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FOREWORD


First Regular Session, 1991

The First Regular Session of the 70th Legislature convened on January 9, 1991. The constitutional sixty-day limit on the duration of the session was midnight, March 9, 1991. 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 17, 1991.

Bills totaling 1,624 were introduced in the two houses during this session (987 House and 637 Senate). The Legislature passed 179 bills, 91 House and 88 Senate. The Governor vetoed two Senate bills (S. B. 533 and S. B. 538), leaving a net total of 177 bills which became law.

One hundred nine concurrent resolutions were introduced during the session, 55 House and 54 Senate, of which 15 House and 10 Senate were adopted. Twenty-two House Joint and 11 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. S. J. R. 4, Local Government Levy and Bond Issue Amendment, was adopted. The House had 21 House Resolutions and the Senate had 35 Senate Resolutions, of which 11 House and 30 Senate were adopted.

The Senate failed to pass 85 House bills passed by the House and 52 Senate bills failed passage by the House. One House bill (Com. Sub. for H. B. 2665) and one Senate bill (Com. Sub. for S. B. 485) died in conference.

First Extraordinary Session, 1991

The First Extraordinary Session convened at 12:36 p.m. on March 17, 1991, and adjourned sine die at 1:20 p.m., on March 17, 1991.

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

Two House bills were introduced, passed and approved by the Governor.
The House introduced and adopted one House Resolution, authorizing the appointment of employees for the Extraordinary Session. The Senate introduced and adopted four Senate 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, 1991
First Extraordinary Session, 1991

GENERAL LAWS

Chapter Page

ABANDONED MINE LAND
1. New Accounts for Abandoned Mine Land Reclamation Program............................................................ 1

ADMINISTRATIVE PROCEDURES
2. Authority of Secretary of State and Attorney General to Disapprove Amendments to Emergency Rules.................. 7

AGRICULTURE
3. Meat Inspection Program Continued.................................................. 13
4. Tree Fruit Industry Self-Improvement Assessment Board........... 14
5. Disposal of Dead Poultry................................................................. 15
6. Livestock Dealers........................................................................... 16
7. Milk, Dairy Products and Imitation Dairy Products.................. 22
8. Plant Pests, Other Insects and Noxious Weeds......................... 79
9. West Virginia Commercial Feed Law.............................................. 85

APIARY LAW
10. West Virginia Apiary Law of 1991................................................... 103

APPROPRIATIONS
Supplemental, 1991 Budget
11. Department of Transportation, Division of Highways, Account No. 6700 .................................................. 113
12. Department of Transportation, Division of Motor Vehicles, Account No. 6710............................................. 115

Budget Bill

BANKS AND BANKING
14. Bank Merger and Incorporation Fees............................................. 203

See also TAXATION.
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.</td>
<td>Changing Powers and Duties of the Municipal Bond Commission</td>
<td>216</td>
</tr>
<tr>
<td>16.</td>
<td>Combining Employment Security and Workers' Compensation</td>
<td>225</td>
</tr>
<tr>
<td>17.</td>
<td>West Virginia Capital Company Act</td>
<td>358</td>
</tr>
<tr>
<td>18.</td>
<td>Child Advocate Office Continued</td>
<td>375</td>
</tr>
<tr>
<td>19.</td>
<td>Administration of Programs for Handicapped Children</td>
<td>376</td>
</tr>
<tr>
<td>21.</td>
<td>Noncustodial Counseling of Child and Parent or Guardian</td>
<td>386</td>
</tr>
<tr>
<td>22.</td>
<td>Employee Representative Organization Bulletin Boards</td>
<td>387</td>
</tr>
<tr>
<td>23.</td>
<td>Department of Administration, Education, Health and Human Resources, Corrections and Workers' Compensation</td>
<td>388</td>
</tr>
<tr>
<td>24.</td>
<td>Victims of Crimes</td>
<td>390</td>
</tr>
<tr>
<td>25.</td>
<td>Numerous State Agencies</td>
<td>392</td>
</tr>
<tr>
<td>26.</td>
<td>Appointment of Guardian When Minor Has Received an Award</td>
<td>401</td>
</tr>
<tr>
<td>27.</td>
<td>Limited Documentary Charges by Creditors</td>
<td>405</td>
</tr>
<tr>
<td>28.</td>
<td>Regulation of Credit Service Organizations</td>
<td>410</td>
</tr>
<tr>
<td>29.</td>
<td>Updating Lists of Controlled Substances</td>
<td>419</td>
</tr>
<tr>
<td>30.</td>
<td>Repeal of Article Governing Building and Loan Associations</td>
<td>444</td>
</tr>
<tr>
<td>31.</td>
<td>Repeal of Article Governing Federal Savings and Loan Insurance Corporation</td>
<td>444</td>
</tr>
<tr>
<td>32.</td>
<td>Compensation of Correctional Officers Required to Work on Holidays</td>
<td>445</td>
</tr>
<tr>
<td>33.</td>
<td>Additional Duties of County Officials and Compensation Therefor</td>
<td>446</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>34</td>
<td>Redefining Judicial Circuits</td>
<td>452</td>
</tr>
<tr>
<td>35</td>
<td>Full-Time Investigators Prohibited from Other Employment</td>
<td>457</td>
</tr>
<tr>
<td>36</td>
<td>Cruelty to Animals</td>
<td>458</td>
</tr>
<tr>
<td>37</td>
<td>Negligent Shooting of Humans or Livestock While Hunting</td>
<td>464</td>
</tr>
<tr>
<td>38</td>
<td>First and Second Degree Murder Defined</td>
<td>465</td>
</tr>
<tr>
<td>39</td>
<td>Purchase of Nonferrous Metals by Junk Dealers</td>
<td>466</td>
</tr>
<tr>
<td>40</td>
<td>Escape from Custody of Commissioner of Corrections</td>
<td>468</td>
</tr>
<tr>
<td>41</td>
<td>Increasing Criminal Penalties for Sexual Offenses</td>
<td>471</td>
</tr>
<tr>
<td>42</td>
<td>Administrative Structure Within Division of Culture and History</td>
<td>476</td>
</tr>
<tr>
<td>43</td>
<td>Appointment as Jailer and Civil Service Coverage</td>
<td>501</td>
</tr>
<tr>
<td>44</td>
<td>Civil Service Coverage</td>
<td>505</td>
</tr>
<tr>
<td>45</td>
<td>Family Support Obligations</td>
<td>508</td>
</tr>
<tr>
<td>46</td>
<td>Authority of Circuit Courts to Issue Injunctions to Prevent Harassment</td>
<td>551</td>
</tr>
<tr>
<td>47</td>
<td>Authorizing Arrests for Domestic Violence</td>
<td>558</td>
</tr>
<tr>
<td>48</td>
<td>Voluntary Mutual Consent Registry for Identifying Information Concerning Birth Parents and Adult Adoptees</td>
<td>572</td>
</tr>
<tr>
<td>49</td>
<td>Program in Physical Fitness</td>
<td>583</td>
</tr>
<tr>
<td>50</td>
<td>Performance Standards to Establish Impaired Schools</td>
<td>584</td>
</tr>
<tr>
<td>51</td>
<td>West Virginia Share in Your Future Act</td>
<td>590</td>
</tr>
<tr>
<td>52</td>
<td>School Library Media Improvement Grant Program</td>
<td>596</td>
</tr>
<tr>
<td>53</td>
<td>Superintendents, Personnel and Personal Leave for Service Employees</td>
<td>602</td>
</tr>
<tr>
<td>54</td>
<td>Emergency Powers of County Superintendent</td>
<td>622</td>
</tr>
<tr>
<td>55</td>
<td>Permitting School Employees to Serve on School Boards in County of Residence</td>
<td>623</td>
</tr>
<tr>
<td>56</td>
<td>Donation of Unneeded Real Estate by County Boards of Education</td>
<td>625</td>
</tr>
<tr>
<td>57</td>
<td>School Closing or Consolidation</td>
<td>627</td>
</tr>
<tr>
<td>58</td>
<td>Vocational-Technical School Improvement Councils</td>
<td>629</td>
</tr>
<tr>
<td>59</td>
<td>Salary Reduction by Employment Term Reduction Prohibited</td>
<td>632</td>
</tr>
<tr>
<td>60</td>
<td>West Virginia State College Designated as a Land Grant Institution</td>
<td>633</td>
</tr>
<tr>
<td>61</td>
<td>Advanced Salary Classification</td>
<td>634</td>
</tr>
</tbody>
</table>
Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>62.</td>
<td>Institutional and Statewide Report Cards to Ensure Accountability</td>
<td>641</td>
</tr>
<tr>
<td>63.</td>
<td>Classified Employee Experience Increment</td>
<td>651</td>
</tr>
<tr>
<td>64.</td>
<td>Classified Employees' Catastrophic Leave Transfer</td>
<td>653</td>
</tr>
<tr>
<td>65.</td>
<td>Underwood-Smith Teacher Scholarship Program</td>
<td>655</td>
</tr>
<tr>
<td></td>
<td>EDUCATIONAL BROADCASTING AUTHORITY</td>
<td></td>
</tr>
<tr>
<td>66.</td>
<td>Distance Learning Coordinating Council</td>
<td>662</td>
</tr>
<tr>
<td></td>
<td>ELECTIONS</td>
<td></td>
</tr>
<tr>
<td>67.</td>
<td>Vendors Authorized to Print Ballots</td>
<td>667</td>
</tr>
<tr>
<td>68.</td>
<td>Election of Delegates and Alternate Delegates to National Political Party Conventions</td>
<td>670</td>
</tr>
<tr>
<td>69.</td>
<td>Campaign Contribution Reporting</td>
<td>712</td>
</tr>
<tr>
<td></td>
<td>FEES AND ALLOWANCES</td>
<td></td>
</tr>
<tr>
<td>70.</td>
<td>Increasing Mileage Charge for Conveying Prisoners</td>
<td>718</td>
</tr>
<tr>
<td></td>
<td>FINANCE AND ADMINISTRATION</td>
<td></td>
</tr>
<tr>
<td>71.</td>
<td>Repeal of Article Creating the Citizens Hearing Committee</td>
<td>720</td>
</tr>
<tr>
<td>72.</td>
<td>Financial Accounting and Reporting Section</td>
<td>720</td>
</tr>
<tr>
<td></td>
<td>FIRE PREVENTION AND CONTROL</td>
<td></td>
</tr>
<tr>
<td>73.</td>
<td>Requiring Installation of Smoke Detectors in All One- and Two-Family Dwellings</td>
<td>724</td>
</tr>
<tr>
<td></td>
<td>GUARANTEED WORK FORCE PROGRAM</td>
<td></td>
</tr>
<tr>
<td>74.</td>
<td>Participation by Firms</td>
<td>726</td>
</tr>
<tr>
<td></td>
<td>HAZARDOUS AND MEDICAL WASTE</td>
<td></td>
</tr>
<tr>
<td>75.</td>
<td>Transportation of Hazardous Waste and Enacting the Medical Waste Act</td>
<td>730</td>
</tr>
<tr>
<td></td>
<td>HEALTH</td>
<td></td>
</tr>
<tr>
<td>76.</td>
<td>West Virginia Health Care Planning Commission Act</td>
<td>751</td>
</tr>
<tr>
<td>77.</td>
<td>Uniform Health Professionals Data Collection System</td>
<td>763</td>
</tr>
<tr>
<td>78.</td>
<td>Health Care Cost Containment (HCCRA)</td>
<td>764</td>
</tr>
<tr>
<td>79.</td>
<td>WIC Program Special Funds Account</td>
<td>814</td>
</tr>
<tr>
<td>80.</td>
<td>Hearing Impairment in Newborns</td>
<td>815</td>
</tr>
<tr>
<td>81.</td>
<td>Repeal of Article Governing Continuum of Care for the Elderly, Impaired and Terminally Ill</td>
<td>819</td>
</tr>
<tr>
<td>82.</td>
<td>Early Intervention Services for Children with Developmental Delays</td>
<td>819</td>
</tr>
<tr>
<td>83.</td>
<td>Long-Term Care Ombudsman Program Act</td>
<td>824</td>
</tr>
<tr>
<td>84.</td>
<td>Testing of Newborn Infants for Certain Diseases</td>
<td>846</td>
</tr>
<tr>
<td>85.</td>
<td>Procedures for Executing a Living Will</td>
<td>849</td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HORSE AND DOG RACING</strong></td>
<td></td>
</tr>
<tr>
<td>86. Four Stakes Races, West Virginia Futurity Race and Frank Gall Memorial Stakes Race</td>
<td>858</td>
</tr>
<tr>
<td><strong>HUMAN SERVICES</strong></td>
<td></td>
</tr>
<tr>
<td>87. Caseload Standards</td>
<td>865</td>
</tr>
<tr>
<td><strong>HUNTING AND FISHING</strong></td>
<td></td>
</tr>
<tr>
<td>88. Class K Nonresident Fishing License</td>
<td>866</td>
</tr>
<tr>
<td><strong>INSURANCE</strong></td>
<td></td>
</tr>
<tr>
<td>89. Insurance Generally, Agents, Brokers, Solicitors, Reciprocity With Other States, Authority of Commissioner Regarding Hazardous Financial Condition of Companies</td>
<td>867</td>
</tr>
<tr>
<td>90. Creation of Office of Consumer Advocacy for Health Care and Insurance Costs</td>
<td>930</td>
</tr>
<tr>
<td>91. Requiring Certain Signatures on Life or Sickness Insurance Policies</td>
<td>933</td>
</tr>
<tr>
<td>92. Insurance Coverage on Vehicles Loaned by Automobile Dealers</td>
<td>936</td>
</tr>
<tr>
<td>93. Individual, Employer and Small Employer Group Accident and Sickness Insurance</td>
<td>937</td>
</tr>
<tr>
<td>94. Third Party Reimbursement for Rehabilitation Services</td>
<td>968</td>
</tr>
<tr>
<td>95. Professional Liability Insurance and Tail Coverage</td>
<td>981</td>
</tr>
<tr>
<td><strong>JURIES</strong></td>
<td></td>
</tr>
<tr>
<td>96. Increasing Per Diem Allowance for Grand Jurors and Payment of Mileage and Expenses</td>
<td>985</td>
</tr>
<tr>
<td><strong>LABOR</strong></td>
<td></td>
</tr>
<tr>
<td>97. Increasing the Minimum Wage</td>
<td>986</td>
</tr>
<tr>
<td><strong>LEGAL HOLIDAYS</strong></td>
<td></td>
</tr>
<tr>
<td>98. Native American Indian Heritage Week as a Special Memorial Week</td>
<td>987</td>
</tr>
<tr>
<td><strong>LEGISLATIVE RULES</strong></td>
<td></td>
</tr>
<tr>
<td>99. Promulgation of Administrative Rules and Regulations</td>
<td>988</td>
</tr>
<tr>
<td><strong>LIENS</strong></td>
<td></td>
</tr>
<tr>
<td>100. Entitlement of Architects, Engineers and Landscape Architects to Mechanic's Lien</td>
<td>1096</td>
</tr>
<tr>
<td><strong>MEDICAID UNCOMPENSATED CARE FUND</strong></td>
<td></td>
</tr>
<tr>
<td>101. New Article Establishing</td>
<td>1098</td>
</tr>
<tr>
<td><strong>MINES AND MINERALS</strong></td>
<td></td>
</tr>
<tr>
<td>102. Protective Clothing and Equipment to be Worn by Miners</td>
<td>1103</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>MOTOR CARRIERS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>103.</td>
<td>PSC Safety Inspection of Commercial Vehicles</td>
<td>1104</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>MOTOR VEHICLES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>104.</td>
<td>Defining “Resident” for Registration Purposes</td>
<td>1108</td>
</tr>
<tr>
<td>105.</td>
<td>Recreating the Driver's Licensing Advisory Board</td>
<td>1109</td>
</tr>
<tr>
<td>106.</td>
<td>Emergency Vehicle Permits</td>
<td>1111</td>
</tr>
<tr>
<td>107.</td>
<td>Abolishing Administrative Hearing for DUI Convictions in Absence of Appeal</td>
<td>1115</td>
</tr>
<tr>
<td>108.</td>
<td>Clarifying Law Governing the Use of Sun Screening Devices</td>
<td>1117</td>
</tr>
<tr>
<td>109.</td>
<td>Motor Vehicle Dealers Permitted to Operate Certain Vehicles Without a Sticker</td>
<td>1121</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>MUNICIPALITIES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>110.</td>
<td>Leases as Lessor by Municipalities</td>
<td>1122</td>
</tr>
<tr>
<td>111.</td>
<td>Paid Police and Fire Department Promotions Based on Experience and Written Competitive Examinations</td>
<td>1124</td>
</tr>
<tr>
<td>112.</td>
<td>Disability and Retirement Benefits for Municipal Retirees</td>
<td>1126</td>
</tr>
<tr>
<td>113.</td>
<td>County Airport Authorities</td>
<td>1139</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>NATURAL RESOURCES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>114.</td>
<td>Possession of Wildlife After Hunting Season</td>
<td>1148</td>
</tr>
<tr>
<td>115.</td>
<td>Developmentally Disabled Residents Permitted to Fish Without a License</td>
<td>1149</td>
</tr>
<tr>
<td>116.</td>
<td>Clarifying “Owner” Within Provisions Regulating Underground Petroleum Storage Tanks</td>
<td>1152</td>
</tr>
<tr>
<td>117.</td>
<td>Groundwater Protection Act</td>
<td>1155</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>NONINTOXICATING BEER</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>118.</td>
<td>Merger of Nonintoxicating Beer Commissioner and Alcohol Beverage Control Commissioner, Alcohol Beverage Control Act</td>
<td>1178</td>
</tr>
<tr>
<td>119.</td>
<td>Establishment of Brewpubs</td>
<td>1209</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>PESTICIDES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.</td>
<td>Repeal of Article Creating Interagency Committee on Pesticides</td>
<td>1229</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>POET LAUREATE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>121.</td>
<td>Salary Increase for West Virginia Poet Laureate</td>
<td>1229</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>PROBATION AND PAROLE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>122.</td>
<td>Notification of Parole Hearing or Release Date of Prisoner to Victim or Immediate Family Member</td>
<td>1230</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>PROFESSIONS AND OCCUPATIONS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>123.</td>
<td>Auctioneers and Apprentice Auctioneers</td>
<td>1231</td>
</tr>
<tr>
<td>124.</td>
<td>Contractor Licensing Act</td>
<td>1245</td>
</tr>
<tr>
<td>125.</td>
<td>Practice of Medicine, Surgery and Podiatry and Continuing Status of Certain Licenses</td>
<td>1264</td>
</tr>
</tbody>
</table>
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>126. Continuing Education for Renewal of License to Practice Medicine and Surgery or Podiatry</td>
<td>1268</td>
</tr>
<tr>
<td>127. Certification Requirements for Physician Assistants and Prohibiting Such Assistants from Dispensing a Prescription for a Refraction</td>
<td>1271</td>
</tr>
<tr>
<td>128. Registration and Licensing of Pharmacists, New Fees and Creating Position of Pharmacist-In-Charge</td>
<td>1278</td>
</tr>
<tr>
<td>129. Permits for Mail-Order Houses Which Dispense Drugs</td>
<td>1286</td>
</tr>
<tr>
<td>130. Osteopathic Physician Assistants</td>
<td>1287</td>
</tr>
<tr>
<td>131. Licensure and Practice of School Psychology</td>
<td>1294</td>
</tr>
<tr>
<td>132. Booth or Chair Rental by Barbers and Beauticians</td>
<td>1309</td>
</tr>
<tr>
<td><strong>PUBLIC DEFENDER</strong></td>
<td></td>
</tr>
<tr>
<td>133. Prohibiting the Private Practice of Law by Public Defenders</td>
<td>1311</td>
</tr>
<tr>
<td><strong>PUBLIC EMPLOYEES INSURANCE</strong></td>
<td></td>
</tr>
<tr>
<td>134. Prohibiting Balance Billing of Medical Bills Under PEIA</td>
<td>1313</td>
</tr>
<tr>
<td><strong>PUBLIC MONEYS AND SECURITIES</strong></td>
<td></td>
</tr>
<tr>
<td>135. Debt Management Act of 1991</td>
<td>1326</td>
</tr>
<tr>
<td>136. Certain Securities Exempt Under the Uniform Securities Act</td>
<td>1330</td>
</tr>
<tr>
<td><strong>PUBLIC PORT/WAYPORT AUTHORITY</strong></td>
<td></td>
</tr>
<tr>
<td>137. Combining Public Port and Wayport Authorities</td>
<td>1336</td>
</tr>
<tr>
<td><strong>PUBLIC SAFETY</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PUBLIC SERVICE COMMISSION</strong></td>
<td></td>
</tr>
<tr>
<td>139. Publication of Rate Information of Public Utilities</td>
<td>1360</td>
</tr>
<tr>
<td><strong>RADIOACTIVE WASTE</strong></td>
<td></td>
</tr>
<tr>
<td><strong>RAILROAD MAINTENANCE AUTHORITY</strong></td>
<td></td>
</tr>
<tr>
<td>141. North Bend Rail Trail</td>
<td>1364</td>
</tr>
<tr>
<td>142. Membership of the Authority</td>
<td>1365</td>
</tr>
<tr>
<td><strong>REAL ESTATE BROKERS</strong></td>
<td></td>
</tr>
<tr>
<td>143. Actions for Fees, Commissions or Other Compensation, Revocation of Broker's License as Suspending Salesperson's License, Listing Agreements, Disclosure of Agency Status and Setting Forth Purchase Agreements</td>
<td>1368</td>
</tr>
</tbody>
</table>
# Table of Contents

**REAL PROPERTY**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>144.</td>
<td>1370</td>
</tr>
<tr>
<td>Licensure and Certification of Real Estate Appraisers</td>
<td></td>
</tr>
</tbody>
</table>

**SALVAGE YARDS**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>145.</td>
<td>1380</td>
</tr>
<tr>
<td>Defining Terms</td>
<td></td>
</tr>
</tbody>
</table>

**SUNSET**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>146.</td>
<td>1382</td>
</tr>
<tr>
<td>Rescheduling Termination Dates of Governmental Entities and Programs</td>
<td></td>
</tr>
<tr>
<td>147.</td>
<td>1385</td>
</tr>
<tr>
<td>Changing Termination Date of the Division of Parks and Tourism</td>
<td></td>
</tr>
<tr>
<td>148.</td>
<td>1385</td>
</tr>
<tr>
<td>Continuation of the Labor-Management Council</td>
<td></td>
</tr>
<tr>
<td>149.</td>
<td>1386</td>
</tr>
<tr>
<td>Repeal of Code Provisions Terminating Certain Agencies</td>
<td></td>
</tr>
<tr>
<td>150.</td>
<td>1387</td>
</tr>
<tr>
<td>Continuing the Rural Resources Division, Known as the Marketing and Development Division</td>
<td></td>
</tr>
<tr>
<td>151.</td>
<td>1387</td>
</tr>
<tr>
<td>Continuing the State Soil Conservation Committee</td>
<td></td>
</tr>
<tr>
<td>152.</td>
<td>1391</td>
</tr>
<tr>
<td>Continuing the Oil and Gas Conservation Commission</td>
<td></td>
</tr>
<tr>
<td>153.</td>
<td>1394</td>
</tr>
<tr>
<td>Continuing the Division of Corrections</td>
<td></td>
</tr>
<tr>
<td>154.</td>
<td>1395</td>
</tr>
<tr>
<td>Continuing the State Geological and Economic Survey</td>
<td></td>
</tr>
<tr>
<td>155.</td>
<td>1396</td>
</tr>
<tr>
<td>Placing the Division of Personnel Under Sunset Review</td>
<td></td>
</tr>
<tr>
<td>156.</td>
<td>1397</td>
</tr>
<tr>
<td>Continuing the Women's Commission</td>
<td></td>
</tr>
<tr>
<td>157.</td>
<td>1398</td>
</tr>
<tr>
<td>Continuing the State Lottery Commission</td>
<td></td>
</tr>
<tr>
<td>158.</td>
<td>1399</td>
</tr>
<tr>
<td>Continuing the Family Law Masters System</td>
<td></td>
</tr>
</tbody>
</table>

**SURFACE MINING**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>159.</td>
<td>1400</td>
</tr>
<tr>
<td>Surface Mining Regulations</td>
<td></td>
</tr>
</tbody>
</table>

**SYNTHETIC FUEL**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>160.</td>
<td>1453</td>
</tr>
<tr>
<td>Tax Credit for Investment in New Industrial Facilities</td>
<td></td>
</tr>
</tbody>
</table>

**TAXATION**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>161.</td>
<td>1464</td>
</tr>
<tr>
<td>Filing of Hotel Occupancy Tax Reports by Convention and Visitor's Bureaus</td>
<td></td>
</tr>
<tr>
<td>162.</td>
<td>1469</td>
</tr>
<tr>
<td>Disclosure of Certain Taxpayer Information</td>
<td></td>
</tr>
<tr>
<td>163.</td>
<td>1473</td>
</tr>
<tr>
<td>Dedication of Additional Coal Severance Tax for Counties and Municipalities</td>
<td></td>
</tr>
<tr>
<td>164.</td>
<td>1479</td>
</tr>
<tr>
<td>Business Franchise and Corporation Net Income Tax Credit for Investment in Management Information Services Facility</td>
<td></td>
</tr>
<tr>
<td>165.</td>
<td>1522</td>
</tr>
<tr>
<td>Certification by Division of Culture and History for Historic Preservation Tax Credit</td>
<td></td>
</tr>
<tr>
<td>166.</td>
<td>1528</td>
</tr>
<tr>
<td>Personal Income Tax Terms</td>
<td></td>
</tr>
<tr>
<td>167.</td>
<td>1529</td>
</tr>
<tr>
<td>Tax on Financial Institutions Doing Business in the State</td>
<td></td>
</tr>
<tr>
<td>168.</td>
<td>1579</td>
</tr>
<tr>
<td>Business Franchise and Corporation Net Income Tax Terms</td>
<td></td>
</tr>
</tbody>
</table>

**VETERANS**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169.</td>
<td>1582</td>
</tr>
<tr>
<td>Extending an Additional Five Point Civil Service Preference to Certain Veterans</td>
<td></td>
</tr>
<tr>
<td>170.</td>
<td>1585</td>
</tr>
<tr>
<td>Providing Tax Benefits for Duty in the Persian Gulf</td>
<td></td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>VOTER REGISTRATION</td>
</tr>
<tr>
<td>171. Registration of Voters at Driver's License Facilities</td>
</tr>
<tr>
<td>WINE</td>
</tr>
<tr>
<td>172. Wine Retailer's License</td>
</tr>
<tr>
<td>WOMEN'S COMMISSION</td>
</tr>
<tr>
<td>173. Continuation, Composition and Duties of Women’s Commission</td>
</tr>
<tr>
<td>WORKERS' COMPENSATION</td>
</tr>
<tr>
<td>174. Workers' Compensation Generally and Appeal Board Findings</td>
</tr>
<tr>
<td>LOCAL LAWS</td>
</tr>
<tr>
<td>HUNTINGTON PARK AND RECREATION DISTRICT</td>
</tr>
<tr>
<td>175. Severing the Village of Barboursville from the District</td>
</tr>
<tr>
<td>WEIRTON</td>
</tr>
<tr>
<td>176. Increasing Certain Gross Weight Limitations on Certain Roads</td>
</tr>
<tr>
<td>WHEELING</td>
</tr>
<tr>
<td>177. Authorizing the Creation of Conditional Zoning</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number</th>
<th>Concurrent</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCR 12.</td>
<td>Requesting the Joint Committee on Government and Finance to Continue the Study of Area Health Education Centers (AHEC)</td>
</tr>
<tr>
<td>HCR 27.</td>
<td>Study by Joint Committee on Government and Finance of Accessibility to the State Capitol by the Physically Disabled</td>
</tr>
<tr>
<td>HCR 28.</td>
<td>Raising a Joint Assembly to Hear an Address by the Honorable Robert C. Byrd, Senator of the Congress of the United States</td>
</tr>
<tr>
<td>HCR 32.</td>
<td>Urging the U.S. Congress to Enact a National Health Plan Providing Access to Health Care for All Americans</td>
</tr>
<tr>
<td>SCR 13.</td>
<td>Commending Honorable Robert C. Byrd for a Lifetime of Service to the State</td>
</tr>
<tr>
<td>SCR 19.</td>
<td>Urging the Resolution of the Labor-Management Crisis at Ravenswood Aluminum Corporation</td>
</tr>
<tr>
<td>House</td>
<td></td>
</tr>
<tr>
<td>HR 9.</td>
<td>Creating a Select Committee on Redistricting</td>
</tr>
<tr>
<td>HR 18.</td>
<td>Urging the President to Support Civil Rights Initiatives to Help Minorities and Women in this Country Reach Their Full Potential</td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR 21. Recognizing and Commending the Three Medical Schools for Collaborative Efforts in the Development of Foundation Support for Rural Primary Care Centers</td>
<td>1676</td>
</tr>
<tr>
<td>SR 8. Requesting the United States Government to Release Information Regarding Unaccounted for WV POWs and MIAs</td>
<td>1677</td>
</tr>
<tr>
<td>SR 13. Commemorating the Death of Rueben G. Kirk III, the First West Virginian to Die in Operation Desert Shield</td>
<td>1678</td>
</tr>
<tr>
<td>Joint Resolution Adopted by Both Houses</td>
<td></td>
</tr>
<tr>
<td>SJR 4. Local Government Levy and Bond Issue Amendment</td>
<td>1679</td>
</tr>
</tbody>
</table>

## First Extraordinary Session, 1991

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>APPROPRIATIONS</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Supplemental</strong></td>
<td></td>
</tr>
<tr>
<td>1. Division of Public Safety, Account No. 5700</td>
<td>1683</td>
</tr>
<tr>
<td>2. Division of Public Safety, Inspection Fees, Account No. 8350</td>
<td>1684</td>
</tr>
</tbody>
</table>
MEMBERS OF THE SENATE
REGULAR SESSION, 1991

OFFICERS
President—Keith Burdette, Parkersburg
President Pro Tem—William R. Sharpe, Jr., Weston
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Estil L. Bevins, Williamson
Doorkeeper—Porter Cotton, Chesapeake

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Prior Service in Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>First...</td>
<td>Thais Blatnik (D)</td>
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</tr>
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<td>Don Macnaughtan (D)</td>
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<td></td>
</tr>
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<td>Larry Wiedebusch (D)</td>
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<td>(House 62nd-67th; 69th</td>
</tr>
<tr>
<td>Third...</td>
<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
<td>Appt. 5/14/85, 67th; 68th-69th</td>
</tr>
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<td></td>
<td>Keith Burdette (D)</td>
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<td>(House 64th-65th; 66th-69th</td>
</tr>
<tr>
<td>Fourth..</td>
<td>Oshel B. Craig (D)</td>
<td>Hurricane</td>
<td>(House 65th); 66th-69th</td>
</tr>
<tr>
<td></td>
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<td>69th</td>
</tr>
<tr>
<td>Fifth....</td>
<td>Homer Heck (D)</td>
<td>Huntington</td>
<td>65th-66th; 69th</td>
</tr>
<tr>
<td></td>
<td>Ned Jones (D)</td>
<td>Huntington</td>
<td>Appt. 12/30/85, 67th; 68th-69th</td>
</tr>
<tr>
<td>Sixth....</td>
<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
<td>66th-69th</td>
</tr>
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<td></td>
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<td>69th</td>
</tr>
<tr>
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<td>Sammy D. Dalton (D)</td>
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<td>(House 62nd-67th; 69th</td>
</tr>
<tr>
<td></td>
<td>Earl Ray Tomblin (D)</td>
<td>Chapmanville</td>
<td>(House 62nd-64th); 65th-69th</td>
</tr>
<tr>
<td>Eighth.</td>
<td>James F. Humphreys (D)</td>
<td>Charleston</td>
<td>(House 66th-68th); Appt. 9/1/89, 69th</td>
</tr>
<tr>
<td></td>
<td>Mark Anthony Manchin (D)</td>
<td>Charleston</td>
<td>69th</td>
</tr>
<tr>
<td>Ninth...</td>
<td>Billy Wayne Bailey, Jr. (D)</td>
<td>Alpoca</td>
<td>Appt. 1/8/91</td>
</tr>
<tr>
<td></td>
<td>William R. Wooton (D)</td>
<td>Beckley</td>
<td>(House 63rd-67th; 69th</td>
</tr>
<tr>
<td>Tenth...</td>
<td>Leonard W. Anderson (D)</td>
<td>Summers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tony E. Whitlow (D)</td>
<td>Kelleyville</td>
<td>(House 60th-61st; 63rd-66th; 67th-69th</td>
</tr>
<tr>
<td>Eleventh.</td>
<td>J. D. Brackenridge (D)</td>
<td>Lewisburg</td>
<td>68th-69th</td>
</tr>
<tr>
<td></td>
<td>Robert Kelvin Holliday (D)</td>
<td>Fayetteville</td>
<td>(House 56th-58th; 59th-60th; 65th-69th</td>
</tr>
<tr>
<td>Twelfth.</td>
<td>Walt Helmick (D)</td>
<td>Marlinton</td>
<td>(House 1 yr., 69th; Appt. 9/25/89; 68th</td>
</tr>
<tr>
<td></td>
<td>Joe Spears (D)</td>
<td>Elkins</td>
<td>(House 62nd-64th); 65th-69th</td>
</tr>
<tr>
<td>Thirteenth.</td>
<td>Joseph M. Minard (D)</td>
<td>Clarksburg</td>
<td>(House Appt. 1/10/83; 66th; 67th-69th</td>
</tr>
<tr>
<td></td>
<td>William R. Sharpe, Jr. (D)</td>
<td>Weston</td>
<td>55th-64th; 67th-69th</td>
</tr>
<tr>
<td>Fourteenth.</td>
<td>Eugene Claypole (D)</td>
<td>Granville</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Joe Manchin, III (D)</td>
<td>Fairmont</td>
<td>(House 66th); 68th-69th</td>
</tr>
<tr>
<td>Fifteenth.</td>
<td>Charles B. Felton, Jr. (D)</td>
<td>Rowlesburg</td>
<td>Appt. 5/21/87; 68th; 69th</td>
</tr>
<tr>
<td></td>
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<td>Grafton</td>
<td></td>
</tr>
<tr>
<td>Sixteenth.</td>
<td>Thomas J. Hawse, III (D)</td>
<td>Moorefield</td>
<td>(House 67th-68th; 69th</td>
</tr>
<tr>
<td></td>
<td>Sondra Moore Lucht (D)</td>
<td>Martinsburg</td>
<td>66th-69th</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>Charlotte Jean Pritt (D)</td>
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<td>(House 67th-68th); 69th</td>
</tr>
<tr>
<td></td>
<td>Martha G. Wehrle (D)</td>
<td>Charleston</td>
<td>(House 62nd-66th); Appt. 9/5/89, 68th</td>
</tr>
</tbody>
</table>

(D) Democrats........................................... 33
(R) Republicans........................................ 1
TOTAL.................................................. 34
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1991

OFFICERS

Speaker—Robert C. Chambers, Huntington
Speaker Pro Tem—W. E. Anderson, Logan
Clerk—Donald L. Kopp, Clarksburg
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—E. Don Yoak, Spencer

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Prior Service in House</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Sam Love (D)</td>
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<td>66th-69th</td>
</tr>
<tr>
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</tr>
<tr>
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<td></td>
</tr>
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</tr>
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<td>65th-69th</td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
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<td>69th</td>
</tr>
<tr>
<td>Sixth</td>
<td>James E. Allison (R)</td>
<td>Sistersville</td>
<td>69th</td>
</tr>
<tr>
<td>Seventh</td>
<td>Otis A. Leggett (R)</td>
<td>St. Marys</td>
<td>68th-69th</td>
</tr>
<tr>
<td>Eighth</td>
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<td></td>
</tr>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
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<td>Parkersburg</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Robert W. Burk, Jr. (R)</td>
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<td>58th-59th (Appt. to Senate 2/23/69, 59th); Appt. to House 1/17/86, 67th; 68th-69th</td>
</tr>
<tr>
<td>Ninth</td>
<td>John Campbell (D)</td>
<td>Sutton</td>
<td></td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>Tenth</td>
<td>Bob Ashley (R)</td>
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<td>67th-69th</td>
</tr>
<tr>
<td>Eleventh</td>
<td>Bill Carmichael (R)</td>
<td>Ripley</td>
<td>Appt. 7/8/69; 61st; 64th-67th</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Charley Damron (D)</td>
<td>Leon</td>
<td>62nd-63rd; 65th-66th; 69th</td>
</tr>
<tr>
<td></td>
<td>Deborah F. Phillips (D)</td>
<td>Scott Depot</td>
<td>67th-69th</td>
</tr>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
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<td>67th-69th</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>Robert C. Chambers (D)</td>
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<td>64th-69th</td>
</tr>
<tr>
<td></td>
<td>Rick Houvoureas (D)</td>
<td>Huntington</td>
<td>68th-69th</td>
</tr>
<tr>
<td></td>
<td>John C. Huntwork, M.D. (D)</td>
<td>Huntington</td>
<td></td>
</tr>
<tr>
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<td>69th</td>
</tr>
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<td>Evelyn E. Richards (R)</td>
<td>Huntington</td>
<td>64th; 67th; 69th</td>
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<td>Stephen T. Williams (D)</td>
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<td>Fourteenth</td>
<td>Kenneth Adkins (D)</td>
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<td>Walter Rollins (D)</td>
<td>Kenova</td>
<td>60th-62nd (Senate 63rd-64th); 67th-69th</td>
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<td>Fifteenth</td>
<td>Grant Preece (D)</td>
<td>Ragland</td>
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<td>Jim Reid (D)</td>
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<td>Sixteenth</td>
<td>W. E. Anderson (D)</td>
<td>Logan</td>
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<td>Tracy Dempsey (D)</td>
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<td>Joe C. Ferrell (D)</td>
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<td>Larry Hendricks (D)</td>
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<td>Delores W. Cook (D)</td>
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<td>Ernest C. Moore (D)</td>
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<td>60th-63rd; 65th-69th</td>
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<td>Rick Muransky (D)</td>
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<td>Nineteenth</td>
<td>Richard Browning (D)</td>
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<td>Twentieth</td>
<td>Gilbert E. Bailey (D)</td>
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<td>William G. Carper, Jr. (D)</td>
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<td>Richard D. Flanigan (D)</td>
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<td>Odell H. Huffman (D)</td>
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<td>59th-60th; (Senate 61st-66th)</td>
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<tr>
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<td>Mary Pearl Compton (D)</td>
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<td>Robert S. Kiss (D)</td>
<td>Prosperity</td>
<td>66th-69th</td>
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<td>Perry E. Mann (D)</td>
<td>Hinton</td>
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<td>Jack J. Roop (D)</td>
<td>Beckley</td>
<td>66th-69th</td>
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<tr>
<td>Twenty-Third</td>
<td>Bonnie L. Brown (D)</td>
<td>South Charleston</td>
<td>66th-68th</td>
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<tr>
<td></td>
<td>Ann Calvert (D)</td>
<td>Charleston</td>
<td>66th-69th</td>
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<td>Ramona Tate Cerra (D)</td>
<td>Charleston</td>
<td>69th</td>
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<td>Joseph H. Farris (D)</td>
<td>Charleston</td>
<td>69th</td>
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<tr>
<td></td>
<td>Ruth Goldsmith (D)</td>
<td>South Charleston</td>
<td>65th</td>
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<td></td>
<td>David Grubb (D)</td>
<td>Charleston</td>
<td>69th</td>
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<tr>
<td></td>
<td>Nancy Kessell (D)</td>
<td>Charleston</td>
<td>64th</td>
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<td>Charlotte R. Lane (D)</td>
<td>Charleston</td>
<td>66th-69th</td>
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<tr>
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<td>Margaret Miller (R)</td>
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<tr>
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<td>Phyllis J. Rutledge (D)</td>
<td>Charleston</td>
<td>59th-61st; 69th</td>
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<td></td>
<td>Sharon Spencer (D)</td>
<td>Charleston</td>
<td>66th; 68th-69th</td>
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<td>Martha Yeager Walker (D)</td>
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<tr>
<td>Twenty-Fourth</td>
<td>Paul M. Blake, Jr. (D)</td>
<td>Fayetteville</td>
<td>69th</td>
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<td></td>
<td>Tom Louise (D)</td>
<td>Oak Hill</td>
<td>67th-68th</td>
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<td>Lucile S. Meadows (D)</td>
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<td>James J. Rowe (D)</td>
<td>Lewisburg</td>
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<td>Bill Wallace (R)</td>
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<td>C. Farrell Johnson (D)</td>
<td>Summersville</td>
<td>68th-69th</td>
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<td>Eugene T. Wilson (D)</td>
<td>Covington</td>
<td>69th</td>
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<td>Twenty-Seventh</td>
<td>Joe Martin (D)</td>
<td>Elkins</td>
<td>65th-69th</td>
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<td></td>
<td>Bill Proudfoot (D)</td>
<td>Elkins</td>
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<td>Dale F. Riggs (R)</td>
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<td>Donald L. Stemple (R)</td>
<td>Philippi</td>
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<td>Twenty-Ninth</td>
<td>Robert J. Conley (R)</td>
<td>Weston</td>
<td>65th-69th</td>
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<td>Thirty-first</td>
<td>Percy C. Ashcraft, II (D)</td>
<td>Clarksburg</td>
<td>66th-69th</td>
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<td></td>
<td>Ron Fragale (D)</td>
<td>Nutter Fort</td>
<td>66th-69th</td>
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<td>Floyd Follen (D)</td>
<td>Bridgeport</td>
<td>66th-68th</td>
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<td>Barbara Ann Warner (D)</td>
<td>Bridgeport</td>
<td>69th</td>
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<td>Thirty-first</td>
<td>Roman W. Precioso, Jr. (D)</td>
<td>Fairmont</td>
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<td>Paul E. Prunty (R)</td>
<td>Fairmont</td>
<td>61st; 63rd-65th; 67th, 69th</td>
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<td>William Ellisworth Stewart (D)</td>
<td>Fairmont</td>
<td>66th; 68th</td>
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<td>John H. Taylor (D)</td>
<td>Grafton</td>
<td>66th-69th</td>
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<tr>
<td>Thirty-second</td>
<td>Robert C. Beach (D)</td>
<td>Core</td>
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<td>Stephen L. Cook (D)</td>
<td>Morgantown</td>
<td>64th; 65th</td>
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<tr>
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<td>Hrian Gallagher (D)</td>
<td>Morgantown</td>
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<td>Greg Sayre (D)</td>
<td>Morgantown</td>
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<tr>
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<td>David Collins (D)</td>
<td>Davis</td>
<td>69th</td>
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<td>David E. Miller (D)</td>
<td>Kingwood</td>
<td>69th</td>
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<td>Thirty-fourth</td>
<td>Allen V. Evans (R)</td>
<td>Dorcas</td>
<td>69th</td>
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<td>Robert A. Schadler (R)</td>
<td>Keyser</td>
<td>69th</td>
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<td>Thirty-fifth</td>
<td>Harold K. Michael (D)</td>
<td>Moorefield</td>
<td>69th</td>
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<td>Jerry L. Mezzatesta (D)</td>
<td>Romney</td>
<td>68th-69th</td>
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<td>Thirty-seventh</td>
<td>Vicki V. Douglas (D)</td>
<td>Martinsburg</td>
<td>69th</td>
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<td>Thirty-eighth</td>
<td>Larry V. Faircloth (R)</td>
<td>Inwood</td>
<td>65th-69th</td>
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<tr>
<td>Thirty-ninth</td>
<td>John Overington (R)</td>
<td>Martinsburg</td>
<td>67th-69th</td>
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<tr>
<td>Fortieth</td>
<td>Dale Manuel (D)</td>
<td>Charles Town</td>
<td>69th</td>
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</tbody>
</table>

| (D) Democrats | 74 |
| (R) Republicans | 26 |

TOTAL | 100 |
COMMITTEES OF THE
HOUSE OF DELEGATES

Regular Session, 1991

STANDING

Agriculture and Natural Resources

D. Miller (Chairman of Agriculture), Compton (Vice Chairman of Agriculture), Love (Chairman of Natural Resources), Johnson (Vice Chairman of Natural Resources), Bailey, Browning, Campbell, Fragale, Hendricks, Michael, Pethel, Preece, Reed, Sayre, Schoonover, Stewart, Vest, Warner, Wilson, Border, Evans, Leggett, Riggs, Stemple and Willison.

Banking and Insurance

Rutledge (Chairman of Banking), Williams (Vice Chairman of Banking), Susman (Chairman of Insurance), Adkins (Vice Chairman of Insurance), Beane, Carper, Collins, S. Cook, Damron, Dempsey, Farris, Ferrell, Flanigan, Gallagher, Grubb, Michael, Staton, Vest, Ashley, Border, Carmichael, Goldsmith, McKinley, Riggs and L. White.

Constitutional Revision

Brown (Chairman), Blake (Vice Chairman), Beach, Beane, Browning, Fullen, Houghouras, Huffman, Kessel, Kiss, Lindsey, Louisos, Manuel, Meadows, Moore, Pethel, Preece, Prezioso, Faircloth, McKinley, Overington, Parriott, Prunty, Stemple and Wallace.

Education

Ashcraft (Chairman), Prezioso (Vice Chairman), Beach, Blake, Carper, Compton, D. Cook, Hendricks, Kessel, Lindsey, Mezzatesta, D. Miller, Phillips, Proudfoot, Schoonover, Spencer, Susman, Williams, Border, Goldsmith, Haskins, Leggett, G. Martin, Prunty and Richards.
House of Delegates Committees

Finance

Murensky (Chairman), Kiss (Vice Chairman), Adkins, Anderson, Bailey, Browning, Campbell, Collins, S. Cook, Farris, Flanigan, Houvouras, Louisos, Mezzatesta, Morgan, Pettit, Rutledge, Warner, P. White, Burk, Conley, Faircloth, McKinley, M. Miller and Stemple.

Government Organization

J. Martin (Chairman), Cerra (Vice Chairman), Beane, Dempsey, Fragale, Fullen, Higgins, Johnson, Love, Meadows, Michael, Preece, Reed, Sayre, Stewart, Taylor, Vest, Walker, Calvert, Evans, Overington, Parriott, Wallace, L. White and Willison.

Health and Human Resources

P. White (Chairman), S. Cook (Vice Chairman), Brown, Brum, D. Cook, Douglas, Flanigan, Gallagher, Grubb, Huffman, Kessel, Mann, Mezzatesta, Morgan, Pettit, Roop, Susman, Taylor, Walker, Conley, Haskins, Lane, M. Miller, Richards and Sims.

Industry and Labor

Spencer (Chairman), Schoonover (Vice Chairman), Adkins, Campbell, Compton, Farris, Hendricks, Louisos, D. Miller, Phillips, Prezioso, Proudfoot, Reed, Reid, Stewart, Walker, Wilson, Calvert, Carmichael, Haskins, M. Miller, Overington, Parriott, Prunty and Sims.

Interstate Cooperation

Pethtel (Chairman), Brown, Ferrell, Fullen, Michael, Lane and Overington.

Judiciary

Rowe (Chairman), Staton (Vice Chairman), Brum, Brown, Damron, Douglas, Ferrell, Fullen, Gallagher, Grubb, Huffman, Huntwork, Mann, Manuel, Moore, Pethtel, Reid, Roop, Wilson, Ashley, Carmichael, Lane, Riggs, Schadler and Sims.
Pensions and Retirement

Browning (Chairman), Kiss (Vice Chairman), Morgan, Prezioso, Rollins, Ashley and Wallace.

Political Subdivisions

Roop (Chairman), Manuel (Vice Chairman), Bailey, Beach, Collins, Damron, Douglas, Higgins, Houveras, Huntwork, Johnson, Kiss, Mann, Meadows, Pettit, Phillips, Proudfoot, Sayre, Calvert, Goldsmith, Faircloth, G. Martin, Richards, Schadler and Willison.

Roads and Transportation

Reid (Chairman), Warner (Vice Chairman), Anderson, Blake, Brum, Carper, Cerra, D. Cook, Dempsey, Ferrell, Fragale, Fullen, Higgins, Huntwork, Love, Morgan, Staton, Taylor, Conley, Evans, Leggett, G. Martin, Schadler, L. White and Wallace.

Rules

Chambers (Chairman), Ashcraft, Houveras, J. Martin, Mezzatesta, Murensky, Rollins, Rowe, P. White, Burk, Faircloth and Stemple.

SELECT

Select Committee on Redistricting

Damron (Chairman), Staton (Vice Chairman), Blake, Brown, Ferrell, Flanigan, Houveras, Love, Manuel, J. Martin, Moore, Roop, Warner, Burk, Faircloth, Lane and McKinley.

JOINT

Commission on Special Investigations

Chambers (Co-Chairman), J. Martin, Rowe, Faircloth and Lane.

Enrolled Bills

Moore (Chairman), D. Cook (Vice Chairman), Overington and Willison.
Government and Finance
Chambers (Co-Chairman), Murensky, Ashcraft, Rollins, Rowe, Ashley and Burk.

Government Operations
J. Martin (Co-Chairman), Cerra, Love, Wallace and L. White.

Legislative Commission on Juvenile Law
Brown (Co-Chairman), Douglas and Schadler.

Legislative Rule-Making Review
Grubb (Co-Chairman), Roop (Vice Chairman), Gallagher, Love, Burk and Faircloth.

Rules
Chambers (Co-Chairman) and Burk.
COMMITTEES OF THE SENATE

Regular Session, 1991

STANDING

Agriculture

Hawse (Chairman), Dalton (Vice Chairman), Anderson, Bailey, Dittmar, Helmick, Minard, Spears, Whitlow and Wiedebusch.

Banking and Insurance

Craigo (Chairman), Minard (Vice Chairman), Bailey, Dittmar, Hawse, Heck, Jones, J. Manchin, Pritt, Sharpe, Tomblin, Wagner and Wooton.

Confirmations

Whitlow (Chairman), Jones (Vice Chairman), Blatnik, Chafin, Claypole, Lucht, Tomblin, Wehrle and Wooton.

Education

Lucht (Chairman), Wagner (Vice Chairman), Bailey, Blatnik, Brackenrich, Dalton, Felton, Hawse, Humphreys, Jones, M. Manchin, Withers and Boley.

Energy, Industry and Mining

Sharpe (Chairman), Macnaughtan (Vice Chairman), Brackenrich, Chernenko, Dalton, Felton, Helmick, J. Manchin, M. Manchin, Wagner, Wehrle, Withers and Boley.

Finance

Tomblin (Chairman), Craigo (Vice Chairman), Blatnik, Brackenrich, Chernenko, Hawse, Jones, Lucht, J. Manchin, M. Manchin, Sharpe, Spears, Wagner, Whitlow, Withers, Wooton and Boley.

Government Organization

Spears (Chairman), Wiedebusch (Vice Chairman), Brackenrich, Chernenko, Claypole, Craigo, Felton, Holliday, Jones, Lucht, J. Manchin, Tomblin, Wehrle and Boley.

[ xxii ]
Health and Human Resources

Holliday (Chairman), Pritt (Vice Chairman), Blatnik, Chernenko, Craigo, Macnaughtan, J. Manchin, Sharpe, Spears, Wooton and Boley.

Interstate Cooperation

Wagner (Chairman), Claypole (Vice Chairman), Dalton, Heck, Holliday, Humphreys and M. Manchin.

Judiciary

Humphreys (Chairman), Felton (Vice Chairman), Anderson, Bailey, Chafin, Claypole, Dalton, Dittmar, Heck, Helmick, Holliday, Macnaughtan, Minard, Pritt, Wehrle and Wiedebusch.

Labor

Chernenko (Chairman), Withers (Vice Chairman), Chafin, Claypole, Helmick, Holliday, Humphreys, Macnaughtan, Wagner and Wiedebusch.

Military

Felton (Chairman), Helmick (Vice Chairman), Bailey, Blatnik, Chernenko, Heck, Minard, Spears and Wooton.

Natural Resources

Brackenrich (Chairman), Anderson (Vice Chairman), Chafin, Craigo, Dittmar, Hawse, Helmick, Humphreys, Macnaughtan, Minard, Spears, Whitlow, Wiedebusch and Withers.

Pensions

Wehrle (Chairman), J. Manchin (Vice Chairman), Dittmar, Lucht, Wagner, Withers and Wooton.

Rules

Burdette (Chairman), Blatnik, Brackenrich, Chafin, Craigo, Humphreys, Lucht, Pritt, Tomblin and Boley.
Small Business

Blatnik (Chairman), M. Manchin (Vice Chairman), Anderson, Craigo, Hawse, Jones, Macnaughtan, Minard, Pritt, Sharpe, Tomblin and Whitlow.

Transportation

Dittmar (Chairman), Heck (Vice Chairman), Anderson, Craigo, Dalton, Sharpe, Tomblin, Wagner and Wiedebusch.

SELECT

Select Committee on Ethical Standards and Practices

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

Select Committee on Redistricting

Wooton (Chairman), Spears (Vice Chairman), Anderson, Brackenrich, Chernenko, Craigo, Felton, Lucht, J. Manchin, Sharpe, Tomblin, Wagner, Wehrle, Wiedebusch and Boley.

JOINT

Commission on Special Investigations

Burdette (Co-Chairman), Blatnik, Craigo, Wooton and Boley.

Enrolled Bills

Heck (Chairman), Dittmar (Vice Chairman), Anderson, Claypole and M. Manchin.

Government and Finance

Burdette (Co-Chairman), Chafin, Craigo, Humphreys, Lucht, Tomblin and Boley.

Government Operations

Spears (Co-Chairman), Brackenrich, J. Manchin, Wiedebusch and Boley.
Legislative Commission on Juvenile Law
Lucht *(Co-Chairman)*, Felton and Boley.

Legislative Rule-Making Review
Wooton *(Co-Chairman)*, Chafin, J. Manchin, Tomblin, Wiedebusch and Boley.

Rules
Burdette *(Co-Chairman)*, Chafin and Boley.
AN ACT to amend and reenact sections two and four, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the abandoned mine land reclamation program generally; establishing two new accounts in the state treasury; granting the commissioner of energy authority to expend funds; requirements for expenditures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.

§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.
The Legislature finds that there are a substantial number of acres of land throughout the state that were disturbed by surface-mining operations prior to the time of present day effective control and regulation. There was little or no reclamation conducted and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continue to impair environmental quality, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public.

Further the Legislature finds and declares that, due to the passage of Public Law 95-87, certain areas within the boundaries of this state do not meet present day standards for reclamation.

Further, the Legislature finds that Title IV of the Surface Mining Control and Reclamation Act of 1977 "Public Law 95-87" provides for the collection of thirty-five cents per ton of coal produced from surface-mine operations and fifteen cents per ton of coal produced from underground mine operations in West Virginia to be collected by the secretary of the United States department of the interior until the thirtieth day of September, one thousand nine hundred ninety-five. At least fifty percent of the funds so collected are to be allocated directly to the state of West Virginia to accomplish reclamation of abandoned coal mining operations, as of the date the state of West Virginia obtained an approved abandoned mine reclamation plan in accordance with sections 405 and 503 of Public Law 95-87.

Therefore, it is the intent of the Legislature by this article to vest jurisdiction and authority in the commissioner of the department of energy to maintain program approval by, and receipt of funds from, the United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.

§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.
(a) All abandoned land reclamation funds available under Title IV of Public Law 95-87, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the director, under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the commissioner for the following:

(1) Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all other necessary expenses incurred to accomplish the purpose of this article: Provided, That all expenditures from this fund shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of past surface-mining practices;

(B) The protection of public health, safety and general welfare from adverse effects of past coal surface-mining practices;

(C) The restoration of land and water resources and
environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;

(D) Research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques;

(E) The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal surface-mining practices;

(F) The development of publicly owned land adversely affected by past coal surface-mining practices, including land acquired as provided in this article for recreation and historic purposes, conservation and reclamation purposes and open space benefits.

(2) (A) The commissioner may expend up to fifteen percent of the funds allocated to the state in any year through the grants made available under paragraphs (1) and (5), subsection (g) of section 402 of Public Law 95-87 for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(B) If the adverse effects on water supplies referred to in this subdivision occurred both prior to and after the third day of August, one thousand nine hundred seventy-seven, subdivision (3) of this subsection shall not be construed to prohibit the state from using funds for the purposes of this subdivision if the commissioner determines that such adverse effects occurred predominantly prior to the third day of August, one thousand nine hundred seventy-seven.

(3) The commissioner may receive and retain up to ten percent of the total of the grants made annually to such state under paragraphs (1) and (5), subsection (g) of
section 404 of Public Law 95-87 if such amounts are deposited to the credit of either:

(A) A special account in the state treasury designated the “Reclamation and Restoration Fund” which is hereby created. Moneys in the fund may be expended by the commissioner for administrative and personnel expenses and to achieve the priorities stated in subdivision (1) of this subsection after the thirtieth day of September, one thousand nine hundred ninety-five; or

(B) A special account in the state treasury designated the “Acid Mine Drainage Abatement and Treatment Fund” which is hereby created. Moneys in the fund may be expended by the commissioner for administrative and personnel expenses and to implement, in consultation with the United States Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the secretary of the United States department of interior. Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices.

(c) Except as provided for in this subsection, lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the third day of August, one thousand nine hundred seventy-seven, and for which there is no continuing reclamation responsibility:

Provided, That moneys from the funds made available by the secretary of the United States department of interior pursuant to paragraphs (1) and (5), subsection (g), section 402 of Public Law 95-87 may be expended for the reclamation or drainage abatement of a site that:

(1) The surface-mining operation occurred during the period beginning on the fourth day of August, one thousand nine hundred seventy-seven, and ending on or before the twenty-first day of January, one thousand
nine hundred eighty-one, and that any funds for reclamation or abatement which are available pursuant to a bond or other financial guarantee or from any other source, and not sufficient to provide for adequate reclamation or abatement of the site; or (2) the surface-mining operation occurred during the period beginning on the fourth day of August, one thousand nine hundred seventy-seven, and ending on or before the first day of October, one thousand nine hundred ninety-one, and that the surety of such surface-mining operation became insolvent during such period, and as of the first day of October, one thousand nine hundred ninety-one, funds immediately available from proceedings relating to such insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation of the site: Provided, however, That the commissioner, with the concurrence of the secretary, makes either of the above-stated findings, and that the site is eligible, or more urgent than the reclamation priorities set forth in paragraphs (A) and (B), subdivision (1), subsection (a) of this section.

(d) One purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article or any act done by virtue of this article be construed as estopping the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.

(e) Where the governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary concurs, then the commissioner may expend money from the fund for such construction.
CHAPTER 2

(H. B. 2627—By Delegates Roop and Gallagher)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen, fifteen-a and fifteen-b, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the secretary of state's authority to disapprove amendments to emergency rules; granting the attorney general the authority to disapprove amendments to emergency rules filed by the secretary of state; amending time frames; and changing the effective date of an emergency rule.

Be it enacted by the Legislature of West Virginia:

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

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

(a) Any agency with authority to propose legislative rules 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 upon the approval of the secretary of state in accordance with section fifteen-a of this article or upon the approval of the attorney general in accordance with section fifteen-b or upon the thirty-fifth day following such filing, whichever occurs first. 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. Fourteen copies of the rules and of the required statement shall be filed immediately with the secretary of state and one copy shall be filed immediately with the legislative rule-making review committee.

An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

1. The secretary of state, acting under the authority provided for in section fifteen-a of this article, or the attorney general, acting under the authority provided for in section fifteen-b of this article, disapproves the emergency rule because (A) the agency has exceeded the scope of its statutory authority in promulgating the emergency rule; (B) an emergency does not exist justifying the promulgation of such rule; or (C) the rule was not promulgated in compliance with the provisions of this section.

2. The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within thirty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the thirty-first day.

3. The agency has not previously filed and fails to file the proposed rule with the legislative rule-making review committee within ninety days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the ninety-first day.

4. The Legislature has authorized or directed promulgation of an authorized 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.

5. The Legislature has, by law, disapproved of such
emergency rule; in which case the emergency rule expires on the date the law becomes effective.

(b) Any amendment to an emergency rule made by the agency 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), (3) or (4), subsection (a) of this section: Provided, That such emergency amendment shall become effective upon the approval of the secretary of state in accordance with section fifteen-a of this article or upon approval of the attorney general in accordance with section fifteen-b of this article or upon the thirty-fifth day following such filing, whichever occurs first.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1), (2), (3) or (4), subsection (a) of this section, the agency 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 and approval 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 rule-making review committee may review any emergency rule to determine (1) whether the agency 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 committee may recommend to the agency, the Legislature, or the secretary of state such action as it may deem proper.
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

§29A-3-15a. Disapproval of emergency rules and amendments to emergency rules by the secretary of state; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by an agency, under the provisions of section fifteen of this article, by any agency, except for the secretary of state, the secretary of state shall review such rule or such amendment and, within thirty-five days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved. An emergency rule filed by the secretary of state shall be reviewed by the attorney general as provided for in section fifteen-b of this article.

(b) The secretary of state shall disapprove an emergency rule or an amendment to an emergency rule if he determines:

(1) That the agency has exceeded the scope of its statutory authority in promulgating the emergency rule or in filing an amendment to the emergency rule;

(2) That an emergency does not exist justifying the promulgation of the rule or the filing of an amendment to the rule; or

(3) That the rule or an amendment to the rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the secretary of state determines, based upon the contents of the rule or the supporting information filed by the agency, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the
secretary of state concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) If the secretary of state determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the secretary of state concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(e) The determination of the secretary of state shall be reviewable by the supreme court of appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The agency which promulgated the emergency rule;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the secretary of state.

§29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the attorney general; judicial review.
(a) Upon the filing of an emergency rule or filing of
an amendment to an emergency rule by the secretary
of state under the provisions of section fifteen of this
article, the attorney general shall review such rule or
such amendment and, within thirty-five days of such
filing, shall issue a decision as to whether or not such
emergency rule or such amendment to an emergency
rule should be disapproved.

(b) The attorney general shall disapprove an emer-
gency rule or an amendment to an emergency rule if he
determines:

(1) That the secretary of state has exceeded the scope
of its statutory authority in promulgating the emer-
gency rule or in filing an amendment to the emergency
rule;

(2) That an emergency does not exist justifying the
promulgation of the rule or the filing of an amendment
to the rule; or

(3) That the rule or an amendment to the rule was not
promulgated in compliance with the provisions of
section fifteen of this article.

(c) If the attorney general determines, based upon the
contents of the rule or the supporting information filed
by the secretary of state, that the emergency rule should
be disapproved, he may disapprove such rule without
further investigation, notice or hearing. If, however, the
attorney general concludes that the information submit-
ted by the secretary of state is insufficient to allow a
proper determination to be made as to whether the
emergency rule should be disapproved, he may make
further investigation, including, but not limited to,
requiring the secretary of state or other interested
parties to submit additional information or comment or
fixing a date, time and place for the taking of evidence
on the issues involved in making a determination under
the provisions of this section.

(d) If the attorney general determines, based upon the
contents of the amendment to an emergency rule or the
supporting information filed by the agency, that the
amendment to the emergency rule should be disap-
proved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the attorney general concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(e) The determination of the attorney general shall be reviewable by the supreme court of appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The secretary of state;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the attorney general.

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CHAPTER 3

(H. B. 2210—By Delegates Love and Schadler)

[Passed February 19, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the meat inspection program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. INSPECTION OF ANIMALS, MEAT AND MEAT PRODUCTS.
§19-2B-1. Purpose and construction; continuation of meat inspection program.

Subject to the provisions of subsection (a), section seven hereof, the basic purpose of this article is to provide for the inspection, labeling and disposition of animals, carcasses, meat, meat food products and meat byproducts which are to be sold or offered for sale through commercial outlets for human consumption, the licensing of commercial slaughterers, custom slaughterers, and processors, and the inspection of slaughterhouses and processing plants located in the state of West Virginia. This article, being intended to protect the health of the citizens of West Virginia, shall be liberally construed.

Pursuant to the provisions of section four, article ten, chapter four of this code, the meat inspection program 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.

CHAPTER 4
(Com. Sub. for S. B. 115—By Senators Spears and Brackenrich)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two-g, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the tree fruit industry self-improvement assessment board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.
§19-2G-10. Termination of program by law.

1 Pursuant to the provisions of section four, article ten, chapter four of this code, the tree fruit industry self-improvement assessment board shall continue to exist until the first day of July, one thousand nine hundred ninety-three, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 5

(Com. Sub. for S. B. 87—By Senators Hawse and Brackenrich)

[Passed February 14, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-four-a, relating to authority of the commissioner of agriculture to promulgate rules regulating the disposal of dead poultry.

Be it enacted by the Legislature of West Virginia:

That article nine, 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 thirty-four-a, to read as follows:

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

§19-9-34a. Authority of commissioner to promulgate rules regulating disposal of dead poultry.

1 Notwithstanding any other provision of the law, the commissioner of agriculture is authorized to promulgate rules to regulate the disposal of dead poultry or other domestic fowl by persons, firms or corporations engaged in growing poultry or other domestic fowl for commercial purposes. Said rules shall encompass disposal methodologies of composting, incineration and rendering and shall include emergency situations of flock depopulation, abnormal death losses or serious disease outbreak, all in accordance with the provisions of chapter twenty-nine-a of this code.
AN ACT to amend and reenact sections two, four, six, seven and ten, article ten-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to livestock dealers; definitions; changing bonding requirements; investigation of complaints; establishing a board of review; commissioner’s powers and duties; increasing criminal penalties; adding civil penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10B. LIVESTOCK DEALER’S LICENSING ACT.

§19-10B-2. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(a) “Bond” means a written instrument guaranteeing that the person bonded shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him/her, and made payable to the commissioner for the benefit of persons sustaining loss resulting from the nonpayment of the purchase price or the failure to fulfill the terms of the contract of purchase.

(b) “Commissioner” means the commissioner of agriculture of the state of West Virginia and duly authorized representatives.
(c) "Department" means the department of agriculture of the state of West Virginia.

(d) "Livestock" means cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine specie, and domestic poultry.

(e) "Livestock dealer" means a person other than a livestock producer who buys, receives or assembles livestock for resale, either for his/her own account or that of another person.

(f) "Livestock producer" means a person selling livestock which he/she has raised or livestock which he/she has additionally purchased and summered or wintered.

(g) "Person" means an individual, partnership, corporation, association or other legal entity.

§19-10B-4. Applicant to furnish bond.

Before issuing any livestock dealer's license, the commissioner shall require the applicant to file either:

1. A properly attested sworn statement that he or she is maintaining a valid surety bond pursuant to the requirements of The United States Department of Agriculture Packers and Stockyards Act of 1921, 42 Stat 159.7 USCA, 181 as amended; or

2. A fully executed bond in an amount prescribed by the commissioner by regulation, but not less than ten thousand dollars, for the benefit of the sellers of livestock who have been wronged or damaged by any fraud or fraudulent practices of the livestock dealer and so adjudged by a court of competent jurisdiction, and who shall have the rights of action for damage for compensation against such bonds. The bond may include, at the option of the applicant, corporate surety bonding, collateral bonding (including costs and securities), establishment of an escrow account, an irrevocable letter of credit or a combination of these methods. If collateral bonding is used, the livestock dealer 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 home-
owners’ 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; the 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 insure
that the market value of such bonds is sufficient.

(3) The commissioner shall, upon receipt of any such
deposits 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 license is issued.
The applicant making the deposit shall be entitled from
time to time to receive from the state treasurer, upon
written approval of the commissioner, the whole or any
portion of any cash, securities or certificates so depos-
ited, upon depositing with the treasurer 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. Such bond shall be open to public
inspection.

§19-10B-6. Investigation of complaints; board of review;
orders of the commissioner; hearing; review.

(a) The commissioner of agriculture is hereby in-
vested with the authority to, and shall upon the verified
written complaint of any person or by his/her own
initiative, investigate the actions of any livestock dealer,
or any person who assumes to act in that capacity. Upon
verification of the complaint that there is probable
cause, the commissioner shall present the complaint and
evidence to the board of review. The board of review
shall consider all of the facts and recommend a course
of action to the commissioner. The commissioner shall
then issue an order.
(b) The order by the commissioner shall be served upon all persons affected thereby by registered mail. Within ten days of receipt of such order, any party adversely affected thereby may, in writing, request a hearing before the commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of articles five and six, chapter twenty-nine-a of this code, as if the same were set forth herein in extenso. The effect of any order shall be suspended during the course of any hearing or subsequent appeals.

(c) The board of review shall be appointed by the commissioner and shall include three persons who are residents of West Virginia and citizens of the United States. One member shall be a licensed livestock dealer, one member shall be a verified livestock producer, and one member shall represent the livestock public market industry. The members shall be appointed for terms of three years and may serve successive terms: Provided, That at the inception of the board, one member shall be appointed for a three year term, one member for a two year term and one member for a one year term. The first year term shall expire on the first day of January, one thousand nine hundred ninety-two, and subsequently thereafter the terms shall expire on the first day of January of each year. There shall be no limit to the number of consecutive terms a member may serve on the board. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the department of agriculture's travel regulations.

§19-10B-7. Refusals, suspensions or revocation of licenses.

The commissioner may refuse to grant or may suspend or revoke a livestock dealer's license when it is determined from the evidence that there is reasonable cause to believe that any of the following situations exists:

(a) Where the applicant or licensee has violated the laws of the state or official regulations governing the interstate or intrastate movement, shipment or transportation of livestock.
(b) Where there have been false or misleading statements as to the health or physical condition of the animals with regard to the official tests or quality of the animals, or the practice of fraud or misrepresentation in connection therewith; in the buying or receiving of animals; or in the receiving, selling, exchanging, soliciting or negotiation of the sale, resale, exchange, weighing or shipment of animals.

(c) Where the applicant or licensee acts as a dealer for a person attempting to conduct business in violation of this article, after the notice of such violation has been given the licensee by the commissioner.

(d) Where the applicant or licensee fails to practice measures of sanitation, disinfection and inspection of premises or vehicles used for the yarding, holding or transportation of livestock.

(e) Where there has been a failure to keep records required by the commissioner, or where there is a refusal on the part of the applicant or licensee to produce records of transactions in the carrying on of the business for which such license is granted.

(f) Where the licensee fails to maintain a bond or to adjust a bond upon thirty days notice, or refuses or neglects to pay the fees or inspection charges required to be paid.

(g) Where the licensee has been suspended by order of the secretary of agriculture of the United States department of agriculture under provisions of The United States Department of Agriculture Packers and Stockyards Act of 1921, 42 Stat 159.7 USCA, 181 as amended.

§19-10B-10. Penalties.

(a) Criminal penalties—Any person who shall violate any of the provisions 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 one thousand dollars for the first offense, and upon conviction of each subsequent offense, shall be fined not less than five hundred dollars nor more than five thousand dollars. 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, and the demonstrated good faith of any person charged in attempting to achieve compliance with this article before and after written notification of the violation.

(2) The commissioner may assess a penalty of not more than five hundred dollars for the first offense, and not less than five hundred dollars nor more than five thousand dollars for the second and subsequent offenses.

(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 a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the same, shall be assessed interest at ten percent from the date the penalty was assessed. Such penalty and interest constitute a lien in favor of the state of West Virginia and shall attach on the person's property when such lien is properly recorded in the county where the property is situated. There shall be no cost as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules in accordance with the provisions of chapter twenty-nine-a of this code, which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article, and which deal with the civil penalties and procedures thereunder.

(d) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was a probable cause for such action.
CHAPTER 7
(Com. Sub. for S. B. 381—By Senator Hawse)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact articles eleven and eleven-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto two new articles, designated articles eleven-b and twenty-eight, all relating to bulk milk trade law; purpose; definitions; permit for the purchase of milk; certificates of proficiency; licenses; purchase of milk; adulteration; prohibited acts; powers and duties of commissioner; suspension, revocation or denial of permits, licenses and certificates of proficiency; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; dairy products and imitation dairy products standards law; purpose; definitions; permits; labeling; adulteration; misbranded; prohibited acts; approved sampling and testing methods; approved laboratories; powers and duties of commissioner; suspension, revocation or denial of permits; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; dairy products and imitation dairy products standards law; purpose; definitions; permits; labeling; adulteration; misbranded; prohibited acts; approved sampling and testing methods; approved laboratories; powers and duties of commissioner; suspension, revocation or denial of permits; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; frozen desserts and imitation frozen desserts law; purpose; definitions; frozen dessert manufacturer permit; labeling; adulteration; misbranded; prohibited acts; approved sampling and testing methods; approved laboratories; powers and duties of commissioner; suspension, revocation or denial of permits; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; and moving the article relating to vitamin and mineral enrichment of flour and bread to a new place in the chapter to allow all articles relating to milk and milk products to be sequentially grouped together.
Be it enacted by the Legislature of West Virginia:

That articles eleven and eleven-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto two new articles, designated articles eleven-b and twenty-eight, all to read as follows:

Article
11A. Dairy Products and Imitation Dairy Products Law.
28. Vitamin and Mineral Enrichment of Flour and Bread.

ARTICLE 11. BULK MILK TRADE LAW.

§19-11-1. Purpose.
§19-11-3. Permit for the purchase of milk.
§19-11-4. Certificates of proficiency.
§19-11-5. Licenses.
§19-11-6. Purchase of milk.
§19-11-10. Suspension, revocation or denial of permits, licenses and certificates of proficiency.
§19-11-12. Criminal penalties; civil penalties; negotiated agreement.
§19-11-14. Cooperation with other entities.

§19-11-1. Purpose.

1 It is the intent of the Legislature that this article regulate the purchase of milk on the basis of weight, measure or components in the milk; confer powers and impose duties upon the commissioner of agriculture; prescribe penalties; and provide for the enforcement thereof.

Furthermore, except where otherwise indicated it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States secretary of health and human services in order to provide for the movement of bulk milk, cream and the products
manufactured from milk and cream in interstate and intrastate commerce with a minimum of economic barriers.


(a) "Adulterated" means milk or the products manufactured from milk meeting one or several of the conditions listed in section seven of this article.

(b) "Certified tester" means any person who has passed an examination in milk testing, weighing and sampling conducted by the commissioner.

(c) "Certified weigher and sampler" means any person who has passed an examination in milk weighing and sampling conducted by the commissioner.

(d) "Clean" means the condition where no residue remains on a surface that will, or is likely to, cause adulteration or other contamination.

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

(f) "Component" means any of the constituent parts of milk in the solids-not-fat, milk fat or water portion of the milk.

(g) "Dairy plant" means any place, premises, or establishment where milk is collected, handled, processed, stored, pasteurized or prepared for further distribution.

(h) "Distribute" means the act of transporting, holding for sale, offering for sale, selling, bartering, parceling out, giving or otherwise disposing of milk.

(i) "Embargo" means an order to withdraw milk from distribution. An embargo shall detain such milk or milk product and prohibit the transportation or distribution of milk as provided in section nine of this article.

(j) "Manufacture" means pasteurizing, ultrapasteurizing, formulating or compounding milk or packaging or preparing said product for distribution.
33 (k) "Milk" means the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows or goats prior to pasteurization or ultrapasteurization. The term may include the components of milk, including cream.

38 (l) "Milk fat" means fat or butterfat in milk.

39 (m) "Milk producer" means any person who operates a dairy farm and who provides, sells or offers milk for sale.

42 (n) "Milk hauler" means any person who transports milk in an unpackaged form.

44 (o) "Person" means any individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not. The term "person" extends to the agents, servants, officers and employees of the person.

49 (p) "Receiving station" means any place, premises, or establishment where milk in unpackaged form is received, collected, handled, stored or cooled and prepared for further transporting.

53 (q) "Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as practicable. Such treatment shall not adversely affect the equipment, the milk or the health of the consumers consuming the milk or milk products manufactured in the equipment and shall be a method acceptable to the commissioner.

61 (r) "Solids-not-fat" means all components of milk that are not milk fat or water.

63 (s) "Transport" means the movement of milk or milk products from one facility to another in a manner that maintains adequate temperatures and protects the product from freezing temperatures, exposure to the sun and from sources of contamination.

68 (t) "Transfer station" means any place, premises or establishment where milk is transferred directly from one transport tank to another.
(u) "Transport tank" means any tank which is used for the pickup of milk or the transportation of milk to or from any milk producer, dairy plant, receiving station, or transfer station.

§19-11-3. Permit for the purchase of milk.

(a) A "permit for the purchase of milk" shall be issued by the commissioner to each place of operation of each person receiving or buying milk on the basis of the components in the product or weight or measure regardless of the method of settlement, except that transfer stations are exempt from this provision. The permit shall expire on the thirty-first day of March following date of issue.

(b) Permits are not transferable with respect to persons or locations.

(c) Permits shall be applied for at least fifteen days before the date that the current permit expires or within fifteen days of the date that the person intends to engage in business. Application for all permits shall be made on forms supplied by the commissioner and provide such information as may be considered reasonably necessary by the commissioner. All applications shall be accompanied by a fee of fifteen dollars. A penalty of two dollars shall be added to all permits that are not applied for or renewed within the time limits set forth in this subsection.

(d) Permits shall be posted prominently at the place of operation.

§19-11-4. Certificates of proficiency.

(a) Certificates of proficiency shall be issued by the commissioner to individuals who successfully pass an examination given under the terms of this article.

(b) Persons requesting an examination shall pay an examination fee of fifteen dollars at the time of the request. Requests for certification for several tests at one time shall be covered under one examination fee. Reexaminations or examinations for additional tests subsequent to the issuing of a certificate will require an
additional fee of fifteen dollars. Only persons of good character shall be allowed to take this examination. Examinations shall be given within thirty days of the request and at the time and place that the commissioner shall designate.

(c) The examination to weigh and sample milk shall cover the skills needed to weigh and sample milk for the purpose of establishing a price based on the components or weight or volume of the product.

(d) The examination to test milk shall cover the skills needed to test, weigh, measure and sample milk for the purpose of establishing a price based on the components or the weight or measure of the product. The examination will test the proficiency of performing the Babcock test and all other testing methods used by that person for determination of the components of milk. The certificate of proficiency shall state which testing methods the applicant will be certified to perform. Testers will have eight months from the effective date of this article to obtain certificates for specific tests and licenses shall be issued under the former certificates during this time period.

(e) Certificates shall be issued under a serial number to the person that passed the examination and shall be permanent, except that in the case where the person does not obtain a license as provided for under section five of this article for five successive years then the certificate will automatically expire.

(f) Certificates shall be posted prominently at the person’s place of business.

(g) Persons who fail the examination may be issued a temporary waiver by the commissioner under terms established by rule. The temporary waiver is intended to give the person the opportunity to learn the skills needed to pass the examination. No temporary waiver will be issued if the interests of milk producers and purchasers of milk are not protected.

(h) If the examination to test milk is given at a site that requires travel to an out-of-state location, the
§19-11-5. Licenses.

(a) Licenses shall be issued by the commissioner to certified testers, certified weighers and samplers and to laboratories performing tests for the components of milk. Licenses are not transferable.

(b) Licenses shall expire on the thirtieth day of June following date of issue: Provided, That weighers and samplers licenses issued with an expiration date of the thirty-first day of December, one thousand nine hundred ninety-one, shall be extended, at no additional fee, through the thirtieth day of June, one thousand nine hundred ninety-two. Applications for all licenses shall be made on forms supplied by the commissioner and shall provide such information as may be considered reasonably necessary by the commissioner for the administration of this article. Licenses shall be applied for at least fifteen days previous to the date when the current license expires or at least five days before the person intends to do business, except for persons who operate a laboratory for the testing of milk where the initial application shall be made at least thirty days before the person intends to do business to allow for on-site inspection prior to issuing the license. The application for licenses shall be accompanied by a fee of ten dollars. A penalty of two dollars shall be added to all licenses that are not applied for or renewed within this time limit.

(c) A “milk laboratory license” shall be issued to each laboratory where a licensed milk tester performs analytical operations. The license shall not be issued until the commissioner is satisfied that the tests made in such laboratory shall be conducted by qualified persons, with adequate facilities and that such tests shall be performed accurately and according to methods approved by the commissioner.

(d) A “milk tester license” shall be issued to persons who determine the weight, measure or components of
milk for the purpose of establishing a purchase price for such milk. The license will cover the performance of each test used to determine the purchase price as listed on the person’s certificate of proficiency. No test method may be used under provisions of this license until the person has obtained a certificate of proficiency for that test.

(e) A “milk weighers and samplers license” shall be issued to persons who weigh or sample milk for the purpose of establishing a purchase price for such milk and who are not involved in testing the components of milk.

(f) Licenses shall be posted prominently at the person’s place of business.

§19-11-6. Purchase of milk.

(a) No determination of the weight or measure of milk may be made from a milk producer’s tank that is not properly calibrated and level.

(b) No determination of the weight of milk in a transport tank may be made with a device that is not accurate.

(c) Each person obtaining a sample of milk for the purpose of establishing a purchase price shall immediately record the sample data on the receipt. The receipt shall contain the milk producer’s name or number, the date and time of the sample, the temperature of the product, the measuring rod reading, the calculated weight, the name of the employer of the weigher and sampler and the signature of the weigher and sampler. A copy of the receipt shall be left with the milk producer, or seller, at the time of obtaining the sample.

(d) No test on milk may be made from a sample which is in such condition as to prevent an accurate reading of the components in the product.

(e) Only testing methods approved by the commissioner may be used. The Babcock method or other method approved by the commissioner shall be the
(f) Each person making tests of samples of milk for the purpose of establishing a purchase price for such milk shall cause the test results to be accurately recorded in an unalterable or verifiable manner. Each method for recording test results may be examined by the commissioner to determine that the test results are recorded in an unalterable or verifiable manner. All test results shall identify the milk producer or seller of the milk, the results of each test for the components in the product and an identification of the person doing the test. The records shall be filed at the place where the testing occurred for a minimum of one year and shall be available to the milk producer, other seller, or the commissioner upon request.

(g) Each person testing milk for its components shall retain the remainder of the sample when the commissioner so requests for the purpose of verifying sample results.

(h) Each person providing payment to a milk producer or seller of milk on the basis of component content or weight or measure shall provide to the milk producer or seller at each time of payment a statement showing for each milk producer or seller the pay period, total weight or measure of milk received during this period, and the average content of the component(s) of the milk used to establish the purchase price; except that this statement format shall not apply to sales between milk cooperatives and purchasers of milk from cooperatives. Nothing in this requirement may prohibit persons purchasing or receiving milk from giving a more detailed report to the milk producer or seller.


Any milk or any milk products are considered adulterated within the meaning of this article if:

(a) They bear or contain any poisonous or deleterious substance or compound in a quantity which may render it injurious to health;
(b) They bear or contain any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal law or regulation or which is found in the product in excess of an established tolerance;

(c) They are or have been produced, transported, or held under unsanitary conditions;

(d) They contain any substance added thereto so as to make them appear better or of a greater value than they are; or

(e) They meet or have met other conditions of adulteration as established by rule.


(a) No person may have in his possession with the intent to sell, transport or manufacture any milk which is adulterated within the meaning of this article.

(b) No person may interfere with or prohibit the commissioner from performing the duties of his office.

(c) No person may fail to comply with the provisions of an embargo order issued under this article.

(d) No person may fail to comply with the provisions of a revocation, suspension or denial order issued under this article.

(e) No person who in any official capacity obtains any information under the provisions of this article that would be considered trade secrets regarding the quality, source and disposition of milk may use this information to his or her own personal gain.

(f) No person may purchase milk in this state on the basis of, or in any manner with reference to, the weight or measure or the amount of components in the product without a valid "permit for the purchase of milk" and may not establish the price on the basis of measurements or tests that have been performed in a dishonest, incompetent, or inaccurate manner, or falsify the records thereof.

(g) No person may weigh, measure, sample or test
milk produced in this state for the purpose of establishing a purchase price of the product without a valid "milk tester license" and may not perform these duties in a dishonest, incompetent or inaccurate manner, falsify the records thereof, or use a testing method unless he has been certified to use that method.

(h) No person may weigh, measure or sample milk produced in this state for the purpose of establishing a purchase price of the product without a valid "milk weighers and samplers license" and may not perform these duties in a dishonest, incompetent manner or falsify the records thereof.

(i) No person may haul milk in or through this state in a tank truck that has previously been used to haul a chemical or foreign substance unless such tank truck has been cleaned and sanitized according to the rules promulgated by the commissioner prior to the hauling of such milk.

(j) No person may sell, offer for sale or expose for sale any milk that is from a herd that does not meet the requirements for animal health as set by rule under this article.


1 The commissioner has the power and duty to:

2 (a) Adopt, promulgate and enforce rules to carry out the purpose of this article;

3 (b) Have access to and enter at all reasonable times all places where milk produced in this state is stored, purchased on the basis of weight or measure or component content, transferred, transported, held or used in the state and have access to all places where samples, records, papers or documents relating to these transactions are kept;

4 (c) Inspect and photograph all places where milk produced in this state is stored, purchased on the basis of weight or measure or component content, transferred, transported, held or used; inspect, audit and copy records and papers relating to these activities and the
sampling, testing and purchase of milk; examine measuring and testing apparatus; examine milk and milk samples and examine equipment used in holding and transporting milk, except that inspections performed under authority of the provisions of article seven, chapter sixteen of this code will not be duplicated;

(d) Examine tanks, holding containers, vehicles, and processing equipment holding or intended to hold milk and collect evidence, including samples, from these areas to establish compliance with this article;

(e) Open any tank or other container containing or believed to contain milk or samples of milk, for the purpose of inspecting and sampling;

(f) Issue permits, certificates, waivers and licenses;

(g) Suspend, revoke or deny permits, licenses or certificates;

(h) Collect fees and expend moneys under the terms of this article;

(i) Give examinations for proficiency in the weighing, sampling and testing of milk;

(j) Issue embargoes for any milk which is or is believed to be adulterated or that is not in compliance with this article and to cause the transportation or distribution of the milk to cease. Nothing in this article may be construed as requiring the commissioner to issue embargoes for minor violations of this article when he or she believes that a written notice will serve the public interest.

(1) When an embargo is issued, the commissioner shall affix to such product or holding container in an appropriate manner a tag or other marking giving warning that such product is under embargo.

(2) The commissioner shall give written notice to the custodian of the product under embargo describing the violation and stating that the product is prohibited from being transported or distributed and is ordered to be held on the premises. This notice shall notify the custodian of the right to request an immediate hearing.
under the rules that the commissioner shall adopt.

(3) The commissioner may take action to seize and condemn any product that is not brought into compliance with this article and the rules issued under this article within ninety days of the notice to the custodian of the product.

(4) The commissioner has the authority to issue an embargo against a perishable product, even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this article;

(k) Establish, maintain and make provision for milk testing facilities; approve testing facilities; establish reasonable fees for such tests; and incur such expenses as may be necessary to maintain and operate these facilities;

(l) Conduct all sampling and testing using methods set forth in the fifteenth edition of and supplement to the Official Methods of Analysis of the Association of Official Analytical Chemists, published by the Association of Official Analytical Chemists; or the fifteenth edition of the Standard Methods for the Examination of Dairy Products, published by the American Public Health Association, Inc.; or methods approved by the commissioner;

(m) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(n) Investigate complaints, showing good cause, that the weighing and sampling or the testing of the raw bulk milk is incorrect, inaccurate or performed in a deceitful manner;

(o) Conduct hearings as provided by this article; and
(p) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution minor violations of the article when he or she believes that the public interest will be best served by a written notice.

§19-11-10. Suspension, revocation or denial of permits, licenses and certificates of proficiency.

(a) The commissioner may deny any application for a permit, license or certificate whenever said permit, license or certificate has been applied for fraudulently, the applicant has grossly interfered with the duties of the commissioner or the applicant is determined to be not in compliance with or not able to comply with this article.

(b) The commissioner may suspend a permit, license or certificate whenever a health hazard exists, the permit, license, or certificate has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the permit, license or certificate holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. A person whose permit, license or certificate has been suspended shall discontinue operations covered by the permit, license or certificate during the period of the suspension. The commissioner may issue a summary suspension in cases where violations of this article constitute a hazard to the public health, safety or welfare where the public interest requires immediate action.

(1) Except for summary suspensions, the commissioner shall give written notice to the person(s) affected by the pending suspension, stating that he or she contemplates suspension of the permit, license or certificate and giving reasons therefor. The suspension notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit, license, or certificate holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the
(2) All summary suspensions shall be followed by a notice of suspension, the reasons therefor, and an opportunity for a hearing in accordance with this article.

(3) At the end of the period of suspension, the permit, license or certificate holder may resume operations without reapplication for a permit, license or certificate.

(c) The commissioner may revoke any permit, license or certificate issued under this article whenever a health hazard exists, the permit, license or certificate has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. Any person whose permit, license or certificate has been revoked shall immediately discontinue all operations covered under the permit, license or certificate.

(1) Before revoking any permit, license or certificate, the commissioner shall give written notice to the persons affected, stating that the revocation of the permit, license or certificate is being contemplated and giving reasons therefor. The revocation notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit, license or certificate holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) At the end of the period of revocation a new permit, license or certificate will not be issued without the filing of an application, payment of the required fee and compliance with all conditions that the commissioner shall require for the reissuing of such permit, license or certificate.


(a) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a
hearing before the commissioner under the rules
promulgated by the commissioner.

(b) Hearings shall be conducted according to proce-
dures set forth by rule.

(c) All the testimony and evidence at a hearing shall
be recorded by mechanical means, which may include
the use of tape recordings.

The mechanical record shall be maintained for ninety
days from the date of the hearing and a transcript shall
be made available to the aggrieved party.

(d) Any party who feels aggrieved of the suspension,
revocation or denial order may appeal within sixty days
to the circuit court of the county in which the person's
principal place of business is located.

§19-11-12. Criminal penalties; civil penalties; negotiated
agreement.

(a) Criminal penalties. — Any person violating any
provision of this article or rules 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 or subsequent 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
rules adopted hereunder may be assessed a civil penalty
by the commissioner. In determining the amount of any
civil penalty, the commissioner shall give due consider-
atation to the history of previous violations of any person,
the seriousness of the violation, including any irrepar-
able harm to the environment, any hazards to the health
and safety of the public and any economic damages to
the public and the demonstrated good faith of any
person charged in attempting to achieve compliance
(2) The commissioner may assess a civil penalty of up to one thousand dollars for any 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) Nothing in this article may be construed as requiring the commissioner or his representative to report for prosecution as a result of minor violations of the article when he believes that the public interest will be best served by a suitable notice of warning in writing.

(e) Upon application by the commissioner therefor, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(f) No state court may allow for the recovery of damages for any administrative action taken, if the
court finds that there was a probable cause for the action.

(g) It is 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.


1 All fees, penalties or other moneys collected by the commissioner under the provisions of this article shall be paid into a special account and expended upon the order of the commissioner for the purpose of the enforcement and administration of this article.

§19-11-14. Cooperation with other entities.

1 The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, agencies of foreign governments, and private associations in order to carry out the purpose and provisions of this article.


1 The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided, That when revealing the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant; or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.

ARTICLE 11A. DAIRY PRODUCTS AND IMITATION DAIRY PRODUCTS LAW.

§19-11A-1. Purpose.
§19-11A-1. Purpose.

Advances in food technology have resulted in the development of a variety of products of similar usage as standardized dairy products that are so similar in appearance, odor and taste that they are difficult to differentiate from dairy products. Therefore, it is the purpose of this article to regulate these products in addition to dairy products and to regulate their marketing, to protect, promote and preserve the public health and general welfare, to prevent fraud and deception in the manufacture and trade of products covered under this article, to establish labeling requirements and to establish standards of identity for dairy products and imitation dairy products intended primarily for human consumption.

Except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States secretary of health and human services in order to provide for the movement of milk products, cheeses and frozen desserts and imitation dairy products in interstate and intrastate commerce with a minimum of economic barriers.


(a) “Adulterated” means dairy products or imitation dairy products meeting one or several of the conditions listed in section five of this article.

(b) “Approved laboratory” means a laboratory approved by the commissioner under section nine of this article.

(c) “Cheese” means blue, cheddar, cottage, cream,
edam, gouda, gruyere, limburger, monterey jack, mozzarella, muenster, neufchatel, romano, roquefort, swiss or cold-pack cheese; pasteurized blended cheese whether made from cow or goat milk; and such other products as established by rule as a cheese.

(d) "Clean" means the condition where no residue remains on a surface that will, or is likely to, cause adulteration.

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

(f) "Dairy products" means milk products, frozen desserts and cheeses as defined in this article which are intended for human consumption.

(g) "Distributor" means any person who distributes dairy products or imitation dairy products. The term does not include persons who are exclusively retailers.

(h) "Distribute" means the act of transporting, holding for sale, offering for sale, selling, bartering, parceling out, giving or otherwise disposing of dairy products or imitation dairy products. This term does not apply to a firm listed as a distributor on the label if the firm is not engaged in the activities listed in this subsection within the state of West Virginia.

(i) "Embargo" means an order to withdraw a dairy product or imitation dairy product from distribution or to stop a manufacturing operation. An embargo shall detain such product and prohibit the manufacturing process as provided in section ten of this article.

(j) "Freezer" means mechanical equipment used to lower the temperature of a mix, with or without incorporating air into the mix during the freezing process. Freezers may operate on a continuous or batch basis.

(k) "Frozen dessert" means ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, goat’s milk ice cream, goat’s milk ice milk, fruit sherbet, nonfruit sherbets, frozen dietary dessert, frozen yogurt,
frozen lowfat yogurt, milkshakes, any mix used to make such frozen desserts whether quiescently frozen or frozen while mixed and such other products as established by rule as a frozen dessert whether made with milk products from a cow or goat.

(l) "Imitation dairy products" means products that are manufactured, packaged or labeled so as to resemble the composition, physical and sensory properties of dairy products, which contain dairy products or milk-derived ingredients and which are intended to be used as a substitute for a dairy product.

(m) "Label" means the display of written, printed or graphic matter upon or affixed to the package in which the dairy product or imitation dairy product is distributed.

(n) "Labeling" means all representations disseminated in any manner or by any means other than by the label, which induce or which are likely or intended to induce the purchase or use of dairy products or imitation dairy products.

(o) "Manufacture" means pasteurizing, ultrapasteurizing, formulating, compounding, freezing, packaging or preparation for distribution of dairy products or imitation dairy products.

(p) "Manufacturer" means any person who manufactures dairy products or imitation dairy products.

(q) "Milk-derived ingredients" means whey, modified whey products, casein, caseinates, lactose, lactalbumins and lactoglobulins used in fluid, concentrated or dry form and such other ingredients established by rule as a milk-derived ingredient.

(r) "Milk products" means milk, acidified milk, cultured milk, concentrated milk, sweetened condensed milk, sweetened condensed skim milk, lowfat dry milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, evaporated milk, evaporated skim milk, lowfat milk, acidified lowfat milk, cultured lowfat milk, skim milk, acidified skim milk, cultured skim milk, dry whole milk, cream, dry cream, heavy cream, light
cream, light whipping cream, sour cream, acidified sour
cream, eggnog, half-and-half, sour half-and-half, acidifi-
ted sour half-and-half, butter, yogurt, lowfat yogurt,
nonfat yogurt and such other products established by
rule as a milk product whether made with milk
products from a cow or goat.

(s) "Milk fat" means fat in dairy products or in milk-
derived ingredients.

(t) "Misbranded" means dairy products or imitation
dairy products meeting one or several of the conditions
listed in section six of this article.

(u) "Mix" means the product that when frozen
produces a frozen dessert or an imitation of a frozen
dessert.

(v) "Official sample" means any sample taken in
accordance with the provisions of this article.

(w) "Package" means any container holding dairy
products or imitation dairy products.

(x) "Pasteurized" means the process of uniformly
heating every particle of a dairy product or imitation
dairy product, holding it in the heated state and cooling
it, in equipment under conditions of temperature and
time that is established in the Grade "A" Pasteurized
Milk Ordinance, 1989 revision, published by the United
States department of health and human services:
Provided, That nothing contained in this definition shall
be construed as barring any other process which may
be approved by the commissioner or the state director
of health that results in products that are free from
pathogens.

(y) "Person" means any individual, partnership,
association, fiduciary, firm, company, corporation, or
any organized group of persons whether incorporated or
not. The term "person" extends to the agents, servants,
oficers and employees of the person.

(z) "Retailer" means the person who sells dairy
products or imitation dairy products only to the ultimate
consumer, who does not transport dairy products or
imitation dairy products in any manner except between buildings on the same lot or within the retail premises and who sells frozen desserts from a freezer only at the firm where the freezer is located.

(aa) "Sanitization" means the application of any effective method or substance to a clean surface for the destruction, as far as practicable, of pathogens and other organisms. Such treatment shall not adversely affect the equipment, the milk or the health of the consumers consuming the products manufactured in the equipment and shall be a method acceptable to the commissioner.

(bb) "Transport" means the movement from one facility to another of dairy products and imitation dairy products in a manner that maintains adequate temperatures and protects the product from freezing temperatures, exposure to the sun and from sources of contamination.

(cc) "Ultrapasteurized" means the process of heating every particle of a dairy product or imitation dairy product at or above two hundred eighty degrees Fahrenheit for at least two seconds either before or after packaging so as to produce a product which has an extended shelf life under refrigerated conditions.


(a) Permits are not transferable with respect to persons or locations.

(b) Application for all permits shall be made on forms supplied by the commissioner and shall provide such information as may be considered necessary by the commissioner.

(c) Permits shall be posted prominently at the place of operation.

(d) A dairy products distributors permit shall be issued by the commissioner to each person distributing dairy products in this state, even if there is no permanent location maintained in this state. Persons maintaining multiple permanent locations in this state or distributing into this state from several locations shall
obtain a permit for each location. Application shall be made at least fifteen days before the date that the current permit expires or within fifteen days of the date that the person intends to engage in business. The application shall be accompanied by a fee of fifteen dollars. A penalty of two dollars shall be added to all permits that are not applied for or renewed within this time limit. Permits shall expire on the thirty-first day of March following date of issue: Provided, That firms that have a permit with an expiration date of the thirtieth day of June, one thousand nine hundred ninety-one, on the date of implementation of this article shall be allowed to make application for a dairy products permit for the period of the first day of July, one thousand nine hundred ninety-one, through the thirty-first day of March, one thousand nine hundred ninety-two, at a fee of ten dollars.

(e) A dairy products distributors permit is not required for persons who distribute only aseptically processed and hermetically sealed dairy products or frozen desserts, dry dairy products or dry frozen dessert mixes.

(f) A temporary marketing permit may be issued by the commissioner for the marketing of dairy products that are not covered by an established standard. The temporary permit may be issued according to procedures established by rule. Persons applying for a temporary marketing permit shall have a valid dairy products distributors permit. There is no fee for the permit.


(a) All packages of dairy products or imitation dairy products shall have a label upon or affixed to the package. The label shall be legible and of a print size and style easily readable by the ordinary citizen. The information required in this section shall be on each label and shall be stated in English.

(b) The label shall contain the following information:

(1) The name of the product;
(2) The quantity of the contents;

(3) The name and address of the manufacturer, packer or distributor: Provided, That the manufacturer's plant code or name and address shall always appear on the label for Grade "A" products; and

(4) Such other information as the commissioner shall require by rule.


Any dairy product or imitation dairy product referred to in this article is considered adulterated within the meaning of this article if it:

(a) Bears or contains any poisonous or deleterious substance or compound in a quantity which may render it injurious to health;

(b) Contains any coloring substance or flavoring matter that may be deleterious to health;

(c) Bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal law or regulation or which is found in the product in excess of an established tolerance;

(d) Does not meet the quality standards set forth in this article;

(e) Is or has been manufactured under conditions not in conformity with the provisions of this article;

(f) Is or has been produced, processed, prepared or held under unsanitary conditions;

(g) Has not been manufactured according to the provisions of the applicable standard of identity or that contains pathogens after manufacture;

(h) Is or has been stored in a package composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(i) Contains any substance added thereto or mixed or packed therewith so as to make it appear better or of greater value than it is; or
(j) Meets or has met other conditions of adulteration as established by rule.


Any dairy product or imitation dairy product referred to in this article is considered misbranded within the meaning of this article if:

(a) It is labeled as a product for which there is a standard established by this article and it does not conform to such standards;

(b) Its label or labeling is false or misleading in any particular;

(c) It is not labeled in accordance with the requirements of this article;

(d) Any word, statement or other information required by this article to appear on the label or the labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs or devices in the labeling and in such terms as to render it likely to be read or understood by the ordinary person under customary conditions of purchase and use;

(e) Damage or inferiority has been concealed by any means; or

(f) It meets or has met other conditions of misbranding as established by rule.


(a) No person may distribute, sell, offer for sale, hold for sale or have in his possession with the intent to sell any dairy product or imitation dairy product which is adulterated or misbranded within the meaning of this article.

(b) No person may interfere with or prohibit the commissioner from performing the duties of his office.

(c) No person may fail to comply with the provisions of an embargo order issued under this article.

(d) No person may fail to comply with the provisions of a revocation, suspension or denial order issued under
(e) No person who, in any official capacity, obtains any information under the provisions of this article that would be considered trade secrets regarding the quality, source and disposition of dairy products or imitation dairy products may use this information to his or her own personal gain.

(f) No person may bring into, send into or receive into this state, distribute within this state or have in storage dairy products without a valid dairy products distributors permit, except that retailers are exempt from this requirement.

(g) No person may distribute, sell, offer for sale, hold for sale or have in their possession with intent to sell, a dairy product or imitation dairy product in a container if the whole or any part of the item(s) required by this article to be on the label have been altered, mutilated, destroyed, obliterated, removed, concealed, replaced or otherwise falsely represented.

(h) No person may alter or deface any part of the items required by this article to be on the label after packaging.

(i) No person may offer for sale, transport, or distribution dairy products or imitation dairy products subsequent to packaging that have been allowed to exceed a temperature of forty-five degrees Fahrenheit for refrigerated noncultured products or zero degrees Fahrenheit for frozen products, except that dairy products or imitation dairy products containing active cultures shall not be allowed to exceed a temperature of fifty degrees Fahrenheit; and cheeses or imitations of cheeses shall not be allowed to reach temperatures that will allow for spoilage or mold organisms, other than those mold organisms that may be in the product as a result of the process used to make the product, to grow on or in the product. Dairy products or imitation dairy products that have been aseptically processed and hermetically sealed and dry dairy products or dry imitation dairy products are exempted from the requirements of this subsection.
(j) No person may transport dairy products or imitation dairy products in a vehicle that has previously been used to haul a chemical or foreign substance unless such vehicle has been cleaned according to rules promulgated by the commissioner.

(k) No person may sell or reprocess for human consumption dairy products or imitation dairy products that are in, or have been in, broken or opened retail packages that have been out of the possession of the manufacturer. Nothing in this provision prohibits the return of these containers to the distributor for inspection purposes only.

(l) No person may distribute or use for human consumption products manufactured from packaged dairy products or imitation dairy products that have been out of the possession of the manufacturer.

(m) No person may distribute or use dairy products or imitation dairy products that have been repasteurized subsequent to transportation in bulk, except for products that have been handled in a sanitary manner and maintained at forty-five degrees Fahrenheit or less prior to repasteurization.

(n) No person may sell, offer for sale or expose for sale any product containing milk products or milk-derived products that are from a herd that does not meet the requirements for animal health as set by rules promulgated under this article.

(o) No person may sell or exchange or have in his possession with intent to sell or exchange in this state any milk powder originating from any country or area outside the United States with reported cases of rinderpest, African swine fever or foot and mouth disease unless that product is imported into this state under conditions set by rules promulgated under this article.

§19-11A-8. Approved sampling and testing methods.

(a) All sampling and testing methods shall be those set forth in the fifteenth edition of and supplement to the Official Methods of Analysis of the Association of
Official Analytical Chemists, published by the Association of Official Analytical Chemists; or the fifteenth edition of the Standard Methods for the Examination of Dairy Products, published by the American Public Health Association, Inc.; or methods approved by the commissioner.

(b) The Babcock method or other methods approved by the commissioner for determining the milk fat content of dairy products shall be used as the reference method to establish and maintain the calibration of automated testing instruments.


(a) Each person who desires to have his laboratory approved by the commissioner for testing official dairy product or imitation dairy product samples as herein provided shall first satisfy the commissioner that tests to be made in such laboratory shall be conducted by qualified persons, with adequate facilities and that such tests are performed accurately and according to methods approved by the commissioner.

(b) For the purpose of determining whether a laboratory shall be designated as an approved laboratory the commissioner shall designate a qualified person or persons to inspect the laboratory, its equipment, facilities and personnel at the expense of the applying laboratory, and thereafter may have similar inspections made at the expense of the approved laboratory for the purpose of determining whether or not such approval should be continued.

(c) The commissioner may accept the test results of any laboratory that has been approved under this article: Provided, That the commissioner shall not accept the test results of any approved laboratory for samples manufactured, distributed or used by a firm the same as or related to the approved laboratory.


The commissioner has the power and duty to:

(a) Adopt, promulgate and enforce rules to carry out
the purpose of this article, including establishing
definitions and standards of quality and identity for
dairy products and imitation dairy products;

(b) Have access to and enter at all reasonable times
all places where dairy products or imitation dairy
products are manufactured, packaged, stored, held, transported, distributed or used in this state and where
records, papers or documents relating to these transac-
tions are kept;

c) Inspect and photograph all places where dairy
products or imitation dairy products are manufactured, packaged, stored, held, transported, distributed or used, inspect, audit and copy records and papers relating to the manufacturing, distribution, sampling, testing and sale of dairy products or imitation dairy products, examine measuring and testing apparatus; and examine equipment used in manufacturing and transportation of dairy products or imitation dairy products, except that inspections performed under authority of the provisions of article seven, chapter sixteen of this code will not be duplicated;
(d) Examine and sample dairy products or imitation
dairy products, including, but not limited to, ingredients
and packages that are used in the manufacture of these products, and may open any package containing or believed to contain any dairy product or imitation dairy product, or an ingredient to be used in the manufacture of these products for the purpose of inspecting and sampling;
(e) Issue, suspend, revoke or deny permits;
(f) Collect fees and expend moneys under the terms of this article;
(g) Collect evidence, including samples, of the condi-
tion of equipment, holding tanks, storage rooms and vehicles used, or intended to be used in the processing, packaging, transporting or holding of dairy products or imitation dairy products;
(h) Examine the labels and labeling of dairy products or imitation dairy products;
(i) Issue embargoes for any dairy product or imitation dairy product which is or is believed to be adulterated, misbranded or that is not in compliance with this article and to cause the manufacturing and distributing of same to cease. Nothing in this article may be construed as requiring the commissioner to issue embargoes for minor violations of this article when he or she believes that a written notice of the violation will serve the public interest.

(1) When an embargo is issued, the commissioner shall affix to such product or manufacturing device in an appropriate manner a tag or other marking giving warning that such product is under embargo.

(2) The commissioner shall give written notice to the custodian of the product or process under embargo describing the violation and stating that the product is prohibited from being sold, offered for sale, exposed for sale or distributed and is ordered to be held on the premises and, further, that all manufacturing processes in the state of West Virginia for this product shall cease until the embargo is released. This notice shall notify the custodian of the right to request an immediate hearing under the rules adopted by the commissioner.

(3) The commissioner may take action to seize and condemn any product that is not brought into compliance with this article and the rules issued within ninety days of the notice to the custodian of the product.

(4) The commissioner has the authority to issue an embargo against a perishable product, even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this article;

(j) Establish, maintain and make provision for dairy product and imitation dairy product testing facilities, to establish reasonable fees for such tests and to incur such expenses as may be necessary to maintain and operate
these facilities;

(k) Approve sampling and testing methods and evaluate and approve official laboratories;

(l) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(m) Conduct hearings as provided by this article; and

(n) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution minor violations of the article when he or she believes that the public interest will be best served by a written notice of violation.

§19-11A-11. Suspension, revocation or denial of permits.

(a) The commissioner may deny any application for a permit whenever said permit has been applied for fraudulently, the applicant has grossly interfered with the duties of the commissioner, or the applicant is determined to be not in compliance with or not able to comply with this article.

(b) The commissioner may suspend a permit whenever a health hazard exists or is believed to exist, the permit has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the permit holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. Any person whose permit has been suspended shall immediately discontinue all operations covered under the permit. The commissioner may issue a summary suspension in cases where violations of this article constitute a hazard to the public health, safety or welfare or where the public interest requires immediate action.

(1) Except for summary suspensions, the commissioner shall give written notice to the persons affected of the pending suspension, stating that the suspension of the permit is being contemplated and giving reasons
therefore. The suspension notice shall appoint a time and
place for hearing and shall be mailed by certified mail
to the business address of the permit holder at least ten
days before the date set for the hearing. The commis-
sioner shall review the evidence presented at the
hearing prior to issuing his decision.

(2) All summary suspensions shall be followed by a
notice of suspension, the reasons for the suspension, and
an opportunity for a hearing in accordance with this
article.

(3) At the end of the period of suspension, the permit
holder may resume operations without reapplication for
a permit.

(c) The commissioner may revoke any permit issued
under this article whenever a health hazard exists, the
permit has been obtained fraudulently, the holder has
grossly interfered with the duties of the commissioner
or it is determined that the holder is dishonest, deceitful,
incompetent or not in compliance with or is unable to
comply with this article. Any person whose permit has
been revoked shall immediately discontinue all opera-
tions covered under the permit.

(1) Before revoking any permit the commissioner shall
give written notice to the persons affected, stating that
the revocation of the permit is being contemplated and
giving reasons for the revocation. The revocation notice
shall appoint a time and place for hearing and shall be
mailed by certified mail to the business address of the
permit holder at least ten days before the date set for
the hearing. The commissioner shall review the evidence
presented at the hearing prior to issuing his decision.

(2) At the end of the period of revocation the permit
will not be issued without an application, payment of
required fee and the compliance with all conditions that
the commissioner shall require for the reissuing of such
permit.


(a) Any person aggrieved by any action taken under
this article shall be afforded the opportunity for a
(b) Hearings shall be conducted according to procedures set forth by rule.

(c) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party.

(d) Any party who feels aggrieved of the suspension, revocation or denial order may appeal within sixty days to the circuit court of the county in which the person has located its principal place of business or to the circuit court of Kanawha County.

§19-11A-13. Criminal penalties; civil penalties; negotiated agreement.

1 (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 or subsequent 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 (1) Any person violating a provision of this article or rules 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, any hazards to the health and safety of the public and any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance
23 with this article before and after written notification of
24 the violation.

25 (2) The commissioner may assess a civil penalty of up
26 to one thousand dollars for a violation.

27 (3) The civil penalty is payable to the state of West
28 Virginia and is collectible in any manner now or
29 hereafter provided for collection of debt. If any person
30 liable to pay the civil penalty neglects or refuses to pay
31 the same, the amount of the civil penalty, together with
32 interest at ten percent, is a lien in favor of the state of
33 West Virginia upon the property, both real and per-
34 sonal, of such a person after the same has been entered
35 and docketed to record in the county where such
36 property is situated. The clerk of the county, upon
37 receipt of the certified copy of such, shall enter same to
38 record without requiring the payment of costs as a
39 condition precedent to recording.

40 (c) Notwithstanding any other provision of law to the
41 contrary, the commissioner may promulgate and adopt
42 rules which permit consent agreements or negotiated
43 settlements for the civil penalties assessed as a result of
44 violation of the provisions of this article.

45 (d) Upon application by the commissioner for an
46 injunction, the circuit court of the county in which the
47 violation is occurring, had occurred or is about to occur,
48 as the case may be, may grant a temporary or perma-
49 nent injunction restraining any person from violating or
50 continuing to violate any of the provisions of this article
51 or any rule promulgated under this article, notwith-
52 standing the existence of other remedies at law. Any
53 such injunction shall be issued without bond.

54 (e) No state court may allow for the recovery of
55 damages for any administrative action taken, if the
56 court finds that there was a probable cause for such
57 action.

58 (f) It is the duty of the prosecuting attorney of the
59 county in which the violation occurred to represent the
60 department of agriculture, to institute proceedings and
61 to prosecute the person charged with such violation.

1 All fees, penalties or other moneys collected by the
2 commissioner under the provisions of this article shall
3 be paid into a special account and expended upon the
4 order of the commissioner for the purpose of the
5 enforcement and administration of this article.


1 The commissioner may cooperate with and enter into
2 agreements with governmental agencies of this state,
3 other states, agencies of the federal government,
4 agencies of foreign governments, and private associations in order to carry out the purpose and provisions
5 of this article.


1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial
3 or financial information obtained from a person or
4 privileged or confidential information: Provided, That
5 when the information is necessary to carry out the
6 provisions of this article, this information may be
7 revealed, subject to a protective order, to any federal,
8 state or local agency consultant or may be revealed,
9 subject to a protective order, at a closed hearing or in
10 findings of fact issued by the commissioner.

ARTICLE 11B. FROZEN DESSERTS AND IMITATION FROZEN DESSERTS LAW.

§19-11B-1. Purpose.
§19-11B-3. Frozen dessert manufacturer permit.
§19-11B-4. Labeling.
§19-11B-5. Adulteration.
§19-11B-8. Approved sampling and testing methods.
§19-11B-11. Suspension, revocation or denial of permits.
§19-11B-13. Criminal penalties; civil penalties; negotiated agreement.
§19-11B-14. Payment of fees.
§19-11B-15. Cooperation with other entities.
§19-11B-1. Purpose.

1 The legislative intent of this article is to protect, promote and to prevent fraud and deception in the manufacture, sale, offering for sale, exposing for sale, and possession with intent to sell, frozen desserts and products resembling frozen desserts for human consumption. Further, the Legislature recognizes that advances in food technology have resulted in the development of a variety of products of similar usage as standardized frozen desserts that are so similar in appearance, odor and taste that they are difficult to differentiate from frozen desserts. Therefore, this article shall regulate these products in addition to frozen desserts, establish definitions and standards for such foods or labeling requirements by rules which effect their orderly marketing and ensure similar sanitary standards for frozen desserts and imitation frozen desserts.

Except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States secretary of health and human services in order to provide for the movement of frozen desserts and imitation frozen desserts in interstate and intrastate commerce with a minimum of economic barriers.


(a) “Adulterated” means frozen desserts or imitation frozen desserts meeting one or several of the conditions listed in section five of this article.

(b) “Approved laboratory” means a laboratory approved by the commissioner under section nine of this article.

(c) “Clean” means the condition where no residue remains on a surface that will, or is likely to, cause adulteration.

(d) “Commissioner” means the commissioner of
agriculture of the state of West Virginia or his or her duly authorized agent.

(e) "Distributor" means any person who distributes frozen desserts or imitation frozen desserts. The term does not include persons who are exclusively retailers and who are not engaged in the transportation of frozen desserts or imitation frozen desserts.

(f) "Distribute" means the act of transporting, holding for sale, offering for sale, selling, bartering, parceling out, giving or otherwise disposing of frozen desserts or imitation frozen desserts.

(g) "Embargo" means an order to withdraw a frozen dessert or imitation frozen dessert from distribution or to stop a manufacturing operation as provided in section ten of this article.

(h) "Freezer" means mechanical equipment used to lower the temperature of a mix, with or without incorporating air into the mix during the freezing process. Freezers may operate on a continuous or batch basis.

(i) "Frozen dessert" means ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, goat's milk ice cream, goat's milk ice milk, fruit sherbet, nonfruit sherbets, frozen dietary dessert, frozen yogurt, frozen lowfat yogurt, milkshakes, any mix used to make such frozen desserts whether quiescently frozen or frozen while mixed and such other products as established by rule as a frozen dessert whether made with milk products from a cow or goat.

(j) "Imitation frozen desserts" means products that are manufactured, packaged or labeled so as to resemble the composition, physical and sensory properties of frozen desserts which contain milk products or milk-derived ingredients whether from a cow or a goat and which are intended to be used as a substitute for a frozen dessert. This term includes any mix used to manufacture imitation frozen desserts.

(k) "Label" means the display of written, printed or
graphic matter upon or affixed to the package in which
the frozen dessert or imitation frozen dessert is
distributed.

(l) “Labeling” means all representations disseminated
in any manner or by any means other than by the label
which induce or which are likely or intended to induce
the purchase or use of frozen desserts or imitation frozen
desserts.

(m) “Manufacture” means pasteurizing, ultrapasteur-
ing, formulating, compounding, freezing, processing
or packaging a mix into a frozen dessert or imitation
frozen dessert.

(n) “Manufacturer” means any person who manufac-
tures frozen desserts or imitation frozen desserts.

(o) “Milk-derived ingredients” means whey, modified
whey products, casein, caseinates, lactose, lactalbumins
and lactoglobulins used in fluid, concentrated or dry
form and other ingredients as established by rule as a
milk-derived ingredient.

(p) “Milk products” means milk, acidified milk,
cultured milk, concentrated milk, sweetened condensed
milk, sweetened condensed skim milk, lowfat dry milk,
nonfat dry milk, nonfat dry milk fortified with vitamins
A and D, evaporated milk, evaporated skim milk, lowfat
milk, acidified lowfat milk, cultured lowfat milk, skim
milk, acidified skim milk, cultured skim milk, dry
whole milk, cream, dry cream, heavy cream, light
cream, light whipping cream, sour cream, acidified sour
cream, eggnog, half-and-half, sour half-and-half, acidif-
ied sour half-and-half, butter, yogurt, lowfat yogurt,
nonfat yogurt and such other products as established by
rule as a milk product whether made with milk
products from a cow or goat.

(q) “Milk fat” means fat in frozen desserts or imitation
frozen desserts.

(r) “Misbranded” means frozen desserts or imitation
frozen desserts meeting one or several of the conditions
listed in section six of this article.
(s) "Mix" means the product made from wholesome ingredients that when frozen shall produce a frozen dessert or imitation frozen dessert.

(t) "Official sample" means any sample taken in accordance with the provisions of this article.

(u) "Package" means any container holding frozen desserts or imitation frozen desserts.

(v) "Pasteurized" means the process of uniformly heating every particle of a mix, holding in the heated state and cooling it, in equipment under conditions of temperature and time that is established in Grade "A" Pasteurized Milk Ordinance, 1989 revision, published by the United States department of health and human services: Provided, That nothing contained in this definition may be construed as barring any other process which may be approved by the commissioner or the state director of health that results in products that are free from pathogens.

(w) "Person" means any individual, partnership, association, fiduciary, firm, company, corporation or any organized group of persons whether incorporated or not. The term "person" extends to the agents, servants, officers and employees of the person.

(x) "Rerun" means a frozen dessert or imitation frozen dessert that is removed from a freezer and is intended to be reprocessed.

(y) "Retailer" means the person who sells frozen desserts or imitation frozen desserts to the ultimate consumer and who does not transport frozen desserts or imitation frozen desserts to or from the location of the freezer.

(z) "Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and other organisms as far as practicable. Such treatment shall not adversely affect the equipment, the dairy product or the health of the consumers consuming the products manufactured in the equipment and shall be a method acceptable to the commissioner.
Transport" means the movement from one facility to another in a manner that maintains adequate temperatures and protects the product from freezing temperatures, exposure to the sun and from sources of contamination.

(bb) "Ultrapasteurized" means the process of heating every particle of a dairy product or mix at or above two hundred eighty degrees Fahrenheit for at least two seconds either before or after packaging so as to produce a product which has an extended shelf life under refrigerated conditions.

§19-11B-3. Frozen desserts manufacturer permit.

(a) A "frozen desserts manufacturer permit" shall be issued to each manufacturer of frozen desserts or imitation frozen desserts. Permits shall be issued for each place of operation and shall not be transferable with respect to persons or locations. The permit may be applied to the operation of several freezers at one location. Each mobile unit shall be considered as operating at one location.

(b) Application shall be made on forms supplied by the commissioner and provide such information as may be considered necessary by the commissioner. Permits shall be applied for at least fifteen days before the date that the current permit expires or within fifteen days of the date that the person intends to engage in business. The application shall be accompanied by a fee of twenty dollars. A penalty of two dollars shall be added to all permits that are not applied for or renewed within this time limit. The permits shall expire on the thirty-first day of March following date of issue: Provided, That firms that have a permit with an expiration date of the thirtieth day of June, one thousand nine hundred ninety-one, on the date of implementation of this article shall be allowed to make application for a frozen desserts manufacturer permit for the period of the first day of July, one thousand nine hundred ninety-one, through the thirty-first day of March, one thousand nine hundred ninety-two, at a fee of ten dollars.
(c) Permits shall be posted prominently at the place of operation.

§19-11B-4. Labeling.

(a) All packages of frozen desserts or imitation frozen desserts shall have a label upon or affixed to the package. The label shall be legible and of a print size and style easily readable by the ordinary citizen. The information required in this section shall be on each label and shall be stated in English.

(b) The label shall contain the following information:

(1) The name of the product;

(2) The quantity of the contents;

(3) The name and address of the manufacturer, packer or distributor; and

(4) Such other information as the commissioner shall establish by rule.

§19-11B-5. Adulteration.

Any frozen dessert or imitation frozen dessert referred to in this article is considered adulterated within the meaning of this article if it:

(a) Bears or contains any poisonous or deleterious substance or compound in a quantity which may render it injurious to health;

(b) Contains any coloring substance or flavoring matter that may be deleterious to health;

(c) Bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal law or regulation or in excess of an established tolerance;

(d) Does not meet the quality standards set forth in this article;

(e) Is or has been manufactured under conditions not in conformity with the provisions of this article;
(f) Is or has been produced, processed, prepared or held under unsanitary conditions;

(g) Is or has been stored in a package composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(h) Contains any substance added thereto or mixed or packed therewith so as to make it appear better or of greater value than it is; or

(i) Meets or has met other conditions of adulteration as established by rule.


Any frozen dessert or imitation frozen dessert referred to in this article is considered misbranded within the meaning of this article if:

(a) It is labeled as a product for which there is a standard established by this article and it does not conform to such standards;

(b) Its label or labeling is false or misleading in any particular;

(c) It is not labeled in accordance with this article;

(d) Any word, statement or other information required by this article to appear on the label or the labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or devices in the labeling and in such terms as to render it likely to be read or understood by the ordinary person under customary conditions of purchase and use;

(e) If damage or inferiority has been concealed by any means; or

(f) It meets or has met other conditions of misbranding as established by rule.


(a) No person may distribute, sell, offer for sale, hold for sale or have in his possession with the intent to sell any frozen dessert or imitation frozen dessert which is
adulterated or misbranded within the meaning of this article.

(b) No person may interfere with or prohibit the commissioner from performing the duties of his office.

(c) No person may fail to comply with the provisions of an embargo order issued under section ten of this article.

(d) No person may fail to comply with the provisions of a revocation, suspension or denial order issued under section eleven of this article.

(e) No person who in any official capacity obtains any information under the provisions of this article that would be considered trade secrets regarding the quality, source and disposition of frozen desserts or imitation frozen desserts may use this information to his or her own personal gain.

(f) No person may dispense or manufacture frozen desserts or imitation frozen desserts without a valid frozen desserts manufacturer permit.

(g) No person may distribute, sell, offer for sale, hold for sale or have in their possession with intent to sell, a frozen dessert or imitation frozen dessert in a container if the whole or any part of the items required by this article to be on the label have been altered, mutilated, destroyed, obliterated, removed, concealed, replaced or otherwise falsely represented.

(h) No person may alter or deface any items required by this article to be on the label after packaging.

(i) No person may offer for sale, transport, or distribution, frozen desserts or imitation frozen desserts subsequent to their packaging that have been allowed to exceed a temperature of forty-five degrees Fahrenheit for refrigerated noncultured products or zero degrees Fahrenheit for frozen products, except that mixes containing active cultures shall not be allowed to exceed a temperature of fifty degrees Fahrenheit. Mixes that have been sterilized and hermetically sealed and dry mixes are exempted from this provision.
(j) No person may haul frozen desserts or imitation frozen desserts in a vehicle that has previously been used to haul a chemical or foreign substance unless such vehicle has been cleaned according to the rules promulgated by the commissioner prior to the hauling of such frozen dessert or imitation frozen dessert.

(k) No person may sell or reprocess frozen desserts or imitation frozen desserts for human consumption that are in or have been in broken or opened retail packages. Nothing in this provision may prohibit the return of these containers to the manufacturer or distributor for inspection purposes only.

(l) No person may distribute or use for human consumption products manufactured from returned packaged frozen desserts or imitation frozen desserts.

(m) No person may distribute or use mix that has been repasteurized subsequent to transportation in bulk, except for products that have been handled in a sanitary manner and maintained at forty-five degrees Fahrenheit or less prior to repasteurization.

(n) No person may sell, offer for sale or expose for sale any product containing milk products or milk-derived products that are from a herd that does not meet the requirements for animal health as required by rules promulgated under this article.

§19-11B-8. Approved sampling and testing methods.

(a) All sampling and testing methods shall be those set forth in the fifteenth edition of and supplement to the Official Methods of Analysis of the Association of Official Analytical Chemists, published by the Association of Official Analytical Chemists; or the fifteenth edition of the Standard Methods for the Examination of Dairy Products, published by the American Public Health Association, Inc.; or methods approved by the commissioner as provided by rule.

(b) The Babcock method or other methods approved by the commissioner for determining the milk fat content of frozen desserts shall be used as the reference

(a) Each person who desires to have his laboratory approved by the commissioner for testing official frozen dessert or imitation frozen dessert samples as provided in this section shall first satisfy the commissioner that tests to be made in such laboratory shall be conducted by qualified persons with adequate facilities and that such tests shall be performed accurately and according to approved methods.

(b) For the purpose of determining whether or not a laboratory shall be designated as an approved laboratory the commissioner shall designate a qualified person or persons to inspect the laboratory, its equipment, facilities and personnel at the expense of the applying laboratory, and thereafter may have similar inspections made at the expense of the applying laboratory for the purpose of determining whether or not such approval should be continued.

(c) The commissioner may accept the test results of any laboratory that has been approved under this article: Provided, That the commissioner shall not accept the test results of any approved laboratory for samples manufactured, distributed or used by a firm related to or owned by the approved laboratory.


The commissioner has the power and duty to:

(a) Adopt, promulgate and enforce rules to carry out the purpose of this article;

(b) Have access to and enter at all reasonable times all places where frozen desserts or imitation frozen desserts are manufactured, stored, held, transported, distributed or used in the state and where records, papers or documents relating to these transactions are kept;

(c) Inspect and photograph all places where frozen desserts or imitation frozen desserts are manufactured,
packaged, stored, held, transported or distributed; inspect, audit and copy records and papers relating to the manufacturing, distribution, sampling, testing and sale of frozen desserts or imitation frozen desserts; examine measuring and testing apparatus; and examine equipment used in manufacturing and transportation of frozen desserts or imitation frozen desserts, except that inspections performed under authority of the provisions of article seven, chapter sixteen of this code will not be duplicated;

(d) Sample frozen desserts or imitation frozen desserts, including, but not limited to, ingredients and packages that are used in the manufacture of these products and may open any package containing or believed to contain any frozen dessert or imitation frozen dessert or an ingredient to be used in the manufacture of a frozen dessert or imitation frozen dessert for the purpose of inspecting and sampling;

(e) Issue, suspend, revoke or deny permits;

(f) Collect fees and expend moneys under the terms of this article;

(g) Collect evidence, including samples, of the condition of equipment, holding tanks, storage rooms and vehicles used, or intended to be used, in the processing, packaging, transporting or holding of frozen desserts or imitation frozen desserts;

(h) Examine the labels and labeling of frozen desserts and imitation frozen desserts;

(i) Issue embargoes for any product which is or is believed to be adulterated, misbranded or that is not in compliance with this article and to cause the manufacturing and distributing of same to cease. Nothing in this article may be construed as requiring the commissioner to issue embargoes for minor violations of this article when he or she believes that a written notice of violation will serve the public interest.

(1) When an embargo is issued, the commissioner shall affix to such product or manufacturing device in an appropriate manner a tag or other marking giving warning that such product is under embargo.
(2) The commissioner shall give written notice to the custodian of the product or process under embargo describing the violation and stating that the product is prohibited from being sold, offered for sale, exposed for sale or distributed and is ordered to be held on the premises and, further, that all manufacturing processes for this product shall cease until the embargo is released. This notice shall notify the custodian of the right to request an immediate hearing under the rules adopted by the commissioner.

(3) The commissioner shall take action to seize and condemn any product that cannot be brought into compliance with this article and the rules issued under same within ninety days of notice to the custodian of the product.

(4) The commissioner has the authority to issue an embargo against a perishable product, even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this article;

(j) Establish, maintain and make provision for frozen dessert and imitation frozen dessert testing facilities; to establish reasonable fees for such tests and to incur such expenses as may be necessary to maintain and operate these facilities;

(k) Approve sampling and testing methods, and evaluate and approve official laboratories;

(l) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(m) Conduct hearings as provided by this article; and

(n) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution minor
§19-11B-11. Suspension, revocation or denial of permits.

(a) The commissioner may deny any application for a permit whenever said permit has been applied for fraudulently, the applicant has grossly interfered with the duties of the commissioner or the applicant is determined to be not in compliance with or not able to comply with this article.

(b) The commissioner may suspend a permit whenever a health hazard exists or is believed to exist, said permit has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the permit holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with the provisions of this article. Any person whose permit has been suspended shall immediately discontinue all operations covered under the permit. The commissioner may issue a summary suspension in cases where violations of this article constitute a hazard to the public health, safety or welfare where the public interest requires immediate action.

(1) Except for summary suspensions, the commissioner shall give written notice to the persons affected of the pending suspension, stating that suspension of the permit is being contemplated and giving reasons therefor. The suspension notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) All summary suspensions shall be followed by a notice of suspension, the reasons for the suspension and an opportunity for a hearing in accordance with the provisions of this article.

(3) At the end of the period of suspension, the permit holder may resume operations without reapplication for
(c) The commissioner may revoke any permit issued under this article whenever a health hazard exists, the permit has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. Any person whose permit has been revoked shall immediately discontinue all operations covered under the permit.

(1) Before revoking any permit, the commissioner shall give written notice to the persons affected, stating that revocation of the permit is being contemplated and giving reasons for the revocation. The revocation notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) At the end of the period of revocation, the permit will not be issued without an application, payment of the required fee and compliance with all conditions that the commissioner shall require for the reissuing of such permit.


(a) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the commissioner under the rules promulgated by the commissioner.

(b) Hearings shall be conducted in accordance with procedures set forth by rule.

(c) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party.

(d) Any party who feels aggrieved of the suspension,
revocation or denial order may appeal within sixty days
to the circuit court of the county in which the person
has located its principal place of business.

§19-11B-13. 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 or subsequent 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
rules adopted hereunder may be assessed a civil penalty
by the commissioner. In determining the amount of any
civil penalty, the commissioner shall give due consider-
atation to the history of previous violations of any person,
the seriousness of the violation, including any irrepar-
able harm to the environment, any hazards to the health
and safety of the public and any economic damages to
the public and the demonstrated good faith of any
person charged in attempting to achieve compliance
with this article before and after written notification of
the violation.

(2) The commissioner may assess a civil penalty of up
to one thousand dollars for a 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 per-
sonal, 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) Upon application by the commissioner for an injunction, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(e) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for such action.

(f) It is 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.

§19-11B-14. Payment of fees.

All fees, penalties or other moneys collected by the commissioner under the provisions of this article shall be paid into a special account and expended upon the order of the commissioner for the purpose of the enforcement and administration of this article.

§19-11B-15. Cooperation with other entities.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, agencies of foreign governments and private associa-

The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided, That when the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.

ARTICLE 28. VITAMIN AND MINERAL ENRICHMENT OF FLOUR AND BREAD.

§19-28-1. Definitions.

§19-28-2. Vitamin and mineral requirements for flour; exceptions as to flour sold to distributors, bakers or other processors.

§19-28-3. Vitamin and mineral requirements for white bread or rolls.

§19-28-4. Enforcement of article; authority and duties of commissioner.

§19-28-5. Penalties for violation of article; inconsistent acts repealed; provisions severable.

§19-28-1. Definitions.

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

(a) "Flour" includes, and is limited to, the foods commonly known in the milling and baking industries as: (1) White flour, also known as wheat flour or plain flour; (2) bromated flour; (3) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and (4) phosphated flour, also known as phosphated white flour, or phosphated wheat flour, but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun or biscuit baking, such as specialty cake, pancake and pastry flours.

(b) "White bread" means any bread made with flour as defined in paragraph (a) whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread and Italian bread.
(c) "Rolls" include plain white rolls and buns of the semibread dough type, namely soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls and hard rolls, such as Vienna rolls, Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(d) "Commissioner" means the commissioner of agriculture or his or her duly authorized agent.

(e) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread or rolls.

§19-28-2. Vitamin and mineral requirements for flour; exceptions as to flour sold to distributors, bakers or other processors.

It is unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour as defined in section one of this article, unless the following vitamins and minerals are contained in each pound of such flour: Not less than two and not more than two and five-tenths milligrams of thiamine; not less than one and two-tenths and not more than one and five-tenths milligrams of riboflavin; not less than sixteen and not more than twenty milligrams of niacin or niacinamide; not less than thirteen and not more than sixteen and five-tenths milligrams of iron; except in the case of self-rising flour which in addition to the above ingredients shall contain not less than five hundred and not more than fifteen hundred milligrams of calcium: Provided, That the provisions of this section do not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the commissioner has prescribed by rule, certifying that such flour will be: (1) Resold to a distributor, baker or other processor; (2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this article; or (3) used in the manufac-
It is unlawful for any such purchaser furnishing any such certificate to use or resell the flour purchased in any manner other than as prescribed in this section: Provided, however, That the provisions of this section do not apply to noncommercial flour manufactured by small flour mills, located in this state, for persons from wheat harvested in this state or to any other flour produced and sold at retail by such mills.

§19-28-3. Vitamin and mineral requirements for white bread or rolls.

It is unlawful for any person to manufacture, bake, sell or offer for sale, for human consumption in this state, any white bread or rolls, as defined in section one of this article, unless the following vitamins and minerals are contained in each pound of such bread or rolls: Not less than one and one-tenth and not more than one and eight-tenths milligrams of thiamine; not less than seven-tenths and not more than one and six-tenths milligrams of riboflavin; not less than ten and not more than fifteen milligrams of niacin; and not less than eight and not more than twelve and five-tenths milligrams of iron.

§19-28-4. Enforcement of article; authority and duties of commissioner.

(a) The commissioner is hereby charged with the duty of enforcing the provisions of this article and is hereby authorized and directed to make, amend or rescind rules and orders for the efficient enforcement of this article.

(b) Whenever the vitamin and mineral requirements set forth in sections two and three of this article are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the commissioner, in order to maintain uniformity between the intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this article, and to maintain and protect the health of the citizens of this state, is authorized and directed to
modify or revise such requirements to conform with amended standards governing interstate shipments, and there shall be a presumption that the amended standards governing interstate shipments actually represent the standards which will promote the health and well-being of such citizens.

(c) In the event of findings by the commissioner that there is an existing or imminent shortage of any ingredient required by section two or three of this article, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this article, the commissioner shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls and, if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further order of the commissioner. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the commissioner on his motion may, and upon receiving the sworn statement of ten or more persons subject to this article that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence, and shall make findings based upon the evidence presented.

Whenever the commissioner has reason to believe that such shortage no longer exists, he shall hold a public hearing, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such shortage no longer exists, he shall issue an order to become effective not less than thirty days after date of issuance, revoking such previous order: Provided, That undisposed floor stocks of flour on hand at the effective date of such revocation order, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of.
(d) All orders and rules adopted by the commissioner pursuant to this article, and within the limits specified by this article, shall become effective upon a date fixed by the commissioner.

(e) It is the duty of the commissioner to furnish to any person or organization, filing a written request for such information, a copy of any and all orders or rules, adopted pursuant to this article, at least ten days prior to the effective date of such orders or rules, and to make copies of same available to the press. In case any interested person files written objections to any proposed order or rule, the commissioner shall give an opportunity for a public hearing upon such order or rule before the same shall become effective.

(f) For the purpose of this article, the commissioner, or such officers or employees under his supervision as he may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread or rolls therein and all pertinent equipment, material, containers and labeling.

§19-28-5. Penalties for violation of article; inconsistent acts repealed; provisions severable.

Any person who violates any of the provisions of this article or the orders or rules promulgated by the commissioner is guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense a sum of not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail not to exceed sixty days, or both fined and imprisoned. Magistrates have jurisdiction to try cases involving violations of any provision of this article, or of the orders or rules promulgated by the commissioner.
CHAPTER 8

(Com. Sub. for S. B. 150—By Senator Hawse)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, fourteen and sixteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to plant pests; defining and redefining certain terms; setting forth duties of the commissioner of agriculture; authorizing commissioner to enter into compliance agreements; requiring persons to obtain a state or federal permit; when state permit required; increasing criminal penalties upon a second and subsequent offense; authorizing commissioner to assess civil penalties; providing for the collection of such penalties; mandating commissioner to promulgate legislative rules; making trade secrets confidential; and setting forth exceptions.

Be it enacted by the Legislature of West Virginia:

That sections two, three, fourteen and sixteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

ARTICLE 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.

§19-12-2. Definitions.

§19-12-3. Commissioner to enforce article; powers and duties generally.

§19-12-14. Permit required to sell, transport, etc., plant pests or noxious weeds.

§19-12-16. Criminal penalties; civil penalties; duties of the 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) “Agent” means any person soliciting orders for nursery stock under the partial or full control of a nurseryman or dealer.

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

(c) “Commissioner” means the commissioner of agriculture of the state of West Virginia and his or her duly authorized representatives.

(d) “Compliance agreement” means a written agreement between the department and any person engaged in growing, handling or moving articles, plants or plant products regulated under this article, wherein the person agrees to comply with stipulated requirements.

(e) “Dealer” means any person who buys, receives on consignment or otherwise acquires and has in his or her 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.

(f) “Department” means the department of agriculture of the state of West Virginia.

(g) “Genetically modified organism” means any organism altered or produced through genetic modification from a donor, vector or recipient organism using modern molecular techniques.

(h) “Host” means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.

(i) “Infested area” means any area of uncontrolled growth of insects, plant diseases, noxious weeds or other plant pests.

(j) “Noxious weed” means any living plant, or part
thereof, declared by the commissioner, after public
hearing, to be detrimental to crops, other desirable
plants, waterways, livestock, land or other property, or
to be injurious to public health or the economy.

(k) "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.

(l) "Nurseryman" means and includes any person who
owns, leases, manages or is in charge of a nursery.

(m) "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 herba-
ceous plants, including strawberry plants, narcissus
plants and narcissus bulbs as the commissioner declares
by rule to be so included whenever he or she 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.

(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) "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.

(p) "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 plant products; and fruit, vegetables, roots, bulbs, seeds and wood.

(q) "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, and any genetically modified organisms for which there is reason to believe may directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

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

(1) The plant pest or noxious weeds.
(2) The articles to be regulated.
(3) Conditions governing movement.
(4) The area or areas quarantined.
(5) Exemptions.

(s) "Regulated article" means any article of any character, as described in quarantine or other order of the commissioner carrying or capable of carrying a pest.

§19-12-3. Commissioner to enforce article; powers and duties generally.

(a) It shall be the duty of the commissioner to exercise the powers and duties imposed upon him or her by this article for the purpose of protecting agricultural, horticultural and other interests of the state from plant pests or other insects and noxious weeds and for this purpose the commissioner is hereby authorized and empowered to promulgate such legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary to effectively eradicate, suppress or control plant pests or other insects or noxious weeds or to retard the dissemination of plant pests or other insects or noxious weeds as far as may
(b) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies, departments and instrumentalities thereof, the state of West Virginia and any agencies, departments, divisions or political subdivisions thereof and any other state or commonwealth and any agencies, departments or political subdivisions thereof, in order to carry out the effective administration of this article.

(c) The commissioner is empowered to enter into compliance agreements with any person engaged in growing, handling or moving articles, plants or plant products regulated by the provisions of this article.

§19-12-14. Permit required to sell, transport, etc., plant pests or noxious weeds.

No person may sell, barter, expose, offer for sale or move, transport, deliver, ship or offer for shipment into or within this state any plant pest or other insects or noxious weeds in any living stage without first obtaining either a federal permit, where applicable, or a state permit from the commissioner. A state permit may be issued only after it has been determined that the plant pests or other insects or noxious weeds are not injurious, are generally present already or are for scientific purposes subject to specified safeguards. If a permit, which addresses environmental safety, has been issued by the appropriate federal regulatory agency in consultation with the commissioner, no state permit is required. If the appropriate federal regulatory agency determines that a permit is unnecessary, the commissioner may, if he or she deems it necessary to protect West Virginia's agricultural interests, require a state permit.

§19-12-16. Criminal penalties; civil penalties; duties of the prosecuting attorney.

(a) Criminal penalties. — Any person violating any of the provisions of this article, or the rules 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 dollars nor more than one thousand dollars, or confined in the county jail not more than six months, or both.

(b) Civil penalties. —

(1) Any person violating a provision of this article or rules 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, any hazards to the health and safety of the public and any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance with the article before and after written notification of the violation.

(2) The commissioner may assess a penalty of not more than five hundred dollars for each first offense or 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.

(4) The commissioner shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to provide for the implemen-
tion and assessment of civil penalties pursuant to subsection (b) of this section.

(5) The commissioner shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to permit consent agreements or negotiated settlements for the civil penalties which may be assessed pursuant to the provisions of this section.

(c) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for such action.

(d) 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.


The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person which is privileged or confidential information: Provided, That when the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant; or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.

CHAPTER 9
(Com. Sub. for H. B. 2583—By Delegates D. Miller and Compton)

[Passed February 27, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article fourteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Commercial Feed Law of 1991; definitions; commissioner’s powers and duties; special revenue fund;
permits; registration; refusal of applications; suspension and revocation of registrations and permits; hearings and appeals; labeling; tonnage reports; inspection fees; adulteration; misbranding; embargoes; condemnation and confiscation; injunctions; confidentiality of trade secrets; prohibited acts; criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That article fourteen, 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 14. WEST VIRGINIA COMMERCIAL FEED LAW.

§19-14-1. Title.

§19-14-2. Definitions.

(a) "Brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor or manufacturer and distinguishing it from all others.

(b) "Bulk" refers to commercial feed distributed in nonpackaged form and accompanied by an invoice or delivery slip.

(c) "Commercial feed" means all materials distributed for use as feed or for mixing in feed for animals, other
than man, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed seeds are not chemically changed or adulterated; (2) unground hay, straw, stover, silage, cobs, husks, hulls, and raw meat when not mixed with other materials and when not adulterated; (3) individual chemical compounds when not mixed with other materials. The term commercial feed shall include the categories of feed ingredients, customer-formula feeds, pet foods and specialty pet foods.

(d) "Commissioner" refers to the commissioner of agriculture of the state of West Virginia or a duly authorized employee.

(e) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract and the commercial feed is supplied, furnished, or provided to the independent contractor and such contractor's remuneration is determined all or in part by feed consumption, mortality, profits, or the amount or quality of the product.

(f) "Customer-formula feed" means a commercial feed which is manufactured according to the specific instructions of the final purchaser.

(g) "Distribute" means to offer for sale, sell, expose for sale, exchange, or barter commercial feed; or to supply, furnish, or provide commercial feed to a contract feeder.

(h) "Distributor" means any person who sells, exposes for sale, offers for sale, exchanges, barters, gives, parcels out, allots, shares, or dispenses a commercial feed.

(i) "Domesticated animal" means any species of animal living and bred in a tame condition.

(j) "Drug" means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than man; and substances, other than nutritive components, intended to affect the structure or any function of the animal body.

(k) "Feed ingredient" means each constituent mate-
rial making up commercial feed, including individual chemical compounds labeled for use as a feed ingredient.

(l) "Label" means a display of written, printed, or graphic matter affixed to the container in which commercial feed is distributed; or affixed to the invoice, delivery slip, or other shipping document which accompanies bulk shipments of commercial feed or customer-formula feed. All such labels shall be legible and in English.

(m) "Labeling" means all written, printed, or graphic matter, or advertising referencing such commercial feed.

(n) "Manufacture" means to grind, mix, blend, package, pack, repackage, repack, or process a commercial feed for distribution.

(o) "Medicated feed" means any commercial feed which contains one or more drugs.

(p) "Mineral feed" means a commercial feed designed or intended to supply primarily mineral elements or inorganic nutrients.

(q) "Official sample" means any sample of commercial feed taken by the commissioner in accordance with the provisions of this article and rules promulgated hereunder.

(r) "Percent" or "percentage" means percentage by weights.

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

(t) "Pet" means any domesticated species of animal normally maintained in or near the household of the owner including, but not limited to, dogs, cats and specialty pets.

(u) "Pet food" means any commercial feed manufactured and distributed for consumption by pets.

(v) "Principal display panel" means the part of a label
that is intended to be shown and examined when the product is on display for retail sale.

(w) "Process" means any treatment that changes a feed ingredient so that it can no longer be restored to its previous form.

(x) "Product name" means the name of the commercial feed which identifies it, such as: Species of animal, age group of animal, characterizing ingredients, specific use, or other descriptive terms.

(y) "Registrant" means any person who registers commercial feed for distribution or use in this state.

(z) "Repack" or "repackaging" means to pack and label a previously manufactured and packaged commercial feed prior to a specific request of a customer.

(aa) "Specialty pet" means any domesticated pet normally maintained in a cage or tank including, but not limited to, gerbils, hamsters, birds, tropical fish, goldfish, snakes and turtles.

(bb) "Specialty pet food" means any commercial feed intended for consumption by specialty pets.

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


The commissioner has the power and authority to:

(a) Enter and inspect, during reasonable hours, any location where commercial feeds are manufactured, distributed, transported or used, and where records relating to the manufacture, distribution, shipment, labeling or sale of commercial feed are kept. Such inspection includes, but is not limited to, examining, photographing, verifying, copying, and auditing records as is necessary to determine compliance with this article, labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing and sale of commercial feeds.

(b) Open, examine, sample and test commercial feed, unmixed or unprocessed whole seeds, equipment,
containers, transport containers, and packages used or intended to be used in the manufacture and distribution of commercial feeds.

(c) Issue permits and registrations pursuant to this article.

(d) Refuse, suspend, or revoke permits and registrations as provided in this article.

(e) Issue embargoes as provided in this article.

(f) Condemn and confiscate any product that is not brought into compliance with this article.

(g) Collect fees and penalties, and expend moneys under the terms of this article.

(h) Conduct sampling in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or methods approved by the commissioner by rules.

(i) Conduct hearings as provided by this article.

(j) Assess civil penalties and refer violations to a court of competent jurisdiction.

(k) Obtain court orders directing any person refusing to submit to inspection, sampling, and auditing to submit.

(l) Establish and maintain feed testing facilities; establish reasonable fees for such tests; incur expenses; and conduct tests in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or methods approved by the commissioner by rules.

(m) Be guided by the analytical results of the official sample when determining whether the commercial feed is deficient in any component.

(n) Report the analytical results on all official samples to the registrant and, in the case of deficient samples, also to the dealer and the purchaser, if known.
(o) Upon request made within thirty days from the date the official sample results are reported, furnish a portion of the official sample to the registrant.

(p) Publish and distribute annually a composite report containing: (1) The sales of commercial feeds and feed ingredients during the preceding period, (2) the results of the analysis of official samples as compared with the guarantee on the label, (3) firms responsible for the product, and (4) such other data the commissioner deems necessary: Provided, That the information on production and use so provided does not disclose the operations of any person.

(q) To cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this article.

(r) Promulgate rules, in accordance with chapter twenty-nine-a of this code, dealing with commercial feeds and enforcement of this article.

§19-14-4. Special revenue fund.

All fees and penalties collected under the provisions of this article shall be deposited with the state treasurer in a special revenue account. Such moneys shall be expended by the commissioner of agriculture for inspection, sampling, analysis, and other expenses necessary for the administration of this article.

§19-14-5. Permits; registration.

(a) Permits and registrations shall not be transferrable with respect to persons or locations.

(b) A person must apply for a permit or registration at least fifteen days prior to the expiration of the current permit or registration expires; or at least fifteen days prior to the date that the person intends to engage in business or market products in this state. All applications shall be accompanied by the fee established in this section. A penalty of two dollars shall be added to the fee for all permits or registrations that are not applied
(c) Persons manufacturing commercial feed or customer-formula feed in this state must obtain a Commercial Feed Manufacturing Permit, except all persons manufacturing feed for only his/her animals on his/her premises. Application forms shall be provided by the commissioner and include such information as established by rules. A separate permit shall be obtained for each manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit application shall be accompanied by an application fee of fifteen dollars. Each permit issued shall expire on the thirty-first day of December next following the date of issue.

(d) Each person first distributing commercial feed into West Virginia trade channels must obtain a Commercial Feed Distributor Permit, except: (1) Persons distributing pet food exclusively, (2) persons holding a valid Commercial Feed Manufacturing Permit, and (3) persons distributing only those feeds that they register. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Distributor Permit application shall be accompanied by an application fee of ten dollars. Each permit issued shall expire on the thirty-first day of December next following the date of issue.

(e) All commercial feed distributed or used in this state, except customer-formula feed, must be registered. Commercial feed that can be uniquely identified by its brand name, product name, physical form or other descriptive term shall be registered as a separate product. Commercial feed that is packaged in such weights as to apply to several categories shall be registered in each applicable category. Application forms shall be provided by the commissioner and include such information as established by rules.

(1) Commercial feed, other than pet food, in packages over ten pounds or bulk shall be registered permanently. A registration fee of ten dollars per product shall accompany each application for registration, except that
there will be no fee for a revision of a commercial feed already on file that involves a change in the net weight, a change in the list of ingredients, and/or a change in the guarantee for vitamins or minerals.

(2) On the thirty-first day of August, 1991, permanent registrations for pet food in packages over ten pounds are void and application for registration and payment of fees will be required. Pet food, including specialty pet foods, in packages over ten pounds or bulk shall be registered annually. A registration fee of fifty dollars per product shall accompany each application for registration. The registration shall expire the thirty-first day of August next following the date of issue.

(3) Commercial feed, excluding specialty pet food in packages of one pound or less, in packages of ten pounds and under shall be registered annually. A registration fee of forty dollars per product shall accompany each application for registration. The registration shall expire on the thirty-first day of December next following the date of issue.

(4) Specialty pet food in packages of one pound or less shall be registered annually. A registration fee of twenty dollars per product shall accompany each application for registration. The registration shall expire on the thirty-first day of December next following the date of issue.

(f) A person is not required to register any brand name or product name of commercial feed which is already registered by another person.

(g) Alteration of commercial feed that changes the label requires a new application for a Commercial Feed Registration be made and approved before distribution.

§19-14-6. Refusal of applications; suspension and revocation of registrations and permits.

The commissioner may refuse to grant, or may suspend or revoke registration of any commercial feed; any commercial feed manufacturing permit; or any commercial feed distributor permit when it is determined that: (a) The applicant, permittee, or registrant
has violated the provisions of this article or any official
rule promulgated hereunder; or (b) this article or the
rules promulgated hereunder cannot be or will not be
complied with: Provided, That the permittee or regis-
trant shall have the opportunity to be heard prior to the
suspension or revocation of the registration or permit.


(a) No application shall be refused until the applicant
has the opportunity to amend his/her application to
comply with the requirements of this article.

No registration or permit shall be refused, suspended
or revoked until the registrant or permittee shall have
the opportunity to have a hearing before the commis-
ioner.

(b) Any person adversely affected by an act, order or
ruling made pursuant to the provisions of this article,
may within forty-five days thereafter, bring an action
for judicial review in the circuit court of the county in
which the violation occurred.

Any party aggrieved by a final judgment entered by
a circuit court, may appeal to the West Virginia
supreme court of appeals.


(a) When commercial feed, except customer-formula
feed, is distributed in this state in bags or other
containers, the label shall be affixed to the container;
when commercial feed is distributed in bulk, the label
shall accompany delivery.

(b) All commercial feed labels, except customer-
formula feeds, shall state the following:

(1) The net weight avoirdupois. The net weight may
also be stated in metric units.

(2) The product name, including brand name, if any,
under which the commercial feed is distributed.

(3) The guaranteed analysis stating what the commis-
sioner determines by rules is required to advise the user
of the composition of the feed and other necessary
information to support claims made on the label. The substances or elements guaranteed must be determinable by laboratory methods published by the association of official analytical chemists or by an acceptable method supplied by the registrant.

(4) An ingredient statement, except that an ingredient statement is not required for single standardized ingredient feeds or when such statement is not in the interest of consumers. An ingredient statement shall include:

(A) The common or usual name of each ingredient as officially defined in the annual Official Publication of the Association of American Feed Control Officials;

(B) Collective terms as defined in the annual Official Publication of the Association of American Feed Control Officials;

(C) The common or usual name of substances generally recognized as safe (GRAS) as authorized by 21 Code of Federal Regulations 570.30 (April 1, 1990) of the Federal Drug and Cosmetic Act as amended August, 1985;

(D) The common or usual name of substances which are so common so as to not need a definition, have a substantially safe history, and no safety hazard is known to exist after consumption by a significant number of animals, including, but not limited to, salt and sugar;

(E) Other ingredients or additives that the commissioner, by rules, deems necessary.

(5) The name and principal mailing address of the manufacturer or the distributor.

(6) Adequate directions and precautionary statements for safe and effective use.

(7) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;
(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the medicated commercial feed;

(E) Withdrawal statements, if applicable;

(F) The word “medicated” shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.

(c) Pet food labels shall have such additional information as required by the commissioner through rules.

(d) All customer-formula feeds shall be labeled at all times and shall be supplied to the purchaser at the time of delivery. The label shall bear the following information:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of manufacture.

(4) Net weight (avoirdupois) of the commercial feed and each feed ingredient used in the customer-formula feed.

(5) Adequate directions and precautionary statements for safe and effective use.

(6) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the commercial feed;

(E) Withdrawal statements, if applicable;

(F) The word “medicated” shall appear directly following and below the product name in type size no
§19-14-9. Tonnage reports; inspection fees.

(a) Each person holding a Commercial Feed Manufacturing Permit, a Commercial Feed Distributor Permit, and every registrant, except those persons exempted in subsection (b) of this section, shall report the number of tons of commercial feed distributed and pay an inspection fee on all feed distributed, except no inspection fee shall be due on:

1. Commercial feed, if the payment was made by a previous distributor.
2. Customer-formula feeds or commercial feeds manufactured in this state, if the inspection fee was paid on the commercial feed or all the feed ingredients used as ingredients therein. For the purpose of this exemption, the sale of the feed ingredients used in customer-formula feeds are considered to have taken place before the processing of these items.
3. Commercial feeds or commercial feeds manufactured in this state which are subsequently used as ingredients in the continuing manufacture of commercial feeds in which the end product is registered.
4. Commercial feed supplied to a poultry contract feeder.
5. Commercial feed in packages of ten pounds or less.
6. Pet food or specialty pet food.
7. Commercial feed, where the inspection fee was paid during a previous quarter and is offered for sale in the current quarter.

(b) Each person holding a Commercial Feed Manufacturing Permit, a Commercial Feed Distributor Permit, or a registrant, except those persons: (1) Exclusively distributing or manufacturing pet food or specialty pet food; or (2) exclusively distributing or manufacturing commercial feed in packages of ten pounds or less, shall file a semiannual statement under oath before the thirty-first day of January and July of
each year. The statement shall include the number of net tons of commercial feeds and feed ingredients manufactured or first distributed in this state during the preceding six-month period.

Each report shall be accompanied by an inspection fee at the rate of thirty-five cents per ton on commercial feed and feed ingredients with the minimum inspection fee being ten dollars each statement. The minimum fee is waived if the total amount of the calculated inspection fee due is two dollars or less. Such fees become effective on the first day of July, 1991.

Inspection fees which are due and payable and not remitted to the commissioner within fifteen days following the due date shall be assessed a penalty of ten percent of the amount due, except that semiannual reports with no fees due received fifteen days after the due date shall be assessed a penalty of ten dollars. The assessment of this penalty fee shall not prevent the commissioner from taking other actions as provided in this chapter.

(c) All persons must keep accurate records, as may be necessary or required by the commissioner, to indicate the tonnage of commercial feed distributed in this state.

§19-14-10. Adulteration.

Commercial feed or feed ingredients is adulterated:

(a) If it contains any poisonous, deleterious or nonnutritive substance, including pesticide chemical residues, food additives, color additives or drugs which is or may be injurious to animals when fed such feed in accordance with the directions, or to humans who consume the resultant food product of the animal;

(b) If its composition or quality falls below or differs from what is stated on the label or by its labeling;

(c) If it contains viable weed seeds exceeding the limits set by the commissioner by rules;

(d) If the facilities, controls, or methods used in the manufacture, processing, or packaging do not conform to industry standards set by the commissioner by rules; or
(e) If it was manufactured or held under conditions whereby it became contaminated by dust, dirt, insects, birds, rodents, or animal excretion thereby rendering it injurious to animal health.


Commercial feed is misbranded:

(a) If its label or labeling is false or misleading;

(b) If it is not labeled as required by this article;

(c) If any word, statement, or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If it purports to or contains a feed ingredient that does not conform to the definition of identity prescribed by the commissioner by rules; or

(e) If any damage or inferiority has been concealed.

§19-14-12. Embargoes; condemnation and confiscation; injunctions.

(a) Embargo orders: When the commissioner has reasonable cause to believe any lot of commercial feed is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in violation of the provisions of this article or any rule promulgated hereunder, then he/she may issue and enforce a written embargo order, warning the custodian of the commercial feed not to manufacture, distribute, use, remove, or dispose of the commercial feed in any manner until the embargo is released by the commissioner or by court order.

When the embargo is issued, the commissioner shall affix a tag or other marking to the commercial feed and/or to the manufacturing device warning that such product or process is under embargo and notify the custodian that he/she has a right to request an immediate hearing.
The commissioner shall release the commercial feed so embargoed when said commercial feed has been brought into compliance with this article and its rules.

The commissioner shall have the authority to issue an embargo against a perishable product, even if the result is the involuntary disposal of the product.

The commissioner may take action to seize and condemn any product if not brought into compliance with this article and the rules issued hereunder, within ninety days of the notice to the custodian.

(b) Condemnation and confiscation: Any commercial feed not in compliance with the provisions of this article or the rules promulgated hereunder shall be subject to condemnation and confiscation on complaint of the commissioner to the circuit court of the county in which the commercial feed in question is located. Jurisdiction is hereby conferred upon the circuit courts to hear and determine such matter.

If the court finds that the commercial feed is in violation of the provisions of this article or its rules and should be confiscated, then the court shall order the condemnation and confiscation of such commercial feed and its disposition in a manner consistent with the quality of such commercial feed which is not in violation of any other laws of this state: Provided, That the owner thereof must first be given an opportunity to process or relabel such commercial feed or dispose of the same in full compliance with the provisions of this article and its rules.

(c) Injunctions: Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated hereunder. An injunction shall be issued without bond.


1 The commissioner may not make public any informa-
tion which contains or relates to trade secrets, acquired under the authority of this article, concerning any methods, formulas, processes, sales, or distribution information: Provided, That the commissioner may exchange information of a regulatory nature with duly appointed officials of the United States Government, of other states, or of other foreign governments who are similarly prohibited by law from revealing this information.


It shall be unlawful:

(a) To manufacture, distribute, or knowingly use any commercial feed that is adulterated or misbranded.

(b) To adulterate or misbrand any commercial feed.

(c) To distribute, use, remove, or dispose of commercial feed in violation of an embargo order, or condemnation and confiscation order provided for under this article.

(d) To manufacture, distribute, or use any commercial feed containing a drug or drugs that cause or may cause residue of the drug or drugs in the edible tissues, milk, or eggs of the animals fed such feed in excess of the acceptable residue levels set by the commissioner by rules.

(e) To fail or refuse to register commercial feeds.

(f) To fail or refuse to obtain permits required under this article.

(g) To fail to make an accurate statement of tonnage.

(h) To fail to pay inspection fees as required under this article.

(i) To distribute or knowingly use any commercial feed that has not had an accurate statement of tonnage reported to the commissioner in the previous reporting period.

(j) To use or imply the name West Virginia department of agriculture, or reference any inspection or
sample findings made by the West Virginia department of agriculture on labels or labeling of commercial feed.

(k) To interfere with the commissioner's official duties.


(a) Criminal penalties.—Any person violating any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for each subsequent 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 any of the provisions of this article or the rules 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, any hazards to the health and safety of the public and to the animals consuming or intended to consume the commercial feed; 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 the first offense or nonserious violation, as determined by the commissioner in accordance with the rules promulgated in accordance with the provisions of chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat, or intentional violation, as determined by the commissioner in accordance with such promulgated rules.

(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 a debt. Any person
liable to pay the civil penalty and neglecting or refusing
to pay the same, shall be assessed interest at ten percent
from the date the penalty was assessed. Such penalty
and interest constitute a lien in favor of the state of West
Virginia and shall attach on the person's property when
such lien is properly recorded in the county where such
property is located. There shall be no cost 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
a violation of the provisions of this article.

(d) It shall be the duty of each prosecuting attorney
to whom any violation is reported to cause appropriate
proceedings to be instituted and prosecuted in a court
of competent jurisdiction without delay.

(e) Nothing in this article shall be construed as to
require the commissioner to report minor violations of
this article when he/she believes that the public interest
will be best served by a written notice.

(f) 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.

CHAPTER 10
(Com. Sub. for H. B. 2293—By Delegate D. Miller)

[Passed February 28, 1991; in effect July 1, 1991. Approved by the Governor.]
quarantines; abandoned apiaries and equipment; re-
quirements for importing bees; pesticide poisoning to
bees; candy for mailing cages; article violations;
increasing criminal penalties; adding civil penalties;
severability.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 13. INSPECTION AND PROTECTION OF APICULTURE.

§19-13-1. Title.

This article shall be known by the short title as "The
West Virginia Apiary Law of 1991."


The following definitions shall apply in the interpre-
tation and enforcement of this article. All words shall
be construed to impart either the plural or the singular,
as the case demands:

(a) “Abandoned apiary” means any apiary in which
the owner cannot be determined and in which twenty-
five percent or more of the colonies are dead or diseased,
or death or disarray of the colonies exposes them to
robbing, or diseased or potentially diseased abandoned
equipment which may jeopardize the welfare of neigh-
boring colonies.

(b) “Apiary” means any place where one or more
colonies or nuclei of bees are kept or where bee equipment is stored.

(c) "Appliances" means any apparatus, tool, machine or other device, used in the handling and manipulating of bees, honey, wax and hives. It also means any container of honey and wax that may be used in any apiary or in transporting bees and their products and apiary supplies.

(d) "Bees" shall be construed to mean any stage of the common hive or honeybee (Apis mellifera), or other species of the genus Apis.

(e) "Bee diseases" shall be construed to mean American foulbrood (Bacillus larvae), European foulbrood (Bacillus pluton), Varroa mite (Varroa jacobsoni), honey bee tracheal mite (Acarapis woodi), or any other infection or parasitic infestation determined by the commissioner to be transmissible to other bee colonies and that represents a threat to beekeeping in West Virginia.

(f) "Bee equipment" means hives, supers, frames, veils, gloves or any other appliances.

(g) "Colony" means the hive and includes bees, comb, honey and equipment.

(h) "Commissioner" means the commissioner of the department of agriculture of the state of West Virginia or a duly authorized employee.

(i) "Control agents or control mechanisms" means any method of chemical or mechanical control to suppress or eradicate an apiary disease, pest, or parasitic infestation in an apiary or the colonies contained therein.

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

(k) "Hive" shall be construed to mean frame hive, box hive, box, barrel, log, gum, skep or any other receptacle or container, natural or artificial, or any part thereof, which may be used or employed as a domicile for bees.
"Nuclei" means the removal of a split portion or division of any colony of honey bees for the express purpose of creating a numerical increase in colonies for honey production, pollination service or monetary gain through sale of honey bees.

"Packaged bees" means bees shipped in combless packages which shall bear a valid certificate of health by an authorized state or federal agency verifying the absence or presence of any infectious or communicable diseases or parasitic infestations, and further provides that no honey has been used for food while in transit or that bears an affidavit that any honey used as food in transit was properly sterilized.

"Person" shall include all corporations, partnerships, associations, societies, individuals or group of individuals or any employee, servant or agent acting for or employed by any person as above defined.

"Premises" means any parcel of real estate and structures in which bee equipment, bees, bee products and bee appliances can be utilized for storage purposes.

"Quarantine" means a specific period of enforced isolation to contain and prevent the spread of contagious bee diseases or parasites, which shall include specific perimeters deemed by the commissioner to be affected or potentially affected by such contagious bee diseases or parasites.

"Sterilized or sterilization" means to treat and neutralize contagious bee diseases by means of steam autoclave or ethylene oxide fumigation, boiling at a temperature of two hundred twelve degrees Fahrenheit for thirty minutes, pit incineration, or by any other acceptable method which the commissioner determines effective for control of bee diseases or parasites.

§19-13-3. Commissioner's powers and duties; apiary education; cooperation with governmental agencies.

(a) It shall be the duty of the commissioner of agriculture to exercise the powers and duties imposed by this article for the purpose of protecting agriculture.
For this purpose, the commissioner is hereby authorized and empowered to promulgate such rules in accordance with the provisions of chapter twenty-nine-a of this code: (1) To effectively eradicate, suppress or control bee diseases as far as may be practical; (2) to regulate the keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries and appliances; (3) to regulate treatments, retreatments, and fees for said services; and (4) such other rules as are necessary to effectuate the enforcement of this article.

(b) The commissioner is authorized to conduct apiary education in a manner which may advance and promote bee culture in West Virginia.

(c) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies, departments and instrumentalities thereof; the state of West Virginia and any agencies, departments, divisions, or political subdivisions thereof; and any other state or commonwealth and any agencies, departments or political subdivisions thereof, in order to carry out the effective administration of this article.

§19-13-4. Registration of bees; identification of apiaries.

(a) All persons keeping bees in this state shall, within ninety days of the effective date of this article, notify the commissioner in writing of the number and location of colonies they own or rent, or which they keep for someone else, whether the bees are located on their own property or someone else’s property. Thereafter, such information shall be provided within ten days of the time the bees are acquired. Bees shall be registered on an annual basis thereafter.

(b) All persons owning or operating an apiary which is not located on said owner’s or operator’s property must post the name and address of the owner or operator in a conspicuous place in the apiary.

§19-13-5. Right of entry; apiary inspections; quarantines.

(a) To effectuate the purpose of this article, the commissioner is hereby invested with authority, during reasonable working hours, with prior consent by the
owner or person in charge of such apiaries, if known, to enter upon any public or private premises, except private residences, and shall have access to any apiary for the purpose of inspecting or sampling.

(b) The commissioner shall inspect, as practical, all colonies of honey bees domiciled within the state of West Virginia. If upon such inspection, it is found that any bee disease or parasite exists in such apiary, the inspector making the inspection shall immediately notify, in writing, the owner or person in charge of such apiary, stating the nature of the disease or parasite and whether the same may be successfully treated or not.

In cases where the disease or parasite is subject to treatment, the inspector shall specify and direct the necessary treatment, which shall be administered by the owner or person in charge, within fourteen days thereafter. Otherwise, the colonies contained in the apiary in which such bee diseases or parasites are found shall be depopulated without remuneration to the owner.

All bee hives and related equipment found in any diseased apiary shall be destroyed or sterilized under the direction of the commissioner.

(c) All queen breeding apiaries shall be thoroughly inspected twice each season. If upon such inspection it shall appear that any bee disease or parasite exists in such apiary, the inspector making the inspection shall immediately notify, in writing, the owner or person in charge thereof, and thereafter it shall be unlawful for any such person to ship, sell or give away any queen bees from such apiary until the disease or parasitic infestation has been eradicated.

(d) The commissioner shall have the power to establish interior and exterior quarantines to prevent or contain the spread of contagious bee diseases and parasitic infestations. Such quarantines shall include specific perimeters to encompass any township, area, county or region within the state deemed by the commissioner, which may be affected by such contagious diseases or parasitic infestations.
Exterior quarantines may be established to prevent diseased or parasitized bees and related equipment from being transported into West Virginia. When the commissioner issues a quarantine pursuant to this authority, he/she shall issue an order which specifies the type of contagious bee disease or parasitic infestation, the area or areas quarantined, conditions governing movement of bees or bee equipment from the quarantined area and such other information that protects the beekeeping industry as deemed necessary by the commissioner. The commissioner shall post a notice of quarantine at the primary location of the bee disease or parasitic infestation. If the quarantine affects more than three miles in radius, then notice of the order of quarantine shall be published as a Class I legal advertisement in compliance with the provisions of chapter fifty-nine of this code, and the publication area for such publication shall be the quarantined area.

All apiaries, bees, bee products, premises, bee equipment and appliances wherein or on which bee diseases and parasites are found to exist shall be quarantined by the commissioner. Such quarantine shall continue until the commissioner declares the same to be apparently free from any such bee diseases and parasites.

The commissioner shall have authority to rescind quarantines as he/she determines the need or practicability no longer exists by the same notice method utilized to implement the quarantine.

§19-13-6. Abandoned apiaries and equipment; notice.

When any apiary or bee equipment is deemed by the commissioner to be abandoned, the commissioner shall give written notice by registered mail to the owner or operator thereof, if such ownership or operator can be determined, that the commissioner deems such apiary or bee equipment abandoned. If the owner or operator of the property cannot be located after reasonable inquiry, said notice shall be provided by the same mailing requirement to the owner of the real property on which the apiary or equipment is located. If such
apiary or equipment continues to be abandoned for a
period of sixty days thereafter, the commissioner may
seize the apiary or equipment and take such action as
is necessary to dispose or destroy said apiary or
equipment as its condition warrants. In order to halt the
spread of bee diseases and parasitic infestation when an
abandoned apiary is found upon inspection to be
diseased, the commissioner is authorized to cause it to
be destroyed.

§19-13-7. Bees brought into state to carry inspection
certificate; commissioner to be notified;
interstate movement of bees.

(a) It shall be unlawful for any person to transport
bees, used hives, used bee equipment or used appliances
into West Virginia, unless the same be accompanied by
a certificate of inspection signed by an authorized
inspection official of the state from which such bees or
equipment is being transported. Such certificate shall
certify the actual inspection of the bees made within
thirty days preceding the date of shipment, and that the
bees, hives, equipment and appliances contained in the
shipment are apparently free from bee diseases and
parasitic infestation.

(b) Prior to the movement of any bees, used bee
equipment, combs, bee appliances or equipment into
West Virginia, and as a prerequisite to the issuance of
a permit of entry, the commissioner shall be furnished
by the owner, transporter, or lessee the following:

(1) The exact location or destination of the bees or
equipment.

(2) Name and address of the owner of the property
where the bees or equipment will be located.

(3) The exact number of colonies or amount of bee
equipment and appliances in the shipment.

(4) A copy of the inspection certificate issued by the
inspector of the state of origin.

Upon compliance with the mandatory requirements
set forth heretofore, the commissioner shall issue a
perm of entry not to exceed sixty days, unless said bees
and equipment are to be permanently located within
West Virginia, then the commissioner shall issue a
nonlimited permit.

If the commissioner denies the request for an entry
permit, then the commissioner shall notify the owner or
transporter of said denial and the reasons therefor.


Any application or treatment of any pesticide to
agricultural crops while in full bloom which is incon-
sistent with product labeling of the pesticide and is
deemed by the commissioner to be injurious to bees shall
be prohibited.


Any person who engages in the shipping of bees in
combless packages in this state shall, in manufacturing
candy for mailing cages, sterilize the same or use candy
that does not contain honey.


It shall be unlawful for any person to:

(a) Knowingly keep in his/her possession without
proper treatment, any colony of bees affected with any
bee disease or parasitic infestation; or to expose any
diseased or infested colony, hive, or appliance so that
foraging bees have access to them.

(b) To sell, barter, give away, accept, receive or
transport any bees that are known to be affected with
any bee disease or parasitic infestation.

(c) To resist, impede or hinder the commissioner or an
authorized employee in the performance of his/her
duties under the provision of this article.

(d) To use or apply any apiary disease, pest or
parasite control chemical by any mechanism which is
inconsistent with the product label as approved by the
United States Environmental Protection Agency.

(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 fifty dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred dollars 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 the provisions 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 violation of any persons, the seriousness of the violation, including any hazards to agriculture in West Virginia 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 two hundred fifty dollars for the first offense or nonserious violation, as determined by the commissioner in accordance with the rules promulgated in accordance with the provisions of chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat or intentional violation, as determined by the commissioner in accordance with such promulgated rules.

(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 a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the same, shall be assessed interest at ten percent from the date the penalty was assessed. Such penalty and interest constitute a lien in favor of the state of West Virginia and shall attach on the person's property when
such lien is properly recorded in the county where the
due property is situated. There shall be no cost as a condition
precedent to recording.

(4) Notwithstanding any other provision of law to the
contrary, the commissioner may promulgate and adopt
rules which permit consent agreements for the civil
penalties assessed as a result of violation of the
provisions of this article.

(5) 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.

(6) 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.


If any provision 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 this article which can be given effect
without the invalid provision or application, and to this
end the provisions of the article are declared severable.

CHAPTER 11
(Com. Sub. for S. B. 101—Originating in the Committee on Finance)

[Passed March 9, 1991: 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 highways, account no. 6700,
supplementing chapter ten, acts of the Legislature,
regular session, one thousand nine hundred ninety,
known as the budget bill.
WHEREAS, The governor submitted to the Legislature the executive budget document dated January 9, 1991, wherein on page X thereof are set forth the revenues and expenditures of the state road fund, including fiscal year 1990-1991; 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 1990-1991, 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-one, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented, amended and thereafter read as follows:

<table>
<thead>
<tr>
<th></th>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Sec. 4. Appropriations of federal funds.</td>
</tr>
<tr>
<td>3</td>
<td>Sec. 5. Appropriations from other funds.</td>
</tr>
<tr>
<td>4</td>
<td>DEPARTMENT OF TRANSPORTATION</td>
</tr>
<tr>
<td>5</td>
<td>157—Division of Highways</td>
</tr>
<tr>
<td>6</td>
<td>(WV Code Chapters 17 and 17C)</td>
</tr>
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<td>7</td>
<td>Acct. No. 6700</td>
</tr>
<tr>
<td>8</td>
<td>TO BE PAID FROM STATE ROAD FUND</td>
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<td>10</td>
<td>Funds</td>
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<td>Fiscal</td>
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<td>1990-91</td>
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<td>14</td>
<td>1 Maintenance, Expressway,</td>
</tr>
<tr>
<td>15</td>
<td>2 Trunkline and Feeder ... $</td>
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<td>16</td>
<td>3 Maintenance, State</td>
</tr>
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<td>17</td>
<td>4 Local Services ............</td>
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<td>18</td>
<td>Maintenance, Contract</td>
</tr>
<tr>
<td>19</td>
<td>Paving and Secondary</td>
</tr>
<tr>
<td>20</td>
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</tr>
<tr>
<td>21</td>
<td>Bridge Repair</td>
</tr>
<tr>
<td>22</td>
<td>and Replacement</td>
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<tr>
<td>23</td>
<td>Industrial Access Roads</td>
</tr>
<tr>
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<td>Inventory Revolving</td>
</tr>
<tr>
<td>25</td>
<td>Equipment Revolving</td>
</tr>
<tr>
<td>26</td>
<td>General Operations</td>
</tr>
<tr>
<td>27</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>28</td>
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</tr>
<tr>
<td>29</td>
<td>Interstate Construction</td>
</tr>
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<td>Other Federal Aid Programs</td>
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<td>31</td>
<td>Appalachian Programs</td>
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<td>Nonfederal Aid Construction</td>
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<tr>
<td>33</td>
<td>Highway Litter Control</td>
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<td>34</td>
<td>Railroad Highway Grade</td>
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<td>35</td>
<td>Crossing Improvements</td>
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<tr>
<td>36</td>
<td>Total</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and amend the existing items in the aforesaid account for expenditure in the fiscal year of 1990-1991 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.

**CHAPTER 12**

*(Com. Sub. for S. B. 85—Originating in the Committee on Finance)*

[Passed February 18, 1991; 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 Legisla-
ture, regular session, one thousand nine hundred ninety, known as the budget bill, and chapter three, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety.

Whereas, The governor submitted to the Legislature the executive budget document dated January 9, 1991, wherein on page X thereof are set forth the revenues and expenditures of the state road fund, including fiscal year 1990-1991; 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 1990-1991, 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 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, and chapter three, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety, be supplemented, amended and thereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 4. Appropriations of federal funds.

3 Sec. 5. Appropriations from other funds.

4 DEPARTMENT OF TRANSPORTATION

5 158—Division of Motor Vehicles

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

7 Acct. No. 6710

8 TO BE PAID FROM STATE ROAD FUND

9

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</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 1990-1991 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.

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CHAPTER 13

(Com. Sub. for H. B. 2040—By Mr. Speaker, Mr. Chambers, and Delegate Burb)

[Passed March 17, 1991; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

I. General provisions.
II. Appropriations.
III. Administration.

TITLE I—GENERAL PROVISIONS.

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

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-two.

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-two" shall mean the period from July first, one thousand nine hundred ninety-one, through June thirtieth, one thousand nine hundred ninety-two.

"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.

Items designated as "total personal services" shall mean funds appropriated to cover the costs of personal services and annual increment.

"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. If there is no appropriation for "employee benefits," such costs shall be paid by each spending unit from its "personal services" line item, its "total personal services" line item or its "unclassified" line item. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of article two, chapter five-a of the code.
“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 an employee benefit.

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

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

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

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated:

Provided, That the secretary of each department shall have the authority to transfer within the department those 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 transportation 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 appropriated 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 appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of article three, chapter twelve of the code or according to any law detailing a procedure specifically limiting that article.

Funds of the State of West Virginia not heretofore classified as to purpose and existing within the funds of 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 appropriations set out in this bill.

TITLE II—APPROPRIATIONS.
§1. Appropriations from general revenue.
§2. Appropriations of federal funds.
### DEPARTMENT OF ADMINISTRATION

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Risk and Insurance Management</td>
<td>2250</td>
</tr>
<tr>
<td>Commission on Uniform State Laws</td>
<td>2450</td>
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<tr>
<td>Committee for the Purchase of Commodities and Services for the Handicapped</td>
<td>2140</td>
</tr>
<tr>
<td>Division of Finance</td>
<td>2110</td>
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<td>Division of Finance and Administration</td>
<td>2100</td>
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<tr>
<td>Division of General Services</td>
<td>2130</td>
</tr>
<tr>
<td>Division of Purchasing</td>
<td>2120</td>
</tr>
<tr>
<td>Education and State Employees Grievance Board</td>
<td>6015</td>
</tr>
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<td>Ethics Commission</td>
<td>6180</td>
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<tr>
<td>Office of the Secretary</td>
<td>2105</td>
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<td>Public Defender Services</td>
<td>5900</td>
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<td>Public Employees Insurance Agency</td>
<td>6150</td>
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<td>Public Employees Retirement System</td>
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### DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

<table>
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<tr>
<th>Agency</th>
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<tr>
<td>Air Pollution Control Commission</td>
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</tr>
<tr>
<td>Board of Coal Mine Health and Safety</td>
<td>4720</td>
</tr>
<tr>
<td>Coal Mine Safety and Technical Review Committee</td>
<td>4750</td>
</tr>
<tr>
<td>Department of Commerce, Labor and Environmental Resources</td>
<td>5921</td>
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<td>Division of Energy</td>
<td>4775</td>
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<td>Division of Forestry</td>
<td>4650</td>
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<td>4500</td>
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<td>5650</td>
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<td>Division of Tourism and Parks</td>
<td>4625</td>
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<td>Geological and Economic Survey</td>
<td>5200</td>
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<td>Interstate Commission on Potomac River Basin</td>
<td>4730</td>
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<td>Office of Community and Industrial Development</td>
<td>1210</td>
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<td>Ohio River Valley Water Sanitation Commission</td>
<td>4740</td>
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<td>Water Resources Board</td>
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</table>

### DEPARTMENT OF EDUCATION

<table>
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<th>Agency</th>
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<td>State Board of Rehabilitation—Division of Rehabilitation Services</td>
<td>4405</td>
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<td>State Department of Education</td>
<td>2860</td>
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<td>State Department of Education—Aid for Exceptional Children</td>
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<td>State Department of Education—School Lunch Program</td>
<td>2870</td>
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<td>State Department of Education—State Aid to Schools</td>
<td>6350</td>
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<td>State Department of Education—Vocational Division</td>
<td>2890</td>
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<td>State FFA-FHA Camp and Conference Center</td>
<td>3360</td>
</tr>
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<td>West Virginia Schools for the Deaf and the Blind</td>
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### DEPARTMENT OF EDUCATION AND THE ARTS

<table>
<thead>
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<tbody>
<tr>
<td>Board of Directors of the State College System</td>
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<td>Board of Trustees of the University System of West Virginia</td>
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<td>Department of Education and the Arts—Office of the Secretary</td>
<td>5332</td>
</tr>
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<td>Division of Culture and History</td>
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<td>Educational Broadcasting Authority</td>
<td>2910</td>
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### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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<th>Agency</th>
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<td>Commission on Aging</td>
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<td>Human Rights Commission</td>
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DEPARTMENT OF PUBLIC SAFETY

Adjutant General—State Militia—Acct. No. 5800 .......................................................... 160
Board of Probation and Parole—Acct. No. 3650 .............................................................. 157
Division of Corrections—Central Office—Acct. No. 3680 ............................................. 157
Division of Corrections—Correctional Units—Acct. No. 3770 ........................................ 158
Division of Public Safety—Acct. No. 5700 ..................................................................... 159
Division of Public Safety—Office of the Secretary—Acct. No. 5854 .............................. 159
Division of Veterans’ Affairs—Acct. No. 4040 .............................................................. 159
Division of Veterans’ Affairs—Veterans’ Home—Acct. No. 4010 ................................. 158
Fire Commission—Acct. No. 6170 ................................................................................. 160
Office of Emergency Services and Advisory Council—
Division of Emergency Services—Acct. No. 1200 ....................................................... 157

DEPARTMENT OF TAX AND REVENUE

Department of Tax and Revenue—Office of the Secretary—Acct. No. 5365 ................... 161
Division of Professional and Occupational Licenses—
State Athletic Commission—Acct. No. 4790 ................................................................. 161
Racing Commission—Acct. No. 4950 ........................................................................... 161
Tax Division—Acct. No. 1800 ....................................................................................... 160

DEPARTMENT OF TRANSPORTATION

Department of Transportation—Office of the Secretary—Acct. No. 5376 ..................... 161
Railroad Maintenance Authority—Acct. No. 5690 ....................................................... 162

EXECUTIVE

Attorney General—Acct. No. 2400 .................................................................................. 134
Auditor’s Office—General Administration—Acct. No. 1500 ........................................... 133
Department of Agriculture—Acct. No. 5100 ................................................................ 135
Department of Agriculture—Agricultural Awards—Acct. No. 5150 ............................. 136
Department of Agriculture—Marketing and Development Division
(Matching Fund)—Acct. No. 5150 ................................................................................ 136
Department of Agriculture—Meat Inspection—Acct. No. 5140 .................................... 136
Department of Agriculture—Soil Conservation Committee—Acct. No. 5120 .................. 135
Governor’s Office—Acct. No. 1200 .............................................................................. 132
Governor’s Office—Civil Contingent Fund—Acct. No. 1240 ......................................... 132
Governor’s Office—Custodial Fund—Acct. No. 1230 ..................................................... 132
Governor’s Office—Educational Programs—Acct. No. 1245 ........................................... 132
Secretary of State—Acct. No. 2500 ................................................................................ 134
State Elections Commission—Acct. No. 2600 ............................................................... 135
Treasurer’s Office—Acct. No. 1600 .............................................................................. 133
Treasurer’s Office—School Building Sinking Fund—Acct. No. 1650 ............................ 133

JUDICIAL

Supreme Court—General Judicial—Acct. No. 1110 ....................................................... 131

LEGISLATIVE

House of Delegates—Acct. No. 1020 ............................................................................... 128
Joint Expenses—Acct. No. 1030 ..................................................................................... 130
Senate—Acct. No. 1010 ................................................................................................. 127

MISCELLANEOUS BOARDS AND COMMISSIONS

Board of Investments—Acct. No. 1900 ............................................................................ 162
Board of Investments—School Building Sinking Fund—Acct. No. 1905 ....................... 162

§3. Appropriations from other funds.
§4. Appropriations of federal funds.

PAYABLE FROM MEDICAL SCHOOL FUND

DEPARTMENT OF EDUCATION AND THE ARTS

State University System—West Virginia University Health Sciences
Center Spending Authority—Acct. No. 9280 .................................................................. 178
PAYABLE FROM SPECIAL REVENUE FUND

DEPARTMENT OF ADMINISTRATION
Division of Information Systems and Communications—Acct. No. 8151 ........................................... 166
Division of Personnel—Acct. No. 8402 .......................................................... 167
Division of Purchasing—Revolving Fund—Acct. No. 8140 ................................................................. 165

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
Division of Banking—Acct. No. 8393 .......................................................... 171
Division of Banking—Acct. No. 8395 .......................................................... 171
Division of Energy—Oil and Gas Operating Permits—Acct. No. 8539 .............................................. 173
Division of Energy—Oil and Gas Reclamation Trust—Acct. No. 8538 .............................................. 173
Division of Energy—Special Reclamation Fund—Acct. No. 8537 .................................................... 172
Division of Forestry—Acct. No. 8478 .................................................................................. 172
Division of Natural Resources—Acct. No. 8300 .............................................................................. 168
Division of Natural Resources—Game, Fish and Aquatic Life Fund—Acct. No. 8303 ...................... 169
Division of Natural Resources—Groundwater Planning—Acct. No. 8312 ...................................... 170
Division of Natural Resources—Hazardous Waste Emergency and Response Fund—Acct. No. 8323 ........................................................................................................... 170
Division of Natural Resources—Nongame Fund—Acct. No. 8304 .................................................. 169
Division of Natural Resources—Solid Waste Enforcement Fund—Acct. No. 8227 .................................................. 171
Division of Natural Resources—Solid Waste Reclamation and Administrative Fund—Acct. No. 8302 .............................................................................................................. 168
Division of Natural Resources—Underground Storage Tanks ......................................................... 168
Division of Natural Resources—Use and Development—P.L.C.—Acct. No. 8306 ................................169
Geological and Economic Survey—Acct. No. 8589 ........................................................................ 173
Office of Community and Industrial Development—Acct. No. 8045 ................................................ 167
Oil and Gas Conservation Commission—Acct. No. 8097 .................................................................... 167
Solid Waste Management Board—Acct. No. 8461 ........................................................................ 172

DEPARTMENT OF EDUCATION
State Board of Rehabilitation—Division of Rehabilitation Services—
West Virginia Rehabilitation Center—Special Account—Acct. No. 8137 ........................................ 174
State Department of Education—FFA-FHA Conference Center—Acct. No. 8244 ................................ 174

DEPARTMENT OF EDUCATION AND THE ARTS
State College and University Systems—State System Registration Fee—
Revenue Bond Construction Fund—Acct. No. 8845 .............................................................................. 176
State College and University Systems—State Systems Tuition Fee—
Revenue Bond Construction Fund—Acct. No. 8860 .......................................................................... 177
State College System—State System Registration Fee—
Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)—Acct. No. 8835 .............................................................................................................. 175
State College System—State System Tuition Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)—Acct. No. 8855 .................................................................................. 176
State University System—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)—Acct. No. 8830 .............................................................................. 175
State University System—State System Tuition Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)—Acct. No. 8865 .............................................................................. 177

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Board of Barbers and Beauticians—Acct. No. 8220 .................................................................................. 178
Division of Health—Health Facility Licensing—Acct. No. 8529 ......................................................... 181
Division of Health—Hospital Services Revenue Account (Special Fund) (Capital Improvement, Renovation and Operations)—Acct. No. 8506 .............................................................................. 180
Division of Health—Laboratory Services—Acct. No. 8529 .................................................................. 181
Division of Health—Vital Statistics—Acct. No. 8236 ............................................................................. 179
Health Care Cost Review Authority—Acct. No. 8564 ........................................................................... 182
Health Care Cost Review Authority—Planning—Acct. No. 8234 ...................................................... 179
Hospital Finance Authority—Acct. No. 8330 .................................................................................. 179
West Virginia Health Care Planning Commission—Acct. No. 8530 .................................................. 181
### DEPARTMENT OF PUBLIC SAFETY
- Agency of Insurance Commissioner Consumer Advocate—Acct. No. 8015 .................................................. 184
- Division of Public Safety—Barracks Construction—Acct. No. 8352 ................................................................. 183
- Division of Public Safety—Drunk Driving Prevention Fund—Acct. No. 8355 ......................................................... 183
- Division of Public Safety—Inspection Fees—Acct. No. 8350 ................................................................. 183
- Division of Veterans' Affairs—Veterans' Home—Acct. No. 8251 ................................................................. 182
- Fire Commission—Fire Marshal Fees—Acct. No. 8465 ......................................................................................... 184
- Regional Jail and Correctional Facility Authority—Acct. No. 8051 ................................................................. 182
- State Armory Board—General Armory Fund—Acct. No. 8446 ................................................................. 184

### DEPARTMENT OF TAX AND REVENUE
- Agency of Insurance Commissioner—Acct. No. 8016 ......................................................................................... 185
- Alcohol Beverage Control Commission—Wine License Special Fund—Acct. No. 8592 ........................................... 187
- Insurance Commission—Examination Revolving Fund—Acct. No. 8018 ......................................................... 185
- Municipal Bond Commission—Acct. No. 8040 ......................................................................................... 185
- Office of Alcohol Beverage Control Commissioner—Acct. No. 8270 ......................................................... 186
- Office of Chief Inspector—Acct. No. 8091 ......................................................................................... 186
- Racing Commission—Acct. No. 8080 ......................................................................................... 186
- Racing Commission—Administration and Promotion—Acct. No. 8082 ......................................................... 186

### DEPARTMENT OF TRANSPORTATION
- Division of Motor Vehicles—Driver Rehabilitation—Acct. No. 8423 ................................................................. 190
- Division of Motor Vehicles—Driver's License Reinstatement Fund—Acct. No. 8422 ......................................................... 189
- Division of Motor Vehicles—Insurance Certificate Fees—Acct. No. 8424 ................................................................. 190
- Division of Motor Vehicles—Motorboat Licenses—Acct. No. 8425 ................................................................. 190
- Division of Motor Vehicles—Returned Check Fees—Acct. No. 8426 ................................................................. 191

### EXECUTIVE
- Attorney General—Anti-Trust Enforcement—Acct. No. 8419 ......................................................................................... 165
- Auditor's Office—Land Department Operating Fund—Acct. No. 8120 ................................................................. 163
- Department of Agriculture—Acct. No. 8180 ......................................................................................... 164
- Department of Agriculture—West Virginia Rural Rehabilitation Program—Acct. No. 8192 ......................................................... 164
- General John McCausland Memorial Farm—Acct. No. 8194 ......................................................................................... 164

### LEGISLATIVE
- Crime Victims Compensation Fund—Acct. No. 8412 ......................................................................................... 163

### MISCELLANEOUS BOARDS AND COMMISSIONS
- Public Service Commission—Acct. No. 8280 ......................................................................................... 192
- Public Service Commission—Consumer Advocate—Acct. No. 8285 ......................................................................................... 193
- Public Service Commission—Gas Pipeline Division—Acct. No. 8286 ......................................................................................... 192
- Public Service Commission—Motor Carrier Division—Acct. No. 8290 ......................................................................................... 193
- Real Estate Commission—Acct. No. 8010 ......................................................................................... 191
- West Virginia Cable Television—Advisory Board—Acct. No. 8174 ......................................................................................... 191

### PAYABLE FROM STATE ROAD FUND
- Division of Highways—Acct. No. 6700 ......................................................................................... 188
- Division of Motor Vehicles—Acct. No. 6710 ......................................................................................... 189

### PAYABLE FROM WORKERS' COMPENSATION FUND

### DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
- Bureau of Employment Programs—Workers' Compensation Fund—Acct. No. 9000 ......................................................................................... 174

### §5. Appropriations from Lottery Net Profits.

### 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 ......................................................................................... 195
- Division of Health—Acct. No. 8525 ......................................................................................... 194
- Division of Human Services—Acct. No. 9132 ......................................................................................... 195


APPROPRIATIONS

Division of Tourism and Parks—Acct. No. 8546 .................................................. 194
State Department of Education—Acct. No. 8243 .................................................. 194

§6. Awards for claims against the state.

§7. Appropriations and reappropriations.

Division of Corrections—Correctional Units—Acct. No. 9719 ................................ 196

§8. Appropriations from surplus accrued.

Division of Energy—Acct. No. 4775 ................................................................. 197
Division of Finance—Acct. No. 2110 ................................................................. 198
Division of Human Services—Acct. No. 4050 ................................................ 197

§9. Appropriations from federal block grants.

PAYABLE FROM FEDERAL FUNDS

Division of Health—Alcohol, Drug Abuse and Mental Health—Acct. No. 8503 ................ 199
Division of Health—Community Youth Activity Program—Acct. No. 8504 ................ 199
Division of Health—Maternal and Child Health—Acct. No. 8502 ............................ 198
Division of Health—Mental Health Services for the Homeless—Acct. No. 8508 .......... 199
Division of Health—Preventive Health—Acct. No. 8506 ........................................ 199
Division of Human Services—Energy Assistance—Acct. No. 9147 ............................ 199
Division of Human Services—Social Services—Acct. No. 9161 ................................ 199
Office of Community and Industrial Development—Community Development—Acct. No. 8029 .... 198
Office of Community and Industrial Development—Community Service—Acct. No. 8031 ...... 198
State Department of Education—Education Grant—Acct. No. 8242 .......................... 198

§10. Special revenue appropriations.

§11. State improvement fund appropriations.

§12. Specific funds and collection accounts.


§15. Appropriations to pay costs of publication of delinquent corporations.

§16. Appropriations for local governments.

§17. Total appropriations.

§18. General school fund.

TITLE II—APPROPRIATIONS.

1. 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-two.

2. 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-two.
The appropriations for the senate for the fiscal year 1990-91 are to remain in full force and effect and are hereby reappropriated to June 30, 1992. Any balances so reappropriated may be transferred and credited to the 1991-92 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 Legisla-
ture, 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 by the senate, the clerk
of the senate shall be paid a monthly salary as provided
by the senate resolution, unless increased between
sessions under the authority of the president, payable
out of the appropriation for Compensation and Per Diem
of Officers and Employees or Current Expenses and
Contingent Fund of the senate.

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

2—House of Delegates
Acct. No. 1020

1 Compensation of Members . . $ — $ 898,478
The appropriations for the house of delegates for the fiscal year 1990-91 are to remain in full force and effect and are hereby reappropriated to June 30, 1992. Any balances so reappropriated may be transferred and credited to the 1991-92 accounts.

Upon the written request of the clerk of the house of delegates, the auditor shall transfer amounts between items of that 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, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers.
and Employees Fund or Current Expenses and Contingent Fund of the house of delegates.

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

3—Joint Expenses

(WV Code Chapter 4)

Acct. No. 1030

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance</td>
<td>$4,172,701</td>
</tr>
<tr>
<td>Legislative Printing</td>
<td>$810,000</td>
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<tr>
<td>Legislative Rule-Making</td>
<td></td>
</tr>
<tr>
<td>Review Committee</td>
<td>$170,500</td>
</tr>
<tr>
<td>Legislative Computer</td>
<td>$350,000</td>
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<tr>
<td>Joint Standing Committee on Education</td>
<td>$40,000</td>
</tr>
<tr>
<td>Total</td>
<td>$5,543,201</td>
</tr>
</tbody>
</table>

The appropriation for Joint Expenses for the fiscal year 1990-91 is to remain in full force and effect and is hereby reappropriated to June 30, 1992. Any balances so reappropriated may be transferred and credited to the 1991-92 accounts.

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


JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$20,665,498</td>
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<tr>
<td>Annual Increment</td>
<td>$181,000</td>
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<tr>
<td>Other Expenses</td>
<td>$2,800,000</td>
</tr>
<tr>
<td>Judges' Retirement System</td>
<td>$1,718,256</td>
</tr>
<tr>
<td>Other Court Costs</td>
<td>$2,000,000</td>
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<tr>
<td>Judicial Training</td>
<td>$250,000</td>
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<tr>
<td>Mental Hygiene Fund</td>
<td>$600,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$1,581,058</td>
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<tr>
<td>Public Employees</td>
<td></td>
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<tr>
<td>Retirement Matching</td>
<td>$1,777,972</td>
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<tr>
<td>Public Employees Health Insurance</td>
<td></td>
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<tr>
<td>Matching</td>
<td>$2,428,750</td>
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<tr>
<td>Total</td>
<td>$34,002,534</td>
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</tbody>
</table>

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1990-91 are hereby reappropriated for expenditure during the fiscal year 1991-92. Any balances so reappropriated may be transferred and credited to the 1991-92 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.
### Appropriaions

#### EXECUTIVE

5—Governor’s Office

(WV Code Chapter 5)

Acct. No. 1200

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Salary of Governor</td>
<td>$72,000</td>
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<tr>
<td>2</td>
<td>Unclassified</td>
<td>1,245,667</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>1,317,667</td>
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</table>

6—Governor’s Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>361,651</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Civil Contingent</td>
<td>1,851,297</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation (account no. 1240-06) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

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.

8—Governor’s Office—Educational Programs

Acct. No. 1245

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Early Childhood</td>
<td>$500,000</td>
</tr>
</tbody>
</table>
3 Center for Professional Development .......... $1,000,000
4 Total .................................. $1,500,000

Any unexpended balances remaining in the appropriation for Early Childhood Development (account no. 1245-09) and Center for Professional Development (account no. 1245-10) at the close of fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

9—Auditor’s Office—General Administration
(WV Code Chapter 12)
Acct. No. 1500

<table>
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<th>Description</th>
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<tbody>
<tr>
<td>Salary of Auditor</td>
<td>$46,800</td>
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<tr>
<td>Total Personal Services</td>
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<tr>
<td>Personal Services</td>
<td>$28,728</td>
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<tr>
<td>Annual Increment</td>
<td>$487,842</td>
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<tr>
<td>Employee Benefits</td>
<td>$500,000</td>
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<tr>
<td>Office Automation</td>
<td>$553,722</td>
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<td>Unclassified</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$3,111,130</td>
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</tbody>
</table>

10—Treasurer’s Office
(WV Code Chapter 12)
Acct. No. 1600

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Salary of Treasurer</td>
<td>$50,400</td>
</tr>
<tr>
<td>Total Personal Services</td>
<td>$458,050</td>
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<tr>
<td>Personal Services</td>
<td>$5,500</td>
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<tr>
<td>Annual Increment</td>
<td>$136,532</td>
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<tr>
<td>Employee Benefits</td>
<td>$228,730</td>
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<tr>
<td>Unclassified</td>
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<tr>
<td>Total</td>
<td>$879,212</td>
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</tbody>
</table>

11—Treasurer’s Office—School Building Sinking Fund
Acct. No. 1650

Any unexpended balance remaining in the appropriation for Treasurer’s Office—School Building Sinking Fund.
Fund (account no. 1650-06) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92 and redesignated as Board of Investments—School Building Sinking Fund (account no. 1905-06).

12—Attorney General

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

Acct. No. 2400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney</td>
<td>$50,400</td>
</tr>
<tr>
<td>2</td>
<td>General</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Total Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Personal Services</td>
<td>$1,787,640</td>
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<tr>
<td>5</td>
<td>Annual Increment</td>
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<tr>
<td>6</td>
<td>Employee Benefits</td>
<td>$505,988</td>
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<td>7</td>
<td>Unclassified</td>
<td>$648,882</td>
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<tr>
<td>8</td>
<td>Total</td>
<td>$3,005,042</td>
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</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>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Secretary</td>
<td>$43,200</td>
</tr>
<tr>
<td>2</td>
<td>of State</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Total Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Personal Services</td>
<td>$434,143</td>
</tr>
<tr>
<td>5</td>
<td>Annual Increment</td>
<td>$4,608</td>
</tr>
<tr>
<td>6</td>
<td>Employee Benefits</td>
<td>$160,603</td>
</tr>
<tr>
<td>7</td>
<td>Office Automation</td>
<td>$52,422</td>
</tr>
<tr>
<td>8</td>
<td>Unclassified</td>
<td>$187,042</td>
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<tr>
<td>9</td>
<td>Total</td>
<td>$882,018</td>
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</table>
### 14—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2600

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$11,058</td>
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</table>

### 15—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 5100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of</td>
<td>$46,800</td>
</tr>
<tr>
<td>2</td>
<td>Commissioner</td>
<td>—</td>
</tr>
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<td>3</td>
<td>Total Personal Services</td>
<td>—</td>
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<td>4</td>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Gypsy Moth Program</td>
<td>—</td>
</tr>
<tr>
<td>8</td>
<td>Unclassified</td>
<td>$3,045,257</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$3,045,257</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>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>—</td>
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<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Soil Conservation Projects</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$2,537,115</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for unclassified (account no. 5121-18) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.
### Appropriations [Ch. 13]

#### 17—Department of Agriculture—
Marketing and Development Division
(Matching Fund)

(WV Code Chapter 19)

Acct. No. 5130

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$377,477</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,652</td>
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<tr>
<td>Employee Benefits</td>
<td>$145,170</td>
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<tr>
<td>Unclassified</td>
<td>$17,240</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$737,145</strong></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>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$246,012</td>
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<tr>
<td>Annual Increment</td>
<td>$5,184</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$110,715</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$478,534</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$376,004</strong></td>
</tr>
</tbody>
</table>

Any part or all of this appropriation from general revenue fund 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>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Awards</td>
<td>$62,569</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>$175,598</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$238,167</strong></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 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92 and redesignated as Department of Transportation—Office of the Secretary—Public Transportation (account no. 5376-41).

21—*Office of the Secretary*

(*WV Code Chapter 5F*)

Acct. No. 2105

1 Unclassified—Total ........ $ 272,184

22—*Division of Finance*

(*WV Code Chapter 5A*)

Acct. No. 2110

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>Personal Services</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 602,626</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ 6,000</td>
</tr>
<tr>
<td>National Governors' Association</td>
<td>$ 130,197</td>
</tr>
<tr>
<td>Southern States Energy Board</td>
<td>$ 28,732</td>
</tr>
<tr>
<td>GAAP Project</td>
<td>$ 2,400,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$ 522,928</td>
</tr>
<tr>
<td>Total</td>
<td>$ 3,754,063</td>
</tr>
</tbody>
</table>

23—*Division of Purchasing*

(*WV Code Chapter 5A*)

Acct. No. 2120

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$</td>
</tr>
</tbody>
</table>


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

Acct. No. 2130

| 1 | Total Personal Services | $ | — | $ | —0— |
| 2 | Personal Services | — | — | 489,484 |
| 3 | Annual Increment | — | — | 11,160 |
| 4 | Employee Benefits | — | — | 204,401 |
| 5 | Fire Service Fee | — | — | 14,000 |
| 6 | Unclassified | — | — | 804,862 |
| 7 | Total | $ | — | $ | 1,523,907 |

25—Committee for the Purchase of Commodities and Services from the Handicapped
(WV Code Chapter 5A)

Acct. No. 2140

| 1 | Unclassified—Total | $ | — | $ | 5,000 |

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

Acct. No. 2250

| 1 | Total Personal Services | $ | — | $ | —0— |
| 2 | Unclassified | — | — | 3,910,537 |
| 3 | Total | $ | — | $ | 3,910,537 |

Any balance remaining in the appropriation for FEMA reimbursement (account no. 2251-29) at the close of fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.
The Unclassified item of appropriation herein includes funding for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various state agencies, except those operating from special revenue funds, with such special revenue fund agencies to be billed by the board of risk and insurance management and with such costs to be a proper charge against such spending units.

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

27—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1 Unclassified—Total ........ $ — $ 14,550

To pay expenses of members of the commission on uniform state laws.

28—Public Defender Services

(WV Code Chapter 29)

Acct. No. 5900

1 Total Personal Services ...... $ — $ —0—
2 Personal Services ............ — $ 227,547
3 Annual Increment ............. — $ 2,232
4 Employee Benefits ............ — $ 56,169
5 Appointed Counsel Fees
   and Public Defender
6 Corporations ................ $ — $ 9,515,969
7 Unclassified .................. — $ 102,095
8 Total ........................ $ — $ 9,904,012

Any unexpended balance remaining in the appropriation for Unclassified (account no. 5900-18) at the close of the fiscal year 1990-91 are hereby reappropriated for expenditure during the fiscal year 1991-92.
29—Education and State Employees Grievance Board

(WV Code Chapter 18)

Acct. No. 6015

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$410,454</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$3,348</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$112,548</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$138,770</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$665,120</td>
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</table>

30—Public Employees Retirement System

(WV Code Chapter 5)

Acct. No. 6140

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Supplemental Benefits for</td>
<td>$1,890,725</td>
</tr>
<tr>
<td>2</td>
<td>Annuitants—Total</td>
<td>$</td>
</tr>
</tbody>
</table>

The division of highways, division of motor vehicles, workers' compensation commissioner, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their 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—Public Employees Insurance Agency

(WV Code Chapter 5)

Acct. No. 6150

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The division of highways, division of motor vehicles, workers' compensation commissioner, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.</td>
<td>$</td>
</tr>
</tbody>
</table>
### 32—Ethics Commission
(WV Code Chapter 6B)

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$-0-</td>
</tr>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>120,734</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>26,676</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>233,467</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$380,877</td>
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</tbody>
</table>

#### DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES

### 33—Office of Community and
Industrial Development
(WV Code Chapter 5B)

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$-0-</td>
</tr>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>2,080,242</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>19,758</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>586,526</td>
</tr>
<tr>
<td>5</td>
<td>Guaranteed Work</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Force Grant</td>
<td>850,000</td>
</tr>
<tr>
<td>7</td>
<td>Partnership Grant</td>
<td>2,100,000</td>
</tr>
<tr>
<td>8</td>
<td>Unclassified</td>
<td>13,795,339</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$8,361,117</td>
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</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$-0-</td>
</tr>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>849,677</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>13,371</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>311,775</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>315,722</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,420,812</td>
</tr>
</tbody>
</table>
### 35—Division of Tourism and Parks

(WV Code Chapter 5B)

Acct. No. 4625

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ - $ -0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$ 4,432,455</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$ 89,676</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$ 1,689,368</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$ -0-</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$ 6,211,499</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 tourism and parks, 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>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ 898,100 $ 217,378</td>
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<tr>
<td>2</td>
<td>Personal Services</td>
<td>$ 2,014,731</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$ 38,484</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$ 758,697</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$ 898,100 $ 217,378</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$ 3,029,290</td>
</tr>
</tbody>
</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>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ - $ -0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$ 43,378</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$ 310</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$ 12,695</td>
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<tr>
<td>5</td>
<td>Unclassified</td>
<td>$ 4,288</td>
</tr>
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<td>6</td>
<td>Total</td>
<td>$ 60,671</td>
</tr>
</tbody>
</table>
### Ch. 13 APPROPRIATIONS

#### 38—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Acct. No. 4730

<table>
<thead>
<tr>
<th></th>
<th>West Virginia’s Contribution to the Interstate Commission on Potomac River Basin—</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total ........................................................................ $ 28,250</td>
</tr>
</tbody>
</table>

#### 39—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Acct. No. 4740

<table>
<thead>
<tr>
<th></th>
<th>Contribution to the Ohio River Valley Water Sanitation Commission—Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total ........................................................................ $ 92,720</td>
</tr>
</tbody>
</table>

#### 40—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Acct. No. 4750

<table>
<thead>
<tr>
<th></th>
<th>Services and Benefits ..................................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services ................................................................</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services ........................................................................</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ........................................................................</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified ................................................................................</td>
</tr>
</tbody>
</table>

#### 41—Air Pollution Control Commission

(WV Code Chapter 16)

Acct. No. 4760

<table>
<thead>
<tr>
<th></th>
<th>Services and Benefits ..................................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services ................................................................</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services ........................................................................</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment .........................................................................</td>
</tr>
</tbody>
</table>
### Appropriations

**Division of Energy**  
*(WV Code Chapter 22)*

Acct. No. 4775

<table>
<thead>
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<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$ —</td>
</tr>
<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>$65,105,006</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$65,105,006</strong></td>
</tr>
</tbody>
</table>

**Geological and Economic Survey**  
*(WV Code Chapter 29)*

Acct. No. 5200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$ —</td>
</tr>
<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>$220,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$220,500</strong></td>
</tr>
</tbody>
</table>

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.

Funds appropriated in prior years To Secure Federal and Other Contracts (account no. 5220-07) and still in use on a revolving basis in special and/or federal accounts to provide advance funding for contracts entered into by this spending unit shall be transferred to a special revolving fund account to be established by the auditor. Such funds may then be transferred to special and/or federal accounts for the purpose of providing advance funding for contracts. The advance funds shall be transferred back to the special revolving fund account to be established upon receipt of reimbursement and/or completion of contractual perform-
23 and will be available for future advance funding purposes.

44—Department of Commerce,
Labor and Environmental Resources—
Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 5321

1 Unclassified—Total $ - $ 391,139

45—Water Resources Board
(WV Code Chapter 20)

Acct. No. 5640

1 Total Personal Services $ - $ 0
2 Personal Services - $ 60,152
3 Annual Increment - $ 900
4 Employee Benefits - $ 18,690
5 Unclassified - $ 40,288
6 Total $ - $ 120,030

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

Acct. No. 5650

1 Total Personal Services $ - $ 0
2 Personal Services - $ 2,359,169
3 Annual Increment - $ 47,214
4 Employee Benefits - $ 786,820
5 Black Fly Control - $ 216,000
6 Waste Water Treatment
7 Revolving Fund - $ 4,100,000
8 Unclassified $41,337,876 $ 314,315
9 Total $41,337,876 $ 7,823,518

Any part or all of the above appropriation for the
Waste Water Treatment Revolving Fund shall be
transferred to a special revenue fund for the purpose of
matching federal funds for the above-named program.
## DEPARTMENT OF EDUCATION

### 47—State Department of Education

(WV Code Chapters 18 and 18A)

**Acct. No. 2860**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>2,548,968</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>37,126</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>724,416</td>
</tr>
<tr>
<td>5</td>
<td>Computer Basic Skills</td>
<td>3,500,000</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>2,704,214</td>
</tr>
<tr>
<td></td>
<td>Institutionalized Education of</td>
<td>$11,025,094</td>
</tr>
<tr>
<td></td>
<td>Juveniles</td>
<td>1,219,344</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$2,704,214</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the unclassified appropriation at the close of fiscal year 1990-91 shall be reappropriated for expenditure during fiscal year 1991-92.

### 48—State Department of Education—School Lunch Program

(WV Code Chapters 18 and 18A)

**Acct. No. 2870**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>138,814</td>
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<tr>
<td>3</td>
<td>Annual Increment</td>
<td>1,703</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>44,305</td>
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<tr>
<td>5</td>
<td>Unclassified</td>
<td>50,119,714</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$50,119,714</td>
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</tbody>
</table>

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

(WV Code Chapters 18 and 18A)

**Acct. No. 2890**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$-0-</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>620,000</td>
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<tr>
<td>Annual Increment</td>
<td>8,881</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>171,047</td>
</tr>
<tr>
<td>Vocational Programs</td>
<td>100,000</td>
</tr>
<tr>
<td>Albert Yanni</td>
<td>160,000</td>
</tr>
<tr>
<td>Total</td>
<td>$10,581,913</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Wood Products—Forestry Vocational Program (Acct. No. 2890-47 and Acct. No. 2891-47) at the close of fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

### 50—State Department of Education—State Aid to Schools

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Educators</td>
<td>$557,592,107</td>
</tr>
<tr>
<td>Service Personnel</td>
<td>188,217,739</td>
</tr>
<tr>
<td>Fixed Charges</td>
<td>62,648,027</td>
</tr>
<tr>
<td>Transportation</td>
<td>26,604,625</td>
</tr>
<tr>
<td>Administration</td>
<td>6,869,251</td>
</tr>
<tr>
<td>Other Current Expenses</td>
<td>90,434,617</td>
</tr>
<tr>
<td>Improve Instructional Programs</td>
<td>62,153,166</td>
</tr>
<tr>
<td>Basic Foundation</td>
<td>994,519,532</td>
</tr>
<tr>
<td>Less Local Share</td>
<td>(158,203,891)</td>
</tr>
<tr>
<td>Total Basic State Aid</td>
<td>836,315,641</td>
</tr>
<tr>
<td>Public Employees Health</td>
<td>115,341,336</td>
</tr>
<tr>
<td>Insurance Agency</td>
<td>113,243,931</td>
</tr>
<tr>
<td>Teachers' Retirement</td>
<td>241,459</td>
</tr>
<tr>
<td>Incentive for Adminis-trative Efficiency</td>
<td>1,812,906</td>
</tr>
<tr>
<td>Increased Enrollment</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Rural Counties</td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3100</td>
<td>School Media Improvement Grant Program</td>
</tr>
<tr>
<td>3101</td>
<td>Unclassified</td>
</tr>
<tr>
<td>3102</td>
<td>Total</td>
</tr>
</tbody>
</table>

51—State Department of Education—Aid for Exceptional Children
(WV Code Chapters 18 and 18A)

Acct. No. 2960

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3200</td>
<td>Unclassified—Total</td>
<td>$25,675,000</td>
</tr>
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</table>

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

Acct. No. 3330

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3300</td>
<td>Total Personal Services</td>
<td>$127,331</td>
</tr>
<tr>
<td>3301</td>
<td>Personal Services</td>
<td>$4,554,290</td>
</tr>
<tr>
<td>3302</td>
<td>Annual Increment</td>
<td>$4,608</td>
</tr>
<tr>
<td>3303</td>
<td>Employee Benefits</td>
<td>$1,348,229</td>
</tr>
<tr>
<td>3304</td>
<td>Unclassified</td>
<td>$1,088,436</td>
</tr>
<tr>
<td>3305</td>
<td>Total</td>
<td>$6,995,563</td>
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</tbody>
</table>

53—State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)

Acct. No. 3360

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3400</td>
<td>Total Personal Services</td>
<td>$1,088,436</td>
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</tbody>
</table>

54—State Board of Rehabilitation—Division of Rehabilitation Services
(WV Code Chapter 18)

Acct. No. 4405

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4500</td>
<td>Total Personal Services</td>
<td>$4,608</td>
</tr>
</tbody>
</table>
Ch. 13] APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>APPROPRIATION</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Personal Services ..................</td>
<td>$4,002,403</td>
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<tr>
<td>3</td>
<td>Annual Increment ...................</td>
<td>$85,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits ..................</td>
<td>$1,296,835</td>
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<tr>
<td>5</td>
<td>Workshop Development ..............</td>
<td>$1,700,000</td>
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<tr>
<td>6</td>
<td>Case Services ........................</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>7</td>
<td>Unclassified ........................</td>
<td>$28,573,483</td>
</tr>
<tr>
<td></td>
<td>Total ..............................</td>
<td>$10,182,640</td>
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</table>

DEPARTMENT OF EDUCATION
AND THE ARTS

55—Board of Directors of the
State College System

Control Account
(WV Code Chapter 18B)
Acct. No. 2785

<table>
<thead>
<tr>
<th></th>
<th>APPROPRIATION</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total .................</td>
<td>$73,993,465</td>
</tr>
</tbody>
</table>

From the above appropriation, no institution shall receive an allocation from the general fund that is less than the allocation received from the same fund during the fiscal year 1990-91.

56—Board of Trustees of the
University System of West Virginia

Control Account
(WV Code Chapter 18B)
Acct. No. 2795

<table>
<thead>
<tr>
<th></th>
<th>APPROPRIATION</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total ................</td>
<td>$136,579,342</td>
</tr>
</tbody>
</table>

From the above appropriation, no institution shall receive an allocation from the general revenue fund that is less than the percentage allocation received from the same fund during the fiscal year 1990-91.
### Appropriations

**Board of Trustees of the University System of West Virginia and Board of Directors of the State College System**

*(WV Code Chapter 18B)*

**Account No. 2800**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ -0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$ 725,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$ 8,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$ 162,000</td>
</tr>
<tr>
<td>5</td>
<td>Higher Education</td>
<td>$ 3,795,000</td>
</tr>
<tr>
<td>6</td>
<td>Grant Program</td>
<td>$ 606,000</td>
</tr>
<tr>
<td>7</td>
<td>Eminent Scholars Program</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>8</td>
<td>Underwood—Smith Scholarship Program</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>9</td>
<td>Student Awards</td>
<td>$ 750,000</td>
</tr>
<tr>
<td>10</td>
<td>School of Osteopathic Medicine</td>
<td>$ 5,263,930</td>
</tr>
<tr>
<td>11</td>
<td>WVU-School of Health Sciences</td>
<td>$ 9,403,523</td>
</tr>
<tr>
<td>12</td>
<td>Unclassified—Central Office</td>
<td>$ 33,167,862</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Asbestos Litigation (account no. 2800-21) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditures during the fiscal year 1991-92.

**Board of Trustees of the University System of West Virginia**

**University of West Virginia**

**Health Sciences Account**

*(WV Code Chapter 18B)*

**Acct. No. 2855**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$ -0-</td>
</tr>
<tr>
<td>2</td>
<td>School of Osteopathic Medicine</td>
<td>$ 5,263,930</td>
</tr>
<tr>
<td>3</td>
<td>Marshall Medical School</td>
<td>$ 9,403,523</td>
</tr>
<tr>
<td>4</td>
<td>WVU—School of Health Sciences</td>
<td>$ 33,167,862</td>
</tr>
</tbody>
</table>
7 WVU—School of Health
8 Sciences—
9 Charleston Division ...... — 3,270,790
10 Health Sciences
11 Scholarship Fund ........ — 150,000
12 WV—NET ................ — 425,000
13 Total ...................... $ — $ 51,681,105

The Health Sciences Scholarship appropriation above shall be used to establish a revolving loan fund for medical students who are West Virginia residents committed to practicing medicine in an underserved area and in a specialty in which there is a shortage of practitioners.

59—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

1 Total Personal Services ...... $ — $ —0—
2 Personal Services ........... — 2,999,090
3 Annual Increment ............ — 42,984
4 Employee Benefits ............ — 1,014,049
5 Unclassified ................... 960,000 1,626,899
6 Total ...................... $ 960,000 $ 5,683,022

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

Effective from passage, from the sum of $450,000 transferred during fiscal year 1990-91 from the secretary of education and the arts, Unclassified (account no. 5332-23) to the division of culture and history, Unclassified (account no. 3510-22), for the West Virginia history project, the sum of $100,000 shall be transferred to the educational broadcasting authority (account no. 2910) and redesignated WNPB Transmitter—Capital Outlay.
### Appropriations

57—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System

(WV Code Chapter 18B)

Account No. 2800

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$725,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$8,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$162,000</td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td>6</td>
<td>Grant Program</td>
<td>$3,795,000</td>
</tr>
<tr>
<td>7</td>
<td>Tuition Contract Program</td>
<td>$606,000</td>
</tr>
<tr>
<td>8</td>
<td>Eminent Scholars Program</td>
<td>$100,000</td>
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<tr>
<td>9</td>
<td>Underwood—Smith</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Scholarship Program—</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Student Awards</td>
<td>$750,000</td>
</tr>
<tr>
<td>12</td>
<td>West Virginia</td>
<td></td>
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<tr>
<td>13</td>
<td>Humanities Council</td>
<td>$100,000</td>
</tr>
<tr>
<td>14</td>
<td>Unclassified—Central Office</td>
<td>$120,353</td>
</tr>
<tr>
<td>15</td>
<td>Total</td>
<td>$6,366,353</td>
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</table>

Any unexpended balance remaining in the appropriation for Asbestos Litigation (account no. 2800-21) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditures during the fiscal year 1991-92.

58—Board of Trustees of the University System of West Virginia

University of West Virginia

Health Sciences Account

(WV Code Chapter 18B)

Acct. No. 2855

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$ -0-</td>
</tr>
<tr>
<td>2</td>
<td>School of</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Osteopathic Medicine</td>
<td>$5,263,930</td>
</tr>
<tr>
<td>4</td>
<td>Marshall Medical School</td>
<td>$9,403,523</td>
</tr>
<tr>
<td>5</td>
<td>WVU—School of</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Health Sciences</td>
<td>$33,167,862</td>
</tr>
</tbody>
</table>
Ch. 13] APPROPRIATIONS

7 WVU—School of Health Sciences—
9 Charleston Division ........ $3,270,790
10 Health Sciences
11 Scholarship Fund ........ $150,000
12 WV—NET ................... $425,000
13 Total .................... $51,681,105

14 The Health Sciences Scholarship appropriation above shall be used to establish a revolving loan fund for medical students who are West Virginia residents committed to practicing medicine in an underserved area and in a specialty in which there is a shortage of practitioners.

59—Educational Broadcasting Authority
(WV Code Chapter 10)

Acct. No. 2910

1 Total Personal Services .... $ — $0
2 Personal Services ........ $2,999,090
3 Annual Increment .......... $42,984
4 Employee Benefits ......... $1,014,049
5 Unclassified ............... $960,000 $1,626,899
6 Total ...................... $960,000 $5,683,022

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

10 Effective from passage, from the sum of $450,000 transferred during fiscal year 1990-91 from the secretary of education and the arts, Unclassified (account no. 5332-23) to the division of culture and history, Unclassified (account no. 3510-22), for the West Virginia history project, the sum of $100,000 shall be transferred to the educational broadcasting authority (account no. 2910) and redesignated WNPB Transmitter—Capital Outlay.
### 60—Library Commission

**(WV Code Chapter 10)**

**Acct. No. 3500**

<table>
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<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
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<td>Total Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
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<td>5</td>
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<td>1,992,579</td>
</tr>
<tr>
<td>6</td>
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<td>$1,992,579</td>
</tr>
</tbody>
</table>

### 61—Division of Culture and History

**(WV Code Chapter 29)**

**Acct. No. 3510**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>2,407,500</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$2,407,500</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 reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

Effective from passage, from the sum of $450,000 transferred during fiscal year 1990-91 from the secretary of education and the arts, Unclassified (account no. 5332-23) to the division of culture and history, Unclassified (account no. 3510-22), for the West Virginia history project, the sum of $100,000 shall be transferred to the
26 educational broadcasting authority (account no. 2910)
27 and redesignated WNPB Transmitter—Capital Outlay.

62—Department of Education and the Arts—
Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 5332

1 Unclassified—Total ........ $ — $ 153,399
2 Any unexpended balance remaining in the appropriation for unclassified (account no. 5332-23) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

63—Division of Health—
Central Office
(WV Code Chapter 16)

Acct. No. 4000

1 Total Personal Services ...... $ — $ —0—
2 Personal Services ............ — 5,331,820
3 Annual Increment ............ — 85,000
4 Employee Benefits ............ — 1,793,178
5 Corporate Nonprofit
6 Community Health
7 Centers—F.M.H.A.
8 Mortgage Finance ............ — 137,269
9 Appalachian States Low
10 Level Radiocative Waste
11 Commission ................ — 58,300
12 Hemophilia Program ....... — 27,689
13 Unclassified ................. — 3,972,927
14 Total ......................... $ — $ 11,406,183
64—Division of Human Services
(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Line Item Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$ —</td>
<td>$ 14,866,432</td>
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<tr>
<td>Personal Services</td>
<td>—</td>
<td>326,002</td>
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<tr>
<td>Annual Increment</td>
<td>—</td>
<td>5,743,772</td>
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<tr>
<td>Oscar and FAMIS</td>
<td>6,383,139</td>
<td>1,105,693</td>
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<tr>
<td>Medical Services</td>
<td>386,600,590</td>
<td>111,344,356</td>
</tr>
<tr>
<td>Family Law Masters</td>
<td>—</td>
<td>827,165</td>
</tr>
<tr>
<td>Women's Commission</td>
<td>—</td>
<td>53,505</td>
</tr>
<tr>
<td>Commission on Hearing Impaired</td>
<td>—</td>
<td>43,000</td>
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<tr>
<td>Public Assistance</td>
<td>108,781,610</td>
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<tr>
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<td>1,410,216</td>
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<tr>
<td>Social Services</td>
<td>—</td>
<td>28,437,862</td>
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<td>Family Preservation</td>
<td></td>
<td>1,500,000</td>
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<tr>
<td>JOBS Program</td>
<td>8,909,058</td>
<td>4,329,058</td>
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<tr>
<td>Unclassified</td>
<td>—</td>
<td>13,553,614</td>
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</tbody>
</table>

Total $526,024,397 $208,085,312

19 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.

27 None of the funds from this account shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

30 The secretary of the department of health and human resources shall have the authority to transfer funds within the above account: Provided, That no more than ten percent of the funds appropriated to one line may be transferred to other lines: Provided, however, That no funds from other lines shall be transferred to the Personal Services line.
### Ch. 13] Appropriations

#### 65—Commission on Aging

(WV Code Chapter 29)

**Acct. No. 4060**

<table>
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<tr>
<td>2. Personal Services</td>
<td>$110,795</td>
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<tr>
<td>3. Annual Increment</td>
<td>$1,591</td>
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<tr>
<td>4. Employee Benefits</td>
<td>$52,190</td>
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<tr>
<td>5. Local Programs</td>
<td></td>
</tr>
<tr>
<td>6. Service Delivery Costs</td>
<td>$2,650,052</td>
</tr>
<tr>
<td>7. Silver Haired Legislature</td>
<td>$15,000</td>
</tr>
<tr>
<td>8. Senior Citizens' Centers—</td>
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</tr>
<tr>
<td>9. Land Acquisition, Construction, and Repairs and Alterations</td>
<td>$75,000</td>
</tr>
<tr>
<td>10. Area Agencies:</td>
<td></td>
</tr>
<tr>
<td>11. Administration</td>
<td>$91,072</td>
</tr>
<tr>
<td>12. Substate Ombudsman</td>
<td>$143,730</td>
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<tr>
<td>13. Unclassified</td>
<td>$10,925,500</td>
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<tr>
<td>14. Total</td>
<td>$3,372,490</td>
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</table>

#### 66—Consolidated Medical Service Fund

**Acct. No. 4190**

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1. Foster Grandparents</td>
<td>$62,000</td>
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<tr>
<td>2. Stipends/Travel</td>
<td>$42,010,316</td>
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<tr>
<td>3. Institutional Facilities</td>
<td></td>
</tr>
<tr>
<td>4. Operations</td>
<td>$15,589,369</td>
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<tr>
<td>5. Employee Benefits</td>
<td></td>
</tr>
<tr>
<td>6. Poison Control Hotline</td>
<td>$250,000</td>
</tr>
<tr>
<td>7. Special Olympics</td>
<td>$28,000</td>
</tr>
<tr>
<td>8. State Aid to Local Agencies</td>
<td>$7,200,000</td>
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<tr>
<td>9. Women, Infants and Children</td>
<td>$400,000</td>
</tr>
<tr>
<td>10. Maternal and Child Health</td>
<td></td>
</tr>
<tr>
<td>11. Clinics, Clinicians and Medical Contracts</td>
<td></td>
</tr>
<tr>
<td>12. and Fees</td>
<td>$4,815,670</td>
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<tr>
<td>13. Preventive Re-Vaccination</td>
<td>$200,000</td>
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<tr>
<td>14. Primary Care Contracts to Community Health</td>
<td></td>
</tr>
<tr>
<td>15. Centers</td>
<td>$2,800,000</td>
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<tr>
<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>19</td>
<td>Epidemiology Research ........</td>
</tr>
<tr>
<td>20</td>
<td>Grants to Counties and EMS Entities ................</td>
</tr>
<tr>
<td>21</td>
<td>Behavioral Health Program ..........</td>
</tr>
<tr>
<td>22</td>
<td>Behavioral Health Program-Personal Services ................</td>
</tr>
<tr>
<td>23</td>
<td>Behavioral Health Program-Unclassified ................</td>
</tr>
<tr>
<td>24</td>
<td>Behavioral Health Program-Community Programs ....</td>
</tr>
<tr>
<td>25</td>
<td>Family Support Act ........</td>
</tr>
<tr>
<td>26</td>
<td>Unclassified ..................</td>
</tr>
</tbody>
</table>

The secretary of the department of health and human resources, 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. The secretary 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 account no. 8500 for operation of the medical facilities.

67—Department of Health and Human Resources—Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 5343

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total .... $</td>
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</table>

68—Human Rights Commission
(WV Code Chapter 5)

Acct. No. 5980

<p>| | |</p>
<table>
<thead>
<tr>
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<th></th>
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<tbody>
<tr>
<td>1</td>
<td>Total Personal Services .... $</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services ...............</td>
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</table>
## DEPARTMENT OF PUBLIC SAFETY

### 69—Office of Emergency Services and Advisory Council—Division of Emergency Services

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Acct. No. 1300</th>
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<tbody>
<tr>
<td><strong>1</strong> Total Personal Services</td>
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<tr>
<td><strong>2</strong> Personal Services</td>
<td>-- 163,974</td>
</tr>
<tr>
<td><strong>3</strong> Annual Increment</td>
<td>-- 3,096</td>
</tr>
<tr>
<td><strong>4</strong> Employee Benefits</td>
<td>-- 54,838</td>
</tr>
<tr>
<td><strong>5</strong> Unclassified</td>
<td>2,759,426 30,963</td>
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<tr>
<td><strong>6</strong> Total</td>
<td>$ 2,759,426 $ 252,871</td>
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### 70—Board of Probation and Parole

(WV Code Chapter 62)

<table>
<thead>
<tr>
<th>Acct. No. 3650</th>
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</tr>
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<tbody>
<tr>
<td><strong>1</strong> Salaries of Members of Board of Probation and Parole</td>
<td>$ -- $ 84,900</td>
</tr>
<tr>
<td><strong>2</strong> Total Personal Services</td>
<td>-- 0--</td>
</tr>
<tr>
<td><strong>3</strong> Personal Services</td>
<td>-- 50,414</td>
</tr>
<tr>
<td><strong>4</strong> Annual Increment</td>
<td>-- 1,152</td>
</tr>
<tr>
<td><strong>5</strong> Employee Benefits</td>
<td>-- 36,221</td>
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<tr>
<td><strong>6</strong> Unclassified</td>
<td>-- 10,620</td>
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<td><strong>7</strong> Total</td>
<td>$ -- $ 183,307</td>
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</table>

### 71—Division of Corrections—Central Office

(WV Code Chapters 25, 28, 29 and 62)

<table>
<thead>
<tr>
<th>Acct. No. 3680</th>
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<tbody>
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<td><strong>1</strong> Total Personal Services</td>
<td>$ -- $ 0--</td>
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<tr>
<td><strong>2</strong> Personal Services</td>
<td>-- 331,044</td>
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</table>
158 APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
<th>Unclassified</th>
<th>Total</th>
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<tbody>
<tr>
<td>3</td>
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<td>$584,374</td>
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72—Division of Corrections—Correctional Units

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

<table>
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<tr>
<th></th>
<th>Total Personal Services</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
<th>Capital Outlay—Davis Center</th>
<th>Unclassified</th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
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<td>$27,397,949</td>
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</tr>
<tr>
<td>8</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$27,397,949</td>
</tr>
</tbody>
</table>

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.

73—Division of Veterans’ Affairs—Veterans’ Home

(WV Code Chapter 9A)

Acct. No. 4010

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|   |                         |                   |                  |                  |
| 1 |                         |                   |                  |                  |
| 2 |                         |                   |                  |                  |
| 3 |                         |                   |                  |                  |
| 4 |                         |                   |                  |                  |

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.
5 Unclassified .................. 473,600 22,363
6 Total ...................... $ 473,600 $ 442,103

7 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 1990-91 are hereby reappropriated for expenditure during the fiscal year 1991-92.

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

Acct. No. 4040

1 Total Personal Services ..... $ — $ 0
2 Personal Services ............. — 595,691
3 Annual Increment ............. — 11,916
4 Employee Benefits ............. — 265,578
5 Unclassified .................. — 51,089
6 Total ......................... $ — $ 924,274

75—Division of Public Safety—Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 5354

1 Unclassified—Total ........... $ — $ 171,286

76—Division of Public Safety
(WV Code Chapter 15)

Acct. No. 5700

1 Total Personal Services ...... $ — $ 0
2 Personal Services ............. — 14,407,730
3 Annual Increment ............. — 81,108
4 Employee Benefits ............. — 4,365,901
5 Unclassified .................. 538,613 4,545,726
6 Total ......................... $ 538,613 $ 23,400,465
### 77—Adjutant General—State Militia

(WV Code Chapter 15)

Acct. No. 5800

<table>
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<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>Personal Services</td>
<td>— 249,021</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>— 5,760</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>— 99,365</td>
</tr>
<tr>
<td>College Education Fund</td>
<td>— 750,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>— 4,865,870</td>
</tr>
</tbody>
</table>

Total: $4,865,870

The item designated college education fund shall be the total annual appropriation for awarding scholarships.

### 78—Fire Commission

(WV Code Chapter 29)

Acct. No. 6170

<table>
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<tr>
<th>Item Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
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</tr>
<tr>
<td>Personal Services</td>
<td>— 351,336</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>— 7,740</td>
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<td>Employee Benefits</td>
<td>— 128,532</td>
</tr>
<tr>
<td>Unclassified</td>
<td>— 91,563</td>
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</table>

Total: $579,171

### DEPARTMENT OF TAX AND REVENUE

### 79—Tax Division

(WV Code Chapter 11)

Acct. No. 1800

<table>
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<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>—</td>
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<tr>
<td>Personal Services</td>
<td>— 8,828,263</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>— 146,124</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>— 2,780,250</td>
</tr>
<tr>
<td>Unclassified</td>
<td>— 5,695,610</td>
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</tbody>
</table>

Total: $17,450,247

Any unexpended balance remaining in the appropri-
8 of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92, not to exceed $850,000.

### 80—Division of Professional and Occupational Licenses—
*State Athletic Commission*

(WV Code Chapter 29)

Acct. No. 4790

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

### 81—Racing Commission

(WV Code Chapter 19)

Acct. No. 4950

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
<th>Unclassified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$54,029</td>
</tr>
<tr>
<td>2</td>
<td>$—</td>
<td>$995,862</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>$—</td>
<td>$9,252</td>
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<tr>
<td>4</td>
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<tr>
<td>5</td>
<td>$—</td>
<td></td>
<td></td>
<td>$54,029</td>
<td></td>
</tr>
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<td>6</td>
<td>$—</td>
<td></td>
<td></td>
<td></td>
<td>$1,338,594</td>
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### 82—Department of Tax and Revenue—
*Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5365

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
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</thead>
<tbody>
<tr>
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<td>$183,186</td>
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</table>

### DEPARTMENT OF TRANSPORTATION

### 83—Department of Transportation—
*Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5376

<table>
<thead>
<tr>
<th></th>
<th>Public Transportation</th>
<th>Civil Air Patrol</th>
<th>Unclassified</th>
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<tbody>
<tr>
<td>1</td>
<td>$10,226,029</td>
<td>$1,384,206</td>
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<td>2</td>
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<td>$82,450</td>
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</tr>
<tr>
<td>3</td>
<td></td>
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<td>$179,546</td>
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</tr>
<tr>
<td>4</td>
<td>$10,226,029</td>
<td></td>
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<td>$1,646,202</td>
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</tbody>
</table>
### 84—Railroad Maintenance Authority

(WV Code Chapter 29)

Acct. No. 5690

<table>
<thead>
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<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Total Personal Services</td>
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</tr>
<tr>
<td>2 Personal Services</td>
<td>$409,355</td>
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<tr>
<td>3 Annual Increment</td>
<td>$5,940</td>
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<tr>
<td>4 Employee Benefits</td>
<td>$259,816</td>
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<td>5 Capital Outlay</td>
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<tr>
<td>6 Unclassified</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,306,804</strong></td>
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### MISCELLANEOUS BOARDS AND COMMISSIONS

85—Board of Investments—

(WV Code Chapter 12)

Acct. No. 1900

<table>
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<td>2 Personal Services</td>
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</tr>
<tr>
<td>3 Annual Increment</td>
<td>$10,924</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>$366,332</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>$2,289,928</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,843,197</strong></td>
</tr>
</tbody>
</table>

86—Board of Investments—

School Building Sinking Fund

(WV Code Chapter 12)

Acct. No. 1905

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td>$12,455,500</td>
</tr>
<tr>
<td>2 Total TITLE II, Section 1</td>
<td>$1,963,278,698</td>
</tr>
<tr>
<td>3 General Revenue</td>
<td>$1,963,278,698</td>
</tr>
</tbody>
</table>

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-two.
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 of the following amounts, as itemized, for expenditures during the fiscal year one thousand nine hundred ninety-two.

LEGISLATIVE

87—Crime Victims Compensation Fund

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Funds</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>Fiscal Year</td>
<td>1991-92</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$</td>
<td>$0</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$105,503</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$684</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$26,755</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>$700,000</td>
<td>$34,728</td>
</tr>
<tr>
<td>Total</td>
<td>$700,000</td>
<td>$167,670</td>
</tr>
</tbody>
</table>

These funds are intended to be expended for court costs and administrative costs and federal reimbursement for compensation paid to crime victims.

EXECUTIVE

88—Auditor’s Office—Land Department Operating Fund

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$</td>
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<tr>
<td>Personal Services</td>
<td>$44,087</td>
<td></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 law.

89—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>—</td>
</tr>
<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>
</tr>
<tr>
<td>Total</td>
<td>—</td>
</tr>
</tbody>
</table>

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

90—Department of Agriculture—

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Acct. No. 8192

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student and Farm Loans</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>—</td>
</tr>
</tbody>
</table>

91—General John McCausland Memorial Farm

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>Personal Services</td>
<td>—</td>
</tr>
</tbody>
</table>
### Ch. 13] Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Annual Increment</th>
<th>—</th>
<th>324</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
<td>3,653</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>—</td>
<td>61,599</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$</td>
<td>74,369</td>
</tr>
</tbody>
</table>

Funds for the above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.

#### 92—Attorney General—Anti-Trust Enforcement

(WV Code Chapter 47)

Acct. No. 8419

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th>—</th>
<th>$</th>
<th>—0—</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>207,450</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>252</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
<td>57,387</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>—</td>
<td>179,541</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$</td>
<td>444,630</td>
<td></td>
</tr>
</tbody>
</table>

### DEPARTMENT OF ADMINISTRATION

#### 93—Division of Purchasing—Revolving Fund

(WV Code Chapter 5A)

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th>—</th>
<th>$</th>
<th>—0—</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>667,215</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>15,840</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
<td>294,146</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>—</td>
<td>515,827</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$</td>
<td>1,493,028</td>
<td></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.

94—Division of Information Systems and Communications
(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$2,880,263</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$45,300</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$889,816</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$682,064</td>
</tr>
<tr>
<td>Total</td>
<td>$4,497,443</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 information systems and communications as provided by law.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable IS&C to provide information processing services to user agencies. These services include but are not limited to data processing equipment, 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.
95—Division of Personnel
(WV Code Chapter 29)
Acct. No. 8402

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>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$1,988,570</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$35,352</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$625,110</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$465,968</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$3,115,000</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

96—Office of Community and Industrial Development
(WV Code Chapter 5B)
Acct. No. 8045

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>Energy Assistance</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

These funds shall be transferred to the division of human services for enhancement of the federal energy assistance program.

97—Oil and Gas Conservation Commission
(WV Code Chapter 22)
Acct. No. 8097

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>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$166,435</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$504</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$38,645</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of natural resources.

Any unexpended balances in the appropriation for Land Purchases and Buildings and Renovation of Dams at the close of fiscal year 1990-91 shall be reappropriated for expenditure during fiscal year 1991-92.
### Appropriations

**100—Division of Natural Resources—Game, Fish and Aquatic Life Fund**  
*(WV Code Chapter 20)*  
**Acct. No. 8303**

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$35,000</td>
</tr>
</tbody>
</table>

**101—Division of Natural Resources—Nongame Fund**  
*(WV Code Chapter 20)*  
**Acct. No. 8304**

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$— $0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>— 79,300</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>— 216</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>— 21,618</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>— 148,819</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>— 249,953</td>
</tr>
</tbody>
</table>

**102—Division of Natural Resources—Use and Development—P.L.C.**  
*(WV Code Chapter 20)*  
**Acct. No. 8306**

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$— $0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>— 116,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>— 1,980</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>— 42,316</td>
</tr>
<tr>
<td>5</td>
<td>Land Purchase</td>
<td>— 75,000</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>— 31,228</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>— 266,524</td>
</tr>
</tbody>
</table>
## Appropriations

### 103—Division of Natural Resources—Groundwater Planning
(WV Code Chapter 20)

Acct. No. 8312

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$55,678</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$216</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$16,685</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$230,081</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$302,660</td>
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</tbody>
</table>

### 104—Division of Natural Resources—Hazardous Waste Emergency and Response Fund
(WV Code Chapter 20)

Acct. No. 8323

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$340,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$648</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$139,119</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$1,624,273</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$2,104,040</td>
</tr>
</tbody>
</table>

### 105—Division of Natural Resources—Solid Waste Reclamation and Environmental Response Fund
(WV Code Chapter 20)

Acct. No. 8326

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
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<tr>
<td>2</td>
<td>Unclassified</td>
<td>$840,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$840,000</td>
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</tbody>
</table>
106—Division of Natural Resources—
Solid Waste Enforcement Fund

(WV Code Chapter 20)

Acct. No. 8327

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>Total Personal Services</td>
<td>$—$0—</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$1,598,632</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$12,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$484,368</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$400,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$2,495,000</td>
</tr>
</tbody>
</table>

107—Division of Banking

(WV Code Chapter 47A)

Acct. No. 8393

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>Total Personal Services</td>
<td>$—$0—</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$10,586</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$4,372</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$9,680</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$24,638</td>
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</table>

108—Division of Banking

(WV Code Chapter 31A)

Acct. No. 8395

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>Total Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$854,419</td>
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<td>Annual Increment</td>
<td>$4,752</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>$240,868</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$400,498</td>
</tr>
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<td>Total</td>
<td>$1,500,537</td>
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</table>
### 109—Solid Waste Management Board
(WV Code Chapter 20)

Acct. No. 8461

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ —</td>
<td>—</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>$ 163,284</td>
</tr>
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<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>$ 2,340</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
<td>$ 52,692</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
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</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>—</td>
<td>$ 2,026,652</td>
</tr>
</tbody>
</table>

### 110—Division of Forestry
(WV Code Chapter 19)

Acct. No. 8478

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ —</td>
<td>—</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>$ 216,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>$ 1,296</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
<td>$ 45,535</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>—</td>
<td>$ 446,996</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>—</td>
<td>$ 709,827</td>
</tr>
</tbody>
</table>

### 111—Division of Energy—
Special Reclamation Fund
(WV Code Chapter 22A)

Acct. No. 8537

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ —</td>
<td>—</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>$ 343,605</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>$ 4,900</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>—</td>
<td>$ 121,709</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>—</td>
<td>$ 7,772,905</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>—</td>
<td>$ 8,243,119</td>
</tr>
</tbody>
</table>

Notwithstanding any provisions of TITLE I, Sec. 3 of this bill, the secretary of the department of commerce,
Ch. 13] APPROPRIATIONS 173

9 labor and environmental resources shall have the
10 authority to transfer spending authority from the
11 Unclassified line above to the Personal Services and
12 Employee Benefits lines above in order to comply with
13 federal mandates to increase inspection personnel.

112—Division of Energy—
Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

Acct. No. 8538

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified— Total .......... $ — $ 250,000

113—Division of Energy—
Oil and Gas Operating Permits

(WV Code Chapter 22B)

Acct. No. 8539

TO BE PAID FROM SPECIAL REVENUE FUND

1 Total Personal Services ...... $ — $ 180,000
2 Personal Services ............ — 180,000
3 Annual Increment ............ — 2,088
4 Employee Benefits ............ — 62,058
5 Unclassified .................. — 255,854
6 Total ..................... $ — $ 500,000

114—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ............ $ — $ 30,000
2 Employee Benefits ............ — 2,796
3 Unclassified .................. — 105,554
4 Total ..................... $ — $ 138,350

5 The above appropriation shall be used in accordance
6 with section four, article two, chapter twenty-nine of the
7 code.
174 APPROPRIATIONS

115—Bureau of Employment Programs—
Workers' Compensation Fund

(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$8,469,489</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$141,138</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$2,891,667</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$6,525,351</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$18,027,645</td>
</tr>
</tbody>
</table>

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 EDUCATION

116—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

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services—Total</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

117—State Department of Education—
FFA-FHA Conference Center

(WV Code Chapter 18)

Acct. No. 8244

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>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$477,369</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$6,812</td>
</tr>
</tbody>
</table>
DEPARTMENT OF EDUCATION
AND THE ARTS

118—State University System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
(WV Code Chapters 18 and 18B)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$ 4,290,000</td>
</tr>
<tr>
<td>Capital Repairs and Alterations</td>
<td>$ 3,000,000</td>
</tr>
<tr>
<td>Miscellaneous Projects</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 7,790,000</td>
</tr>
</tbody>
</table>

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

119—State College System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
(WV Code Chapters 18 and 18B)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$ 1,840,000</td>
</tr>
<tr>
<td>Capital Repairs and Alterations</td>
<td>$ 1,800,000</td>
</tr>
<tr>
<td>Miscellaneous Projects</td>
<td>$ 250,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 3,890,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the prior years' and 1990-91 appropriations are hereby reappropriated for expenditure during the fiscal year 1991-92.

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 the date of passage.

120—State College and University Systems—
State System Registration Fee—
Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

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 available from the date of passage.

Any unexpended balances remaining in the prior years' and the 1990-91 appropriations are hereby reappropriated for expenditure during the fiscal year 1991-92.

121—State College System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

(WV Code Chapters 18 and 18B)

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>$3,310,000</td>
</tr>
<tr>
<td>Building and Capital</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Improvements (New)</td>
<td>$1,885,000</td>
</tr>
</tbody>
</table>
Facilities Planning & Administration .............................. 165,000

Total ...................................................... $ 8,360,000

Any unexpended balances remaining in the prior years' and 1990-91 appropriations are hereby reappropriated for expenditure during the fiscal year 1991-92, except account number 8855-46 fiscal year 1987-88 (debt service), which shall expire on June 30, 1991.

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

122—State College and University Systems—
State Systems Tuition Fee—
Revenue Bond Construction Fund
(WV Code Chapters 18 and 18B)

Acct. No. 8860

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 article twelve-b, chapter eighteen of the code. Projects are to be made available from the date of passage.

Any unexpended balances remaining in prior years' and 1990-91 appropriations are hereby reappropriated for expenditure during the fiscal year 1991-92.

123—State University System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
(WV Code Chapters 18 and 18B)

Acct. No. 8865

TO BE PAID FROM SPECIAL REVENUE FUND

Debt Service .................. $ 7,710,000
Building and Campus Renewal ............ 10,685,000
The total amount of this appropriation shall be paid from the special capital improvement fund created in article twelve-b, chapter eighteen of the code. Projects are to be paid on a cash basis and made available from the date of passage.

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

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM THE MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>2,992,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>8,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>5,375,000</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>6,625,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>15,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the fiscal year 1989-90 and fiscal year 1990-91 appropriations for the West Virginia University Health Sciences Center at the close of the fiscal year 1990-91 are hereby reappropriated for expenditure during the fiscal year 1991-92.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

125—Board of Barbers and Beauticians

(WV Code Chapters 16 and 30)

Acct. No. 8220

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>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>151,120</td>
</tr>
</tbody>
</table>
Ch. 13] Appropriations 179

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>2,556</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>47,826</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>75,360</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$276,862</td>
</tr>
</tbody>
</table>

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

126—Health Care Cost Review Authority—Planning

(WV Code Chapter 16)
Acct. No. 8234

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>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>$-0-</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

127—Division of Health—Vital Statistics

(WV Code Chapter 16)
Acct. No 8236

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>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>166,314</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>4,896</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>68,867</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>82,540</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$322,617</td>
</tr>
</tbody>
</table>

128—Hospital Finance Authority

(WV Code Chapter 16)
Acct. No. 8330

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>Total Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>47,619</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>13,901</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.

129—Division of Health—Hospital Services Revenue Account (Special Fund) (Capital Improvement, Renovation and Operations) (WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$2,740,000</td>
</tr>
<tr>
<td>Institutional Facilities</td>
<td></td>
</tr>
<tr>
<td>Operations</td>
<td>$21,900,000</td>
</tr>
<tr>
<td>Total</td>
<td>$24,640,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92 except for account number 8500-37 and account no. 8500-40 (fiscal year 1984-85); account no. 8500-16, account no. 8500-49 and account no. 8500-51 (fiscal year 1987-88); account no. 8500-52 and account no. 8500-53 (fiscal year 1988-89) which shall expire on June 30, 1991.

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 and bond payments.

Projects are to be paid on a cash basis. 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).

130—Division of Health—Laboratory Services

(WV Code Chapter 16)

Acct. No. 8509

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td></td>
<td>$</td>
<td>395,820</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td></td>
<td></td>
<td>4,788</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td>123,360</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td></td>
<td></td>
<td>581,378</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td></td>
<td>1,105,346</td>
<td></td>
</tr>
</tbody>
</table>

131—Division of Health—Health Facility Licensing

(WV Code Chapter 16)

Acct. No. 8529

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td></td>
<td>$</td>
<td>153,772</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td></td>
<td></td>
<td>720</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td>41,000</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td></td>
<td></td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$</td>
<td>230,492</td>
<td></td>
</tr>
</tbody>
</table>

132—West Virginia Health Care Planning Commission

(WV Code Chapter 16)

Acct. No. 8530

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$</td>
<td></td>
<td>$</td>
<td>350,000</td>
</tr>
</tbody>
</table>
133—Health Care Cost Review Authority
(WV Code Chapter 16)
Acct. No. 8564

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>Total Personal Services</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$944,477</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$5,616</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$312,375</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$1,046,519</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$2,308,987</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

134—Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)
Acct. No. 8051

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>Total Personal Services</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$412,113</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$2,952</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$139,330</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$195,823</td>
</tr>
<tr>
<td>6</td>
<td>Debt Service</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$10,750,218</td>
</tr>
</tbody>
</table>

135—Division of Veterans’ Affairs—Veterans’ Home
(WV Code Chapter 19A)
Acct. No. 8261

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>Total Personal Services</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$489,000</td>
</tr>
</tbody>
</table>
### 136—Division of Public Safety—
**Inspection Fees**

(WV Code Chapter 15)

Acct. No. 8350

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$0</td>
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<tr>
<td>Personal Services</td>
<td>$522,804</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,836</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$142,087</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$139,547</td>
</tr>
<tr>
<td>Total</td>
<td>$806,274</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.

### 137—Division of Public Safety—
**Barracks Construction**

(WV Code Chapter 17C)

Acct. No. 8352

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$58,632</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,476</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$25,428</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$411,174</td>
</tr>
<tr>
<td>Total</td>
<td>$496,710</td>
</tr>
</tbody>
</table>

### 138—Division of Public Safety—
**Drunk Driving Prevention Fund**

(WV Code Chapter 15)

Acct. No. 8355

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$622,740</td>
</tr>
</tbody>
</table>
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.

139—State Armory Board—
General Armory Fund
(WV Code Chapter 15)
Acct. No. 8446
TO BE PAID FROM SPECIAL REVENUE FUND

| Unclassified—Total | $240,000 |

140—Fire Commission—
Fire Marshal Fees
(WV Code Chapter 29)
Acct. No. 8465
TO BE PAID FROM SPECIAL REVENUE FUND

| Total Personal Services | $289,280 |
| Annual Increment | $720 |
| Employee Benefits | $118,900 |
| Unclassified | $216,900 |
| Total | $625,800 |

141—Agency of Insurance Commissioner
Consumer Advocate
(WV Code Chapter 33)
Acct. No. 8015
TO BE PAID FROM SPECIAL REVENUE FUND

| Personal Services | $72,500 |
| Employee Benefits | $27,255 |
| Unclassified | $123,000 |
| Total | $222,755 |
### DEPARTMENT OF TAX AND REVENUE

#### 142—Agency of Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 8016

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$1,219,512</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$11,376</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$421,278</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$523,659</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$2,175,825</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.

#### 143—Insurance Commission—Examination Revolving Fund

(WV Code Chapter 33)

Acct. No. 8018

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$251,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$900</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$70,370</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$177,730</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

#### 144—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 8040

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$102,270</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,404</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefit</td>
<td>$31,300</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$35,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$169,974</td>
</tr>
</tbody>
</table>
### Appropriate Appropriations

**145—Racing Commission**  
(WV Code Chapter 19) 
Acct. No. 8080

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Medical Expenses—Total</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>57,000</td>
<td></td>
</tr>
</tbody>
</table>

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

No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

**146—Racing Commission—Administration and Promotion**  
(WV Code Chapter 19)  
Acct. No. 8082

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>106,086</td>
<td></td>
</tr>
</tbody>
</table>

### 147—Office of Chief Inspector  
(WV Code Chapter 6)  
Acct. No. 8091

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Total Personal Services</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>1,903,517</td>
<td></td>
</tr>
</tbody>
</table>
148—Alcohol Beverage Control Commission—
Wine License Special Fund

(WV Code Chapter 60)
Acct. No. 8592

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>Total Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$52,500</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$648</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$19,460</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$326,379</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$398,987</td>
</tr>
</tbody>
</table>

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.
### Appropriations

**DEPARTMENT OF TRANSPORTATION**

*150—Division of Highways*  
(WV Code Chapters 17 and 17C)  
Acct. No. 6700

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Maintenance, Expressway,</td>
<td>$66,000,000</td>
</tr>
<tr>
<td>2 Trunkline and Feeder</td>
<td>$93,700,000</td>
</tr>
<tr>
<td>3 Maintenance, State</td>
<td>36,711,000</td>
</tr>
<tr>
<td>4 Local Services</td>
<td>32,000,000</td>
</tr>
<tr>
<td>5 Maintenance, Contract</td>
<td>1,250,000</td>
</tr>
<tr>
<td>6 Paving and Secondary</td>
<td>11,950,000</td>
</tr>
<tr>
<td>7 Road Maintenance</td>
<td>30,675,000</td>
</tr>
<tr>
<td>8 Bridge Repair and Replacement</td>
<td>93,300,000</td>
</tr>
<tr>
<td>9 Industrial Access Roads</td>
<td>50,000,000</td>
</tr>
<tr>
<td>10 Other Federal Aid</td>
<td>150,000,000</td>
</tr>
<tr>
<td>11 Appalachian Programs</td>
<td>110,000,000</td>
</tr>
<tr>
<td>12 Nonfederal Aid</td>
<td>25,716,000</td>
</tr>
<tr>
<td>13 Construction</td>
<td>1,500,000</td>
</tr>
<tr>
<td>14 Railroad Highway Grade</td>
<td>200,000</td>
</tr>
</tbody>
</table>

**Total** $705,002,000

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 be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the governor. Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the commissioner and approval of the governor.

151—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>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>2,547,166</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>39,564</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>901,442</td>
</tr>
<tr>
<td>5</td>
<td>License Plate Replacement Program</td>
<td>881,780</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>387,214</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>16,631,540</td>
</tr>
</tbody>
</table>

152—Division of Motor Vehicles—Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Acct. No. 8422

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>148,844</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---------------------</td>
<td>-------</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

153—Division of Motor Vehicles—
Driver Rehabilitation
(WV Code Chapter 17C)

Acct. No. 8423

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td></td>
<td></td>
<td>$</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td></td>
<td></td>
<td>54,766</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td></td>
<td></td>
<td>576</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td>21,541</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td></td>
<td></td>
<td>481,158</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td></td>
<td>558,041</td>
<td></td>
</tr>
</tbody>
</table>

154—Division of Motor Vehicles—
Insurance Certificate Fees
(WV Code Chapter 17A)

Acct. No. 8424

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td></td>
<td></td>
<td>$</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td></td>
<td></td>
<td>489,504</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td></td>
<td></td>
<td>6,768</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td>195,916</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td></td>
<td></td>
<td>90,433</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td></td>
<td>782,621</td>
<td></td>
</tr>
</tbody>
</table>

155—Division of Motor Vehicles—
Motorboat Licenses
(WV Code Chapter 20)

Acct. No. 8425

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td></td>
<td></td>
<td>$</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td></td>
<td></td>
<td>62,238</td>
<td></td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>1,728</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>21,733</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>64,301</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>150,000</td>
</tr>
</tbody>
</table>

**156—Division of Motor Vehicles—Returned Check Fees**

(WV Code Chapter 17)

Acct. No. 8426

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>28,000</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>13,898</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>108</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>4,830</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>9,164</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>28,000</td>
</tr>
</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

**157—Real Estate Commission**

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>315,645</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>152,000</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

**158—West Virginia Cable Television—Advisory Board**

(WV Code Chapter 5)

Acct. No. 8174

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>152,000</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>152,000</td>
</tr>
</tbody>
</table>
### Appropriations [Ch. 13]

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Annual Increment</td>
<td>$2,160</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>$39,968</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>$63,564</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$257,692</strong></td>
</tr>
</tbody>
</table>

159—Public Service Commission  
(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total Personal Services</td>
<td>$7,532,642</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>$4,625,423</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>$42,523</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>$1,427,307</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>$1,437,389</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,532,642</strong></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.

160—Public Service Commission—Gas Pipeline Division  
(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total Personal Services</td>
<td>$172,817</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>$123,363</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>$1,200</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>$32,323</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>$70,369</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$227,255</strong></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.
### 161—Public Service Commission—Motor Carrier Division

(WV Code Chapter 24A)

Acct. No. 8290

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>Total Personal Services</td>
<td>$ -0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$1,116,885</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$18,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$365,006</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$628,985</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,820,569</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.

### 162—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>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Personal Services</td>
<td>$ -0-</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$308,195</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$1,512</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$87,814</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$260,795</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$658,316</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. 5. Appropriations from Lottery Net Profits.

—Net profits of the lottery, not to exceed twenty-eight million dollars, are to be deposited by the lottery director to the following accounts in the amounts indicated. The auditor shall prorate each deposit of net profits by the lottery director amount account nos. 8243,
194  APPROPRIATIONS  [Ch. 13

8525, 8825, 8546 and 9132 in the proportion the
appropriations for each account bear to the total of the
appropriations for the five accounts.

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

Acct. No. 8243

TO BE PAID FROM LOTTERY NET PROFITS

<table>
<thead>
<tr>
<th>1</th>
<th>Elementary Computer</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Education—Total ........ $ — $ 3,520,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation Elementary Computer Education (account no. 8243-06) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

164—Division of Health
(WV Code Chapter 29)

Acct. No. 8525

TO BE PAID FROM LOTTERY NET PROFITS

<table>
<thead>
<tr>
<th>1</th>
<th>In-Home Services For</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Senior Citizens ........ $ — $ 1,800,000</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified ............ — 1,600,000</td>
</tr>
<tr>
<td>4</td>
<td>Total ..................... $ — $ 3,400,000</td>
</tr>
</tbody>
</table>

165—Division of Tourism and Parks
(WV Code Chapter 5B)

Acct. No. 8546

TO BE PAID FROM LOTTERY NET PROFITS

| 1 | Capital Outlay—Parks .... $ — $ 1,340,000 |
| 2 | Unclassified ............ — $ 11,020,000 |
| 3 | Total ..................... $ — $ 12,360,000 |

Any unexpended balance remaining in the appropriation (account no. 8546-06) at the close of the fiscal year 1990-91 is hereby reappropriated, for expenditure during the fiscal year 1991-92.
166—Division of Human Services
(WV Code Chapters 9, 48 and 49)
Acct. No. 9132
TO BE PAID FROM LOTTERY NET PROFITS

1 Health Care and Title
2     XIX Waiver for
3 Senior Citizens—Total ..... $ — $ 5,200,000

167—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

1 Unclassified—Total .......... $ — $ 3,520,000

Sec. 6. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1990-91 and to remain in effect until June 30, 1992 from the fund as designated in the amounts as specified and for the claimants named in enrolled house bill no. 2727, regular session 1991—crime victims compensation funds of $253,000.00 for payment of claims against the state.

There are hereby appropriated for the fiscal year 1991-92 from the funds as designated in the amounts specified and for claimants as named in committee substitute for enrolled house bill no. 2726, regular session 1991 and enrolled senate bill no. 625, regular session 1991—workers’ compensation funds of $21,277.71.

There are hereby appropriated for the fiscal year 1991-92 from the funds as designated in the amounts as specified and for the claimants as named in enrolled house bill no. 2726, regular session 1991 and enrolled senate bill no. 625, regular session 1991—general revenue funds of $1,842,136.75.
The total of general revenue funds above does not include payment for claims in the amount of $22,523.65 from the supreme court—general judicial, account no. 1110, specifically made payable from the appropriation for the current fiscal year 1990-91.

There are hereby appropriated for the fiscal year 1991-92 from the funds as designated in the amounts as specified and for claimants as named in enrolled senate bill 625, regular session 1991—special revenue funds of $9,319.99; state road funds of $810,668.68 and federal funds of $3,558.03.

Sec. 7. Appropriations and reappropriations—revenue sharing trust fund.—Any unexpended balance remaining in the appropriation Chief Mingo Recreation Park—Capital Outlay (account no. 9705-30) and Building Repairs and Alterations (account no. 9740-10) at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

The following item is hereby appropriated from the revenue sharing trust fund and is to be available for expenditure during the fiscal year 1991-92 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 appropriation made by this section shall be payable only from the surplus accrued as of July 31, 1991.

In the event that surplus funds as of July 31, 1991 are not sufficient to meet all of the appropriations made by this section, then the appropriation shall be made to the extent that surplus funds are available as of July 31, 1991.

168—Division of Corrections—Correctional Units

(WV Code Chapters 25, 28, 29, and 62)

Acct. No. 9719

<table>
<thead>
<tr>
<th>Unclassified</th>
<th>Total</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>238,608</td>
</tr>
</tbody>
</table>
Sec. 8. Appropriations from surplus accrued.—
The following items are hereby appropriated from the
state fund, general revenue, and are to be available for
expenditure during the fiscal year 1991-92 out of
surplus funds only, subject to the terms and conditions
set forth in this section.

It is the intent and mandate of the Legislature that
the following appropriations be payable only from
surplus accrued as of the thirty-first day of July, one
thousand nine hundred ninety-one.

In the event that surplus revenues available on the
thirty-first day of July, one thousand nine hundred
ninety-one are not sufficient to meet all appropriations
made pursuant to this section, then surplus shall be
allocated first to provide the necessary funds to meet the
first appropriation of this section; next, to provide the
funds necessary for the second appropriation of this
section; and subsequently to provide the funds necessary
for each appropriation in succession before any funds
are provided for the next subsequent appropriation.

Any surplus balance remaining, after the allocation to
meet the appropriation set forth in this section, shall be
transferred and made available to the state fund,
general revenue during the fiscal year 1991-92. This
transfer of the surplus balance shall be taken into
consideration in making any determination pursuant to
section nine-d, article six, chapter twelve of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, with respect to the sufficiency or insufficiency
of funds available for the timely payment for necessary
improvements in public education.

169—Division of Human Services
(WV Code Chapters 9, 48, and 49)
Acct. No. 4050

Medical Services

$ 21,000,000

170—Division of Energy
(WV Code Chapter 22)
Acct. No. 4775

Unclassified

$ 1,500,000
171—Division of Finance
(WV Code Chapter 5A)
Acct. No. 2110
1 GAAP Project .................................. $ 900,000

1 Sec. 9. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1991-92.

172—Office of Community and Industrial Development—Community Development
Acct. No. 8029
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total .................. $ 14,272,008

173—Office of Community and Industrial Development—Community Service
Acct. No. 8031
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total .................. $ 6,996,154

174—State Department of Education—Education Grant
Acct. No. 8242
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total .................. $ 66,584,699

175—Division of Employment Security—Job Training Partnership Act
Acct. No. 8255
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total .................. $ 46,717,454

176—Division of Health—Maternal and Child Health
Acct. No. 8502
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total .................. $ 6,500,000
<table>
<thead>
<tr>
<th>Account Number</th>
<th>Program Description</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8503</td>
<td>Division of Health—Alcohol, Drug Abuse and Mental Health</td>
<td>$6,500,000</td>
</tr>
<tr>
<td>8504</td>
<td>Division of Health—Community Youth Activity Program</td>
<td>$95,000</td>
</tr>
<tr>
<td>8506</td>
<td>Division of Health—Preventive Health</td>
<td>$900,000</td>
</tr>
<tr>
<td>8508</td>
<td>Division of Health—Mental Health Services for the Homeless</td>
<td>$400,000</td>
</tr>
<tr>
<td>9147</td>
<td>Division of Human Services—Energy Assistance</td>
<td>$10,500,000</td>
</tr>
<tr>
<td>9161</td>
<td>Division of Human Services—Social Services</td>
<td>$21,000,000</td>
</tr>
</tbody>
</table>
Sec. 10. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-two 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. 11. 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-two, 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-two 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. 12. 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. 13. 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. 14. 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. 15. 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. 16. Appropriations for local governments.—
There are hereby appropriated for payment to counties,
districts and municipal corporations such amounts as
will be necessary to pay taxes due counties, districts and
municipal corporations and which have been paid into
the treasury:

(a) For redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 17. Total appropriations.—Where only a total
sum is appropriated to a spending unit, the total sum
shall include personal services, annual increment,
employee benefits, current expenses, repairs and
alterations, equipment and capital outlay, where not
otherwise specifically provided and except as otherwise
provided in TITLE I—GENERAL PROVISIONS, Sec.
3.

Sec. 18. General school fund.—The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is
appropriated for expenditure in accordance with section
sixteen, article nine-a, chapter eighteen of the code.

TITLE III — ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

TITLE III — ADMINISTRATION.

Section 1. Appropriations conditional.—The ex-
penditure of the appropriations made by this act, except
those appropriations made to the legislative and judicial
branches of the state government, are conditioned upon
5 the compliance by the spending unit with the require-
6 ments of article two, chapter five-a of the code.
7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending
9 units, it is the intent of this act that reappropriations
10 shall be to the succeeding or later spending unit created
11 unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is
1 declared unconstitutional by a court of competent
2 jurisdiction, its decision shall not affect any portion of
3 this act which remains, but the remaining portion shall
4 be in full force and effect as if the portion declared
5 unconstitutional had never been a part of the act.

CHAPTER 14
(H. B. 2793—By Delegates Rutledge and Williams)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact sections five, fourteen, fifteen
and thirty-three, article four, chapter thirty-one-a of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact
section twelve, article eight and section four, article
eight-a of said chapter, all relating to banking institu-
tions, increasing certain fees for investigation of bank
incorporation; eliminating certificates of unimpaired
capital and replacing certificates with annual reports;
deposits in trust; limitation on liability of institutions
making payments from certain accounts; and reducing
investigation fees for mergers and share acquisition.

Be it enacted by the Legislature of West Virginia:

That sections five, fourteen, fifteen and thirty-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; and that section twelve, article eight and
section four, article eight-a of said chapter be amended and
reenacted, all to read as follows:
Article 4. Banking Institutions and Services Generally.

§31A-4-5. Requirements and procedure for incorporation of state banks.
§31A-4-14. Trust powers of banking institutions.
§31A-4-15. Certificate showing unimpaired capital to be filed before exercising trust powers; penalties; notice of failure to comply.
§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts.

§31A-4-5. Requirements and procedure for incorporation of state banks.

A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the state of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, "bank," "banking company," "banking association," "trust company," "banking and trust company" or "bank and trust company."

The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the secretary of state for chartering corporations under provisions of article one, chapter thirty-one of this code. The information set forth in the agreement shall include the following:

1. The name of the proposed bank;
2. The community and county in which the bank is to be located, together with the post-office address of the place of business of the bank;
3. Whether such bank proposes also to engage in the trust business;
4. The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;
(5) The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and

(6) The total authorized capital stock of the institution.

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the board, shall be accompanied by the statutory corporation charter fees, and an examination and investigation fee of five thousand dollars payable to the board. However, if the agreement is for the incorporation of a bank to be organized solely for the purpose of facilitating the acquisition of another bank, the examination and investigation fee is five hundred dollars payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the board may communicate, on whom the board may call for further information, and to whom the board may officially report as to action on the agreement so filed with him.

The agreement shall constitute and may be considered and treated by the board as an application for the board's approval to incorporate and organize a banking institution in this state.

§31A-4-14. Trust powers of banking institutions.

(1) Every state banking institution, except industrial banks created and organized pursuant to the provisions of article seven, chapter thirty-one of this code, which files the reports required in the following section and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, shall have and exercise the following powers:

(a) All the powers, rights and privileges of any state banking institution;

(b) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator, or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with
the constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

(c) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;

(d) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;

(e) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;

(f) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including without limitation notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which such items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at such time and upon such terms as the trustee shall deem reasonable; and

(g) To do and perform any act or thing requisite or necessary in, or incidental to, the exercise of the general powers herein set forth.

All national banks having their principal offices in this state which have been, or hereafter may be, authorized under the laws of the United States to act
as trustee and in other fiduciary capacities in the state of West Virginia shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

§31A-4-15. Certificate showing unimpaired capital to be filed before exercising trust powers; penalties; notice of failure to comply.

1 No banking institution shall exercise any of the trust powers mentioned in the preceding section until it shall have filed with the commissioner of banking an annual report of trust assets each calendar year as filed with federal regulators. If any such banking institution shall exercise, or attempt to exercise, any such powers or rights without having complied with the requirements of this section as to the filing of such report, it shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars; and in every such case, whether or not there shall have been a prosecution or conviction of the company so offending, the commissioner of banking, being satisfied of the facts, may publish a notice of the fact that it has failed to comply with the requirements of this section and is therefore not entitled to exercise the trust powers and rights mentioned in the preceding section. In the event a notice is published as aforesaid, it shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such institution is located.

§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts.

1 If any deposit in any banking institution be made by any person describing himself in making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall be given in writing to the banking institution, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the interest thereon, may be paid to the
person for whom the deposit was thus stated to have
been made.

When a deposit is made by any person in the name
of such depositor and another or others and in form to
be paid to any one of such depositors, or the survivor
or survivors of them, such deposit, and any additions
thereto, made by any of such persons, upon the making
thereof, shall become the property of such persons as
joint tenants; and the same, together with all interest
thereon, shall be held for the exclusive use of the persons
so named, and may be paid to any one of them during
the lifetime of them, or to the survivor or survivors after
the death of any of them; and such payment and the
receipt or the acquittance of the one to whom such
payment is made shall be a valid and sufficient release
and discharge for all payments made on account of such
deposit, prior to the receipt by the banking institution
of notice in writing, signed by any one of such joint
tenants not to pay such deposit in accordance with the
terms thereof. Prior to the receipt of such notice no
banking institution shall be liable for the payment of
such sums.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks;
penalties for violation of section.

(a) No banking institution shall engage in business at
any place other than at its principal office in this state,
at a branch bank in this state permitted by this section
as a customer bank communication terminal permitted
by section twelve-b of this article or at any loan
organization office permitted by section twelve-c of this
article: Provided, That acceptance of a deposit at the
offices of any subsidiary, as defined in section two,
article eight-a of this chapter, for credit to the custom-
er's account at any other subsidiary of the same bank
holding company is permissible and does not constitute
branch banking.

Any banking institution which on January one, one
thousand nine hundred eighty-four, was authorized to
operate an off-premises walk-in or drive-in facility,
pursuant to the law then in effect, may, as of the seventh
day of June, one thousand nine hundred eighty-four,
operate such facility as a branch bank and it shall not
be necessary, for the continued operation of such branch
bank, to obtain additional approvals, notwithstanding
the provisions of subsection (d) of this section and
subdivision (6), subsection (b), section two, article three
of this chapter.

(b) Except for a bank holding company, it shall be
unlawful for any individual, partnership, society,
association, firm, institution, trust, syndicate, public or
private corporation, or any other legal entity, or
combination of entities acting in concert, to directly or
indirectly own, control or hold with power to vote,
twenty-five percent or more of the voting shares of each
of two or more banks, or to control in any manner the
election of a majority of the directors of two or more
banks.

(c) A banking institution may establish branch banks
either by:

(1) The construction, lease or acquisition of branch
bank facilities as follows:

(A) After the seventh of June, one thousand nine
hundred eighty-four, within the county in which that
banking institution's principal office is located or within
the county in which that banking institution had prior
to January first, one thousand nine hundred eighty-four,
established a branch bank, pursuant to subdivision (2)
of this subsection; and

(B) After the thirty-first of December, one thousand
nine hundred eighty-six, within any county in this state;
or

(2) The purchase of the business and assets and
assumption of the liabilities of, or merger or consolida-
tion with, another banking institution.

(d) Notwithstanding any other provision of this
chapter to the contrary, subject to and in furtherance
of the board’s authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (g) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The principal office of a banking institution as of the seventh day of June, one thousand nine hundred eighty-four, shall continue to be the principal office of such banking institution for purposes of establishing branch banks under this section, notwithstanding any subsequent change in the location of such banking institution’s principal office.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank, provide notice of such application to all banking institutions. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereupon become a party to any hearing relating thereto before the board.

(h) The commissioner shall prescribe the form of the application for a branch bank and shall collect an examination and investigation fee of one thousand dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and two thousand five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of five hundred dollars. The
board shall complete the examination and investigation within ninety days from the date on which such application and fee are received, unless the board request in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution, in which event such ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of such request and the date such additional information and disclosures are received.

(i) Upon completion of the examination and investigation with respect to such application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

(1) Notice of such hearing shall be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in 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 less than ten nor more than thirty days after such notice is given.

(2) At any such hearing a party may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state.

(3) After such hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(j) No state banking institution may establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving
an application for that branch bank: Provided, That no such hearing shall be required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

1. Public convenience and advantage will be promoted by the establishment of the proposed branch bank;

2. Local conditions assure reasonable promise of successful operation of the proposed branch bank and of those banks and branches thereof already established in the community;

3. Suitable physical facilities will be provided for the branch bank;

4. The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish by regulation;

5. The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state; and

6. The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed branch bank in meeting the convenience and needs of the community to be served by that proposed branch bank.

(k) Any party who is adversely affected by the order of the board shall be entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court
following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.

(l) Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days' prior public notice given in such form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-4. Acquisition of bank shares; when prior notification of board necessary; exemptions.

(a) Unless an order approving such action has been entered by the board, it is unlawful, prior to one hundred and twenty days following the date of the submission to the board of complete, true and accurate copies of the reports required under federal laws or regulations pursuant to Title 12, United States Code, §§1841-1850 (being the act of Congress entitled the Bank Holding Company Act of 1956, as amended), and the payment of an examination and investigation fee to the board of four thousand five hundred dollars:

(1) For any action to be taken that causes any company to become a bank holding company;

(2) For any action to be taken that causes any bank to become a subsidiary of a bank holding company;

(3) For any bank holding company to acquire direct or indirect ownership or control of any shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than five percent of the voting shares of such bank;

(4) For any bank holding company or subsidiary
thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(5) For any bank holding company to merge or consolidate with any other bank holding company; or

(6) For any bank holding company to take any action which would violate the Federal Bank Holding Company Act.

(b) If a bank holding company, pursuant to subsection (a), subdivision (3) above, acquires more than five percent, but less than twenty-five percent of the voting shares of a bank, and is not determined to be acquiring control over the bank, the examination and investigation fee to be paid to the board shall be determined by multiplying the examination and investigation fee established in subsection (a) by the percentage of voting shares to be acquired.

(c) The provisions of subsection (a) of this section shall not apply to:

(1) Shares acquired by a bank:

(A) In good faith in a fiduciary capacity, except where shares are held under a trust that constitutes a company as defined in section two of this article and except as provided in subdivisions (2) and (3), subsection (b), section three of this article; or

(B) In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the seventh day of June, one thousand nine hundred eighty-four, in securing or collecting any such previously contracted debt shall be disposed of within a period of five years from the date on which they were acquired; or

(2) Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. For the purpose of the preceding sentence, bank shares acquired after the seventh day of June, one thousand nine hundred eighty-four, shall not be deemed to have been acquired in good faith in a
59 fiduciary capacity if the acquiring bank or company has
60 sole discretionary authority to exercise voting rights
61 with respect thereto, but in such instances acquisitions
62 may be made without prior notice to the board if the
63 board, upon notice and submission of information in
64 form and content as it shall approve, filed within ninety
65 days after the shares are acquired, approved retention
66 or, if retention is disapproved, the acquiring bank
67 disposes of the shares or its sole discretionary voting
68 rights within five years after issuance of the order of
69 disapproval.

70 (d) If, within one hundred twenty days from the date
71 of submission pursuant to subsection (a) of this section,
72 after notice and a hearing pursuant to the provisions of
73 section three, article three of this chapter, the board
74 enters an order disapproving the proposed action
75 described in subdivision (1), (2), (3), (4), (5) or (6),
76 subsection (a) of this section, it shall be unlawful to take
77 such action. The board shall disapprove the proposed
78 action described in subdivision (1), (2), (3), (4), (5) or (6),
79 subsection (a) of this section on the following grounds:

80 (1) The action would result in a monopoly, or would
81 be in furtherance of any combination of conspiracy to
82 monopolize or to attempt to monopolize the business of
83 banking in any section of this state;

84 (2) The action would have the effect in any section of
85 the state of substantially lessening competition, or would
86 tend to create a monopoly or in any other manner would
87 be in restraint of trade, unless the anticompetitive
88 effects of the proposed action are clearly outweighed in
89 the public interest by the probable effect of the action
90 in meeting the convenience and needs of the community
91 to be served; or

92 (3) Taking into consideration the financial and
93 managerial resources and further prospects of the
94 company or companies and the banks concerned, the
95 action would be contrary to the best interests of the
96 shareholders or customers of the bank whose shares are
97 affected by such action.

98 (e) Notwithstanding any other provision of law, no
bank holding company, or any other company, shall establish, acquire or control any banking institution as defined in section three of this article, when said banking institution does not both (i) accept deposits that the depositor has a legal right to withdraw on demand and (ii) engage in the business of making commercial loans.

(f) Nothing contained in this section shall affect the obligation of any person or company to comply with the provisions of any order of any court or the commissioner entered prior to the seventh day of June, one thousand nine hundred eighty-four.

CHAPTER 15
(S. B. 618—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, six, seven, eight, nine, eleven, thirteen and fourteen, article three, chapter thirteen 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 five-a and seven-a, all relating to the municipal bond commission; exempting the executive secretary of the municipal bond commission from the list of officers whose salaries are set by statute; providing for meetings and voting quorums; authorizing the commission to charge fees for services rendered; changing the powers and duties of the commission; expanding the list of permissible investments; requiring quarterly proration of interest income; permitting escrowing advanced payments of bond principal and interest; requiring notification by issuers of bond sales; providing for collection, deposit and accounting of funds; providing for the determination of levy amount; permitting withdrawal of excess funds; requiring commission to annually estimate the amount of levy necessary for an issuer to make required debt service payments, prescribing rules for making such
estimates; expanding grounds for appointment of substitute paying agents; and requiring sixty days notice for withdrawal of funds.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, seven, eight, nine, eleven, thirteen and fourteen, article three, chapter thirteen 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 five-a and seven-a, all to read as follows:

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.

§13-3-5. Officer and employee bonds.

§13-3-5a. Costs and expenses; fees for services.

§13-3-6. Powers and duties of commission.

§13-3-7. Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.

§13-3-7a. Escrowing bond issues.


§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.


§13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.

§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.

1 (a) The secretary of the department of tax and revenue or his or her designee shall be chair of the commission.

2 (b) The members of the commission shall appoint a chief administrative officer and may fix his title and duties. Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the commission shall have the authority to set the compensation of the chief administrative officer. The chief administrative officer shall serve as secretary to the board and treasurer of the commission. The chair may designate a board member to serve as secretary in the absence of
the chief administrative officer. The chair is authorized, with the approval of the commission, to employ such other employees as may be necessary and such consultants as the commission deems advisable and fix their compensation and prescribe their duties.

(c) Appointed members of the commission shall be paid fifty dollars for each day or substantial portion thereof that they are engaged in the work of the commission. Each member of the commission may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties on behalf of the commission.

(d) The commission shall hold at least three meetings in each fiscal year, one of which meetings shall be held within sixty days of the end of the fiscal year and shall be the annual meeting. Such meetings shall be held on such dates and at such places as the chair may prescribe. Additional meetings may be held at the call of the chair or upon the written request of three members at such time and place as designated in such call or request. Three members of the commission constitute a quorum.

(e) The attorney general shall be the legal advisor to the commission.

§13-3-5. Officer and employee bonds.

The chief administrative officer and the employees designated by the commission shall furnish bonds in such form and in such amounts as the commission shall, from time to time, determine. The costs of such bonds shall be paid by the commission and such bonds shall be filed in the same office as are the bonds of state officers. The attorney general's approval of all bonds required by this section shall be obtained.

§13-3-5a. Costs and expenses; fees for services.

The commission shall set a schedule of fees to be charged for the commission's services, sufficient to meet all expenses of the commission. These fees shall be assessed on the basis of debt service paid by the commission for each issuer and shall not exceed one half
of one percent of the debt service paid, but in no case
shall the fee exceed two thousand dollars per issue or
series per annum. The commission may assess additional
fees, sufficient to recover the expenses of special projects
undertaken to benefit the users of the commission's
services, against specific issuers who are the beneficiar-
ies of such projects.

All sums collected by the commission for its services
shall be deposited in a separate account at the state
treasury to the credit of the municipal bond commission,
and no expenditures for purposes of this article are
authorized from collections except in accordance with
appropriations by the Legislature and in accordance
with the provisions of article three, chapter twelve of
this code and upon fulfillment of the provisions set forth
in article two, chapter five-a of this code. Any amounts
collected which are found from time to time to exceed
the funds needed for purposes set forth in this article
may be transferred to other accounts or funds and
redesignated for other purposes as appropriated by the
Legislature. No expenses incurred under this article
shall be a charge against the general funds of this state.

§ 13-3-6. Powers and duties of commission.

(a) The commission shall serve as fiscal agent for all
issuers of general obligation bonds issued by the
counties, municipalities, and school districts of the state
of West Virginia when the commission is specifically
named as the fiscal agent by statute.

(b) The commission shall serve as fiscal agent for all
issuers of revenue bonds issued by the counties, munic-
ipalities, and school districts of this state when the
commission is specifically named as the fiscal agent by
statute.

(c) The commission shall serve as fiscal agent for the
issuers of revenue bonds issued by the state of West
Virginia through its departments, commissions, boards,
or agencies, when the commission is specifically named
as the fiscal agent by statute.

(d) The commission may serve as fiscal agent for the
17 issuer of other public purpose revenue bond issues when
18 so provided by bond ordinance.
19 (e) The commission may agree to serve as paying
20 agent for all issuers when so provided by bond
21 ordinance.
22 (f) The commission may conduct business by tele-
23 phonic conference when necessary.
24 (g) The commission is hereby granted, has and may
25 exercise all powers necessary or appropriate to effectu-
26 ate the purposes of this article.

§13-3-7. Permissible investments; limitations and prohibi-
1 tions on purchase, sale or exchange of secur-
2 ities; public records; combining funds and
3 proration of interest; custody of securities.
4 (a) Notwithstanding any provisions of this code to the
5 contrary, the commission may invest funds under its
6 control in the following classes of securities and not
7 otherwise:
8 (1) Securities of the United States or any agency
9 thereof which are guaranteed by or for which the full
10 faith and credit of the United States is pledged for the
11 payment of the principal and interest;
12 (2) General obligations of this state or any of its
13 agencies, boards or commissions;
14 (3) General obligations of any county, municipality or
15 school district in this state;
16 (4) Pools of investment operated by the West Virginia
17 board of investments provided that their investments
18 are limited to the above named securities, and provided
19 that securities purchased for these pools following the
20 date of the enactment of this article shall not have
21 maturities greater than five years in length; and
22 (5) Repurchase agreements or similar banking ar-
23 rangements with a member bank of banks of the federal
24 reserve system or a bank, the deposits of which are
25 insured by the federal deposit insurance corporation, or
26 its successor: Provided, That such investments shall only
be made to the extent insured by the federal deposit insurance corporation or to the extent that the principal amount thereof shall be fully collateralized by direct obligations of or obligations guaranteed by the United States of America.

(b) Securities purchased or held under the provisions of this article may be sold or exchanged for other securities: Provided, That: (1) No security shall be purchased, sold or exchanged without the concurrence or ratification of a majority of all members of the commission; (2) no security shall be purchased at a price above, nor sold or exchanged at a price below, its prevailing fair market value; (3) no security shall be purchased, sold or exchanged for the purpose of aiding any individual, firm or corporation by the payment of brokerage commissions or fees thereto; (4) no security purchased, sold or exchanged shall benefit any member or employee of the commission; and (5) no security shall be received in exchange which does not comply with the requirements of this article.

(c) The commission shall record all pertinent information related to any purchase, sale or exchange of securities and make such information available for public inspection during normal office hours of the commission.

(d) Funds from several or all accounts may be combined for investment and any interest earned shall be prorated and credited quarterly to the various contributing accounts on the basis of amount thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle.

(e) All securities purchased by the commission as an investment for the funds shall remain in the custody of the state board of investments until the same are sold, exchanged, retired or mature and are paid.

§13-3-7a. Escrowing bond issues.

(a) All bond issues for which the commission is serving as fiscal agent shall be considered to have been canceled
and paid in advance of their due date or date of redemption if there shall have been deposited with the commissioner either:

(1) Moneys sufficient to pay when and as due all amounts of principal and interest payable on such bonds; or

(2) Securities of a quality in which the commission is authorized by law to invest moneys under its control, the principal of and interest on which will provide moneys sufficient to pay when and as due all amounts of principal and interest payable on such bonds.

(b) The moneys and securities held by the commission pursuant to this section shall be held by the commission in trust and irrevocably dedicated solely to the payment of principal or redemption price, if applicable, of and interest on the bonds: Provided, That this action shall be taken solely at the direction of the issuer. Following such irrevocable commitment of moneys and securities in trust, funds on account with the commission for said bonds which are surplus may be immediately returned to the issuer as specified by statute for paid out surpluses.


For any issue for which the commission shall serve as fiscal agent, either by statute or provisions of bond ordinance, or for any issue which refunds an issue for which the commission is currently serving as fiscal agent, the issuer shall notify the commission of the issuance of such bonds not more than five days after closing, and provide the commission with a copy of the official statement and bond ordinance or resolution not more than forty-five days following closing.

§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

(a) Deposit of funds. — All tax receipts and interest belonging to the counties, municipalities or school districts and earmarked for the purpose of amortizing bonded indebtedness, shall be, by the treasurer or collector thereof, forwarded to the commission at least
quarterly to be deposited in the state treasury to the
credit of the municipal bond commission: *Provided*, That
all funds from the prior fiscal year shall be forwarded
to the commission not later than the following thirtieth
day of September.

(b) Insufficient deposit. — Whenever the amount
deposited for any issuer is not sufficient to meet the
interest or principal due, it shall be the duty of the
treasurer or collector of such issuer, upon being notified
of that fact by the commission, to immediately remit all
funds in his possession that have been earmarked by the
issuer for the purpose of amortizing bonded indebted-
ness plus such additional funds as are necessary to meet
the interest or principal due.

(c) Withdrawal of additional funds. — If an issuer has
remitted to the commission funds not earmarked for the
purpose of amortizing bonded indebtedness, all or a
portion of such funds may be withdrawn by the issuer
upon sixty days’ written notice to the commission: *Provided*, That such withdrawal shall neither create a
deficit in the issuer’s account with the commission nor
be in conflict with terms of the bond issue.

(d) Payment of taxes. — Any taxes to provide for the
payment of principal, creation of a reserve or sinking
fund, or for the payment of interest on bonds by any
county, municipality or school district which shall be
collected by any state officer, shall be paid by such
officer to the commission to be at once applied to the
payment of the debt of the county, municipality or school
district and the fact of such application of such fund
shall be reported by the auditor to the treasurer or
collector of such issuer, which report shall be a receipt
for the amount therein named.

(e) Municipal bond commission fund. — The state
auditor and the state treasurer shall carry an account
to be known as the municipal bond commission fund. All
deposits shall be carried as a part of such fund.

(f) Deposit of collections. — The commission shall
deposit all collections and receipts with the treasurer
daily.
§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.

The commission shall, annually, at least thirty days before the time for making up the estimate for levy purposes, render to each political subdivision having outstanding general obligation bonds, a statement showing the levy required to pay the interest on and provide for the retirement of the subdivision’s outstanding general obligation bonds.

In determining the levy required, the commission shall be governed by the terms of section thirty-four or section thirty-five, article one of this chapter: Provided, That the commission may augment the levy by a reasonable amount to provide for delinquencies and exonerations; and the commissioner may include in the estimate the principal and interest due on bond issues in July, August and September of the following fiscal year. For the purposes of this section, the amount of any moneys, not earmarked for amortizing bonded indebtedness, but which was forwarded by the issuer to the commission for the purpose of meeting principal and interest due under section nine of this article, shall be considered a deficiency for a prior year.


The commission may appoint a new paying agent on any issue for which the commission acts as fiscal agent, in the event of the insolvency, threat of insolvency, malfeasance, misfeasance, incompetence, resignation, or discontinuance from business of the paying agent or in the case of discontinuance of the place of payment as designated by the terms of such bonds. Upon appointment of a substitute paying agent, the commission shall publish notice of such action 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 the former paying agent had residence. Upon designation of another place of payment, publication of
15 notice shall be made in the county in which was located
16 the former place of payment.

§13-3-14. Authorizing the transfer and investment of
funds raised by levy, sale of bonds or
otherwise.

1 Any funds of a political subdivision or of any of the
2 agencies, boards, commission or departments of the
3 state of West Virginia raised by levy, sale of bonds or
4 otherwise and which cannot be used within a reasonable
5 time may be transferred to the municipal bond com-
6 mission. Any funds so transferred shall be invested by the
7 commission in accordance with the provisions of this
8 article. Any such funds so transferred may be with-
9 drawn by the public body which transferred the same
10 as authorized by this article upon sixty days' notice in
11 writing to the commission.

CHAPTER 16

(Com. Sub. for S. B. 132—Originating in the Committee on Finance)

(Passed March 8, 1991; in effect from passage. Approved by the Governor.)

AN ACT to repeal sections one-a, seven and nine, article two,
chapter twenty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to repeal
article three of said chapter; to amend and reenact
section one, article three, chapter five of said code; to
amend and reenact section seventeen, article ten of said
chapter; to amend and reenact section sixteen, article
eleven of said chapter; to amend and reenact section
seven, article sixteen-a of said chapter; to amend and
reenact section one, article four, chapter five-b of said
code; to amend and reenact section ten, article thirteen,
chapter seven of said code; to amend and reenact section
six, article sixteen of said chapter; to amend and reenact
section twenty-seven, article twenty-seven, chapter eight
of said code; to amend and reenact section nineteen,
article twenty-nine of said chapter; to amend and
reenact section five, article twenty-nine-a of said
chapter; to amend and reenact section eleven, article thirty-three of said chapter; to amend and reenact section twelve, article one-a, chapter eleven of said code; to amend and reenact section four, article six-b of said chapter; to amend and reenact section seven, article twelve of said chapter; to amend and reenact section ten, article twenty-four of said chapter; to amend and reenact section two, article twenty-five of said chapter; to amend and reenact section five, article one-a, chapter twelve of said code; to amend and reenact section sixteen, article one, chapter sixteen of said code; to amend and reenact section three, article twenty-nine-d of said chapter; to amend and reenact section three, article twenty-two, chapter seventeen-c of said code; to amend and reenact section twelve, article four, chapter seventeen-d of said code; to amend and reenact section twenty, article seven-a, chapter eighteen of said code; to amend and reenact section sixteen, article nine-b of said chapter; to amend and reenact section fourteen, article twenty-three, chapter nineteen of said code; to amend and reenact section fourteen, article five, chapter twenty-one of said code; to amend and reenact sections three, four, five, six and seven, article one, chapter twenty-one of said code; to amend and reenact sections one, five, six, six-b, eight, eleven, thirteen, sixteen, sixteen-a and twenty-three, article two of said chapter; to amend and reenact sections two and four, article two-a of said chapter; to amend and reenact sections one, two and four, article two-b of said chapter; to amend and reenact section six, article two-c of said chapter; to amend and reenact sections ten-a, sixteen and seventeen-b, article five of said chapter; to amend and reenact section nine, article six of said chapter; to amend and reenact section twenty-three, article seven of said chapter; to amend and reenact sections eleven, nineteen, twenty and twenty-two, article ten of said chapter; to amend and reenact sections one, two, three, six, ten, fourteen, sixteen, seventeen and eighteen, article one, chapter twenty-three of said code; to amend and reenact sections one-c, six, eight and eleven, article two of said chapter; to amend and reenact sections one-a, two and three, article three of said chapter; to amend and
reenact sections one-c, two, seven and fourteen, article four of said chapter; to amend and reenact sections two, three, four, five and eight, article four-a of said chapter; to amend and reenact sections two and seven, article four-b of said chapter; to amend and reenact sections two and five, article four-c of said chapter; to amend and reenact section two, article five of said chapter; to amend and reenact section two, article eight, chapter twenty-six of said code; to amend and reenact section two, article twelve, chapter twenty-nine of said code; to amend and reenact section six, article eighteen of said chapter; to amend and reenact section five, article five, chapter twenty-nine-a of said code; to amend and reenact section sixty-one, article one, chapter thirty-one of said code; to amend and reenact section ten, article eighteen-b of said chapter; to amend and reenact sections one and five, article fifteen, chapter thirty-three of said code; to amend and reenact section one, article sixteen of said chapter; to amend and reenact section three, article twenty-six of said chapter; to amend and reenact section twelve, article five-b, chapter thirty-eight of said code; to amend and reenact sections seventeen and eighteen, article two, chapter forty-eight-a of said code; to amend and reenact section four-d, article five, chapter fifty-seven of said code; and to amend and reenact section thirty, article three-a, chapter sixty of said code, all relating to combining employment security and workers' compensation into the bureau of employment programs and changing references thereto throughout the code; written opinions and advice and other legal services from the attorney general; membership of the West Virginia public employees retirement system; providing that the maintenance of certain records by the bureau of employment programs is not an unlawful discriminatory practice; the availability of data from the bureau of employment programs to the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures; membership of the West Virginia labor-management advisory council; coverage of employees of a community action program organizations, county solid waste
authorities, urban mass transportation authorities, regional airport authorities, county airport authorities and building commissions under the workers' compensation act; functions of the tax commissioner and county assessors in the appraisal of property for periodic statewide appraisals; claims for homestead property tax exemption; reciprocal exchange of information between the tax commissioner and the commissioner of the bureau of employment programs relating to the business registration tax and the corporation net income tax; defining terms relating to tax relief for elderly homeowners and renters; acceptance or rejection of linked deposit loan packages by the state treasurer; defining terms relating to the West Virginia state board of investments; making results of investigations and hearings by the board of health available to the commissioner of the bureau of employment programs; requiring all agencies of the state to cooperate in the development of health care plans; exempting ridesharing from workers' compensation law; defining "motor vehicle liability policy" and setting forth the scope and provisions of such a policy; investment of funds of the state teachers retirement system; transmission and investment of proceeds of permanent improvement funds of county boards of education; disposition of permit fees, registration fees and fines relating to horse and dog racing; employer's bond for wages and benefits; defining terms relating to the bureau of employment programs; placing the bureau under the department of commerce, labor and environmental resources; requiring the bureau to cooperate with the United States department of labor and similar agencies of other states; setting forth duties of the commissioner and the advisory council regarding employment stabilization; creation of the state employment service division within the bureau; setting the salary of the commissioner of the bureau of employment programs; setting forth the powers and duties of the commissioner of the bureau; requiring the tax commissioner to furnish certain information to the commissioner of the bureau of employment programs; compensation of assistants and employees of the bureau; dismissals, terminations,
layoffs and suspensions of bureau employees; appointment of deputies; federal-state cooperation; work incentive program; veteran's training program; defining terms relating to the emergency employment supplemental matching program; providing for notice to private business employers applications for prospective employers and listing of job openings; providing for group insurance plans for regular employees of the bureau and setting forth terms and conditions for such plans; providing for payroll deductions for such plans and allowing employees to continue in group after retirement; administration of the veterans incentive program; optional assessments on employers and employees for unemployment compensation fund; collection of payments from employers and comity for collection of past due payments and overpayments; payment of unemployment benefits; claim procedure and calendar preference for unemployment benefit claims; reports required from employing units; disclosure of certain information to child support and food stamp agencies and the department of housing and urban development; payment of salaries and expenses of commissioner of bureau of employment programs and his employees; allowing the commissioner to employ a secretary and other assistants; payment of fees for officers serving subpoenas; provision of blank forms of applications for workers' compensation benefits; omission to subscribe to workers' compensation fund; annual report by commissioner and occupational pneumoconiosis board; creation of compensation programs advisory board; appointment and terms of members for the advisory board; extraterritorial coverage; furnishing of information by employers, the state tax commissioner and the division of employment compensation and the secrecy of said information; exempting contributing employees from liability to respond in damages for the injury or death of an employee; liability of an employer electing not to pay or defaulting in payment of premiums; election of employer to provide own system of compensation and mandatory participation in second injury reserve of surplus fund; validity of workers' compensation law to
employers adjudicated outside the lawful scope of the workers' compensation law; transfer of silicosis fund to workers' compensation fund; custody investment and disbursement of workers' compensation fund; requiring investment of surplus funds; payment of temporary total disability and medical benefits to claimants; disbursement of workers' compensation fund where injury is self inflicted or intentionally caused by the employer; release of medical information to employer and duty of employer; computation of benefits; specifying to whom benefits may be paid from the disabled workers' relief fund and computation of benefits; providing for payment of benefits from the fund; information required from employers providing own system; funding of disabled workers' relief fund; establishment and administration of coal workers' pneumoconiosis fund; establishment and administration of employers' excess liability fund; creation and membership of workers' compensation appeal board; payment of emergency hospital expenses for entitled persons by commissioner of employment programs; defining terms relating to state insurance for miscellaneous boards and officers; powers, duties and responsibilities of West Virginia railroad maintenance authority; providing exemptions from contested case provisions of state administrative procedures act; issuance of certificates by secretary of state to business and nonprofit corporations; disposition of interest income and repayment of principal of the mortgage and industrial development investment pool; application of the law regarding accident and sickness insurance; optional accident and sickness insurance policy provisions; application of the law regarding group accident and sickness insurance; application of the West Virginia guaranty association act; exemptions relating to the suggestion of the state and political subdivisions; obtaining support from unemployment compensation and workers' compensation benefits to pay child support obligations; exemption for workers' compensation proceedings regarding hospital records and sealed envelopes; requiring certain departments to work with employees whose jobs were terminated by the sale of the state liquor stores; and providing criminal penalties.
Be it enacted by the Legislature of West Virginia:

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

Chapter

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


7. Training Programs for County Employees, Etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees; Their Number and Compensation.


11. Taxation.


17C. Traffic Regulations and Laws of the Road.

17D. Motor Vehicle Safety Responsibility Law.

18. Education.

19. Agriculture.


21A. Unemployment Compensation.

23. Workers' Compensation.


29. Miscellaneous Boards and Officers.

29A. State Administrative Procedures Act.


33. Insurance.

38. Liens.

48A. Enforcement of Family Obligations.

57. Evidence and Witnesses.

60. Alcohol Beverage Control.

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

3. Attorney General.

10. West Virginia Public Employees Retirement Act.
ARTICLE 3. ATTORNEY GENERAL.

§5-3-1. Written opinions and advice and other legal services; expenditures by state officers, boards and commissions for legal services prohibited.

The attorney general shall give his written opinion and advice upon questions of law, and shall prosecute and defend suits, actions, and other legal proceedings, and generally render and perform all other legal services, whenever required to do so, in writing, by the governor, the secretary of state, the auditor, the state superintendent of free schools, the treasurer, the commissioner of agriculture, the board of public works, the tax commissioner, the state archivist and historian, the commissioner of banking, the adjutant general, the commissioner of the division of energy, the superintendent of public safety, the state commissioner of public institutions, the state road commission, the commissioner of the bureau of employment programs, the public service commission, or any other state officer, board or commission, or the head of any state educational, correctional, penal or eleemosynary institution; and it shall be unlawful from and after the time this section becomes effective for any of the public officers, commissions, or other persons above mentioned to expend any public funds of the state of West Virginia for the purpose of paying any person, firm, or corporation for the performance of any legal services: Provided, That nothing contained in this section shall impair or affect any existing valid contracts of employment for the performance of legal services heretofore made.

It shall also be the duty of the attorney general to render to the president of the Senate and/or the speaker of the House of Delegates a written opinion or advice upon any questions submitted to him by them or either of them whenever he shall be requested in writing so to do.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.
§5-10-17. Retirement system membership.

The membership of the retirement system shall consist of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the said participating public employer on and after the said date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after the said date shall thereupon become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers retirement system, the judges retirement system, the retirement system of the division of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the bureau of employment programs, by the commissioner of such bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That such exclusions of membership shall not apply to any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the division of public safety, and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the division of public safety.

(c) Any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate and any employee of the state Legislature whose employ-
ment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is so employed during regular sessions or during the interim between sessions for ten or more years, or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he notifies the retirement system in writing of his intention to be a member of the system and files a membership enrollment form as the board of trustees shall prescribe, and each person, upon filing his written notice to participate in the retirement system, shall by said act authorize the clerk of the House of Delegates or the clerk of the state Senate or such person or legislative agency as the legislative body of any other political subdivision shall designate to deduct such member's contribution, as provided in subsection (b), section twenty-nine of this article, and after said deductions have been made from said member's compensation, such deductions shall be forwarded to the retirement system.

(d) Should any question arise regarding the membership status of any employee, the board of trustees has the final power to decide the question.

ARTICLE 11. HUMAN RIGHTS COMMISSION.


Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the bureau of employment programs to ascertain and record the age, sex, race, religion, color, national origin, ancestry, blindness or handicap of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: Provided, That such recording of the age, sex, race, religion, color, national origin, ancestry, blindness or handicap of any individual shall not be used
to discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.

ARTICLE 16A. THE WEST VIRGINIA HEALTH CARE INSURANCE ACT.

§5-16A-7. Availability of data of bureau of employment programs.

In furtherance of the purposes of this article, the bureau of employment programs shall, notwithstanding the provisions of section eleven, article ten, chapter twenty-one-a of this code, cooperate to make available to the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures such information as they may request for purposes consistent with this article to identify and facilitate contact with small business employers who may be eligible for participation in the plan. The provisions of this section shall be liberally construed by the bureau of employment programs in order to effectuate the development of the health care insurance plan.

Information thus obtained by the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures shall be maintained as strictly confidential and shall be exempt from disclosure to the public.

CHAPTER 5B.
ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

§5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

The West Virginia labor-management advisory council, heretofore created under the provisions of article one-c, chapter twenty-one of this code, shall be continued and be so designated as the West Virginia labor-management council. The council shall consist of twenty-six members. One member of the council shall be the commissioner of labor, one member of the council shall be a member of the economic development
authority, one member of the council shall be the commissioner of the bureau of employment programs or his designated representative, one member of the council shall be the state superintendent of schools, one member of the council shall be a member of the economic development board to be selected by it annually, and one member of the council shall be a member of the board of regents to be selected by it annually, all of whom shall be ex officio nonvoting members of the council. The other members of the council shall be appointed by the governor by and with the advice and consent of the Senate for terms of four years or until their successors have been appointed and have qualified. The members of the council appointed by the governor shall include one president of a state university, one president of a state college or community college, and two persons representing public secondary schools in the state, who shall be appointed for terms of two, three and four years, respectively, as designated by the governor at the time of their appointment, and until their successors have been appointed and have qualified. The present members of the council shall continue to serve out the terms to which they were appointed.

Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy.

In making appointments to the council, the governor shall consider names of persons recommended to him by the West Virginia chamber of commerce, the West Virginia coal association, the West Virginia manufacturers' association, the West Virginia retailers' association, utilities, other industrial groups in this state, the West Virginia labor federation, the united mine workers union, the West Virginia building trades council, other labor organizations in the state, the institutional boards of advisors for state colleges and universities, the state board of education, and the West Virginia school board association. Membership shall be composed of, in addition to those of the state or other government
agencies and educational institutions, no less than eight members from industry and eight from labor. The council shall elect one of its members as chairman and may elect such other officers as the council may deem necessary or desirable. Such persons shall serve as such for one year or until their successors are elected and shall be eligible for reelection.

The council shall meet at least four times each year and at other times on call of the chairman or a majority of the members. Thirteen members of the council shall constitute a quorum for the transaction of business.

CHAPTER 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

Article
16. County Solid Waste Authorities.

ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

§7-13-10. Employees covered by workers' compensation.

All employees of a community action program organization eligible thereto shall be considered to be within the workers' compensation act of West Virginia and premiums on their compensation shall be paid by the organization as required by law.

ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES.

§7-16-6. Employees to be covered by workers' compensation.

All employees of the authority eligible thereto shall be considered to be within the workers' compensation act of West Virginia and premiums on their compensation shall be paid by the authority as required by law.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article
27. Intergovernmental Relations-Urban Mass Transportation Systems.
ARTICLE 27. INTERGOVERNMENTAL RELATIONS-URBAN MASS TRANSPORTATION SYSTEMS.

PART XI. DISSOLUTION OF AUTHORITY; WORKERS' COMPENSATION.

§8-27-27. Employees to be covered by workers' compensation.

1 All eligible employees of any authority shall be considered to be within the workers' compensation statute of this state and premiums on their compensation shall be paid by the authority as required by law.

ARTICLE 29. INTERGOVERNMENTAL RELATIONS-REGIONAL AIRPORTS.

§8-29-19. Employees to be covered by workers' compensation.

1 All eligible employees of any authority shall be considered to be within the workers' compensation statute of this state and premiums on their compensation shall be paid by the authority as required by law.

ARTICLE 29A. COUNTY AIRPORT AUTHORITIES.

*§8-29A-5. Full-time employees of the authority to be public employees.

1 Any person who serves regularly as an employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by the authority, shall be considered to be a public employee and shall be subject to any and all applicable provisions of law relating thereto, including, but not limited to, the workers' compensation act and the West Virginia public employees insurance act.

ARTICLE 33. INTERGOVERNMENTAL RELATIONS-BUILDING COMMISSIONS.

PART IV. WORKERS' COMPENSATION; CONSTRUCTION.

*Clerk's Note: This section was also amended by S.B. 512 (Chapter 113), which passed prior to this act.
§8-33-11. Workers' compensation.

1 Each commission shall subscribe to the workers' compensation fund of this state and pay all necessary premiums thereto, to the end that all eligible employees of such commission shall be covered by workers' compensation.

CHAPTER 11. TAXATION.

ARTICLE 1A. APPRAISAL OF PROPERTY FOR PERIODIC STATEWIDE REAPPRAISALS.

§11-1A-12. Division of functions between the tax commissioner and assessor; local exceptions to value; revisions by tax commissioner; participation by assessor in hearings and appeals.

(a) It is the intent of the Legislature that in carrying out the appraisal functions required by this article, the tax commissioner shall utilize the county assessors and their employees. The county clerk shall prepare a list of all transfers of real property recorded during the calendar year one thousand nine hundred eighty-three for which payment of the excise tax on the privilege of transferring real property, required by article twenty-two of this chapter was required, and forward such list to the tax commissioner during the second month following such transfers' recording with the clerk of the county commission. The assessor shall review the landbooks for his county for the tax year one thousand nine hundred eighty-three and one thousand nine hundred eighty-four, and shall prepare a written property description of every parcel of real property not previously described on a property record card provided to the assessor by the tax commissioner under the provisions of section eleven, article nine-a, chapter eighteen of this code. The assessors may compile lists of comparable property sales and recommend appraisal...
values with respect to any property in their districts to which the tax commissioner shall give consideration when he fixes values for such property for reappraisal purposes to the extent such recommended values are supported by competent evidence.

(b) In each county during the reappraisal function, the tax commissioner shall designate a tax department employee as the coordinator of reappraisal functions among the commissioner's personnel, the commissioner's designated agents, and the assessor's personnel so as to ensure that the resulting appraisal shall be complete, equal and uniform. In each county, the tax commissioner or his designated agent shall prepare a description of the number, job description and minimum qualifications of personnel needed to accomplish the reappraisal, other than permanent employees of the tax commissioner or employees of the assessor. The tax commissioner or his designated agent shall employ qualified individuals to fill the positions giving first preference to persons registered with the bureau of employment programs' job service program, but all such persons shall be residents of the county, or if the tax commissioner finds it necessary for efficiency, any contiguous county, or if none be available, the state. The tax commissioner shall make reasonable efforts to assure that the additional employment required by this article is allocated equitably among the several counties, with attention to the level of unemployment in and the population of each county.

(c) To the extent that the tax commissioner concludes that assessors and local employees have overemphasized or underemphasized local aspects in determining value, the tax commissioner may revise information concerning such values so as to achieve uniformity in the statewide reappraisal: Provided, That in any hearings or appeals under the provisions of this article the assessor or employee who participated in the gathering of such information may be a competent witness as to how tentative values were arrived at in the process of reappraisal before any such revision.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.
§11-6B-4. Claim for exemption; renewals; waiver of exemption.

(a) General. — No exemption shall be allowed under this article unless a claim of exemption is filed with the assessor of the county in which the homestead is located, on or before the first day of October following the July first assessment day. In the case of sickness, absence or other disability of the claimant, the claim may be filed by the claimant or his duly authorized agent.

(b) Claims for disability exemption. — Each claim for exemption based on the owner being permanently and totally disabled shall include one of the following forms of documentation in support of said claim: (1) A written certification by a doctor of medicine or doctor of osteopathy licensed to practice their particular profession in this state that the claimant is permanently and totally disabled; (2) a written certification by the social security administration that the claimant is currently receiving benefits for permanent and total disability; (3) a copy of the letter from the social security administration originally awarding benefits to the claimant for permanent and total disability and a copy of a current check for such benefits, marked void; (4) a current social security health insurance (medicare) card in the name of the claimant and a copy of a current check to the claimant, marked void, for benefits from the social security administration for permanent and total disability; (5) a written certification signed by the veterans administration certifying that a person is totally and permanently disabled; (6) any lawfully recognized workers' compensation documentation certifying that a person is totally and permanently disabled; (7) any lawfully recognized pneumoconiosis documentation certifying that a person is totally and permanently disabled; or (8) any other lawfully recognized documentation certifying that a person is totally and permanently disabled.

(c) Renewals.—

(1) Senior citizens. — If the claimant is age sixty-five or older, then after the claimant has filed for the
exemption once with his assessor, there shall be no need for that claimant to refile unless the claimant moves to a new homestead.

(2) Disabled. — If the claimant is permanently and totally disabled, then after the claimant has filed for the exemption once with his assessor, and signed a statement certifying that he will notify the assessor if he is no longer eligible for an exemption on the basis of being permanently and totally disabled and that the claimant will notify the assessor within thirty days of the discontinuance of the receipt of benefits for permanent and total disability, if the claimant originally claimed receipt of said benefits to document his claim for exemption, there shall be no need for that claimant to refile, unless the claimant moves to a new homestead.

(3) Waiver of exemption. — Any person not filing his claim for exemption on or before the first day of October shall be determined to have waived his right to exemption for the next tax year.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.

Any person to whom a certificate of registration shall be issued under the provisions of section four of this article shall keep such certificate posted in a conspicuous position in the place where the privilege of such business is exercised. Such certificate of registration shall be produced for inspection whenever required by the tax commissioner or by any law-enforcement officers of this state, county or municipality wherein the privileges to conduct business are exercised.

No injunction shall issue from any court in the state enjoining the collection of any business registration certificate tax required herein; and any person claiming that any business certificate is not due, for any reason, shall pay the same under protest and petition the tax commissioner for a refund in accordance with the provisions of section fourteen, article ten of this chapter.
If any person engaging in or prosecuting any business, or trade, contrary to any other provisions of this article, whether without obtaining a business certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of any such business certificate, the circuit court or the judge thereof in vacation, of the county in which such violation occurred, shall, upon proper application in the name of the state, and after ten days' written notice thereof to such person, grant an injunction prohibiting such person from continuing such business, activity or trade until he has fully complied with the provisions of this article. The remedy provided in this section shall be in addition to all other penalties and remedies provided by law.

The tax commissioner shall make available, when requested, information as to whether a person is registered to do business in the state of West Virginia.

The tax commissioner shall deliver to the commissioner of the bureau of employment programs the information contained in the business franchise registration certificate, when this information is used to implement and administer a single point of registration program for persons engaging in any business activity in the state of West Virginia. The single point of registration program shall provide that, once an individual has received a business franchise registration certificate, the tax commissioner shall notify the commissioner of the bureau of employment programs of the names, addresses and other identifying information of that individual or entity. Upon receiving this information the commissioner of the bureau of employment programs shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms and paperwork to register a business within the bureau, pursuant to subsection (b), section six-b, article two, chapter twenty-one-a and subsection (c), section two, article two, chapter twenty-three of this code.

Notwithstanding the provisions of section five, article ten of this chapter, the tax commissioner may enter into a reciprocal agreement with the governor's office of
community and industrial development and other
departments or agencies of this state for the exchange
of information contained in the application for a
business franchise registration certificate filed under
section four of this article, when the purpose for the
exchange is to implement and administer a single-point
registration program for persons engaging in business
in this state. Such other departments and agencies shall
have authority to enter into a reciprocal exchange
agreement for this purpose notwithstanding any provi-
sion of this code to the contrary.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-10. Credit for hiring of qualified employees by
eligible taxpayers engaged in manufac-
turing.

(a) A credit shall be allowed under the provisions of
this section against the primary tax liability of the
taxpayer under this article to eligible taxpayers who
hire qualified employees during the period beginning
the first day of April, one thousand nine hundred eighty-
three, and ending the thirty-first day of December, one
thousand nine hundred eighty-four.

(b) For the purpose of this section, the term “eligible
taxpayer” means a taxpayer who:

(1) Is subject to tax liability under section two-b,
article thirteen, chapter eleven of this code, relating to
business and occupation tax upon the business of
manufacturing, compounding or preparing for sale any
articles, substances or commodities; and

(2) Hires a qualified employee, as defined herein,
during the period beginning the first day of April, one
thousand nine hundred eighty-three, and ending the
thirty-first day of December, one thousand nine hundred
eighty-four; which employee to such employer is not a
returning seasonal employee or employee of like type.

(c) For the purpose of this section, the term “qualified
employee” means an employee who is hired and em-
ployed at a location within this state by an eligible
taxpayer for full-time employment, which, for the
purposes of this section, means employment for at least
one hundred twenty hours per month at a wage equal
to, or greater than, the prevailing federal minimum
wage and:

(1) At the time he or she is hired, has either exhausted
entitlement to unemployment compensation benefits
under the provisions of chapter twenty-one-a of this code
or would have exhausted such benefits within a period
of six weeks from date of employment; or

(2) At the time of employment, he or she is hired so
that one or more present employees will not be required
to continue working overtime, and with a resultant
decrease in the amount of overtime compensation paid
by the employer.

(d) The term "qualified employee" does not include a
person who displaces an employed individual, other than
an individual who is discharged for cause, or does not
include an individual employed and who is closely
related to a person who owns, directly or indirectly,
more than fifty percent of the outstanding stock of the
business, or an individual employed and who is closely
related to the owner or owners of an unincorporated
business.

(e) Notwithstanding any provision of this code to the
contrary, the bureau of employment programs shall
disclose, upon request, to the state tax commissioner or
his employees, any wage, benefits or eligibility informa-
tion with respect to an identified individual which is
contained in its records.

(f) The maximum total credits allowed to any eligible
taxpayer in all taxable years because of the hiring of
any one qualified employee shall be one thousand
dollars: Provided, That the amount of the credit allowed
by this section in any one taxable year shall be the lesser
of either one thousand dollars for each qualified
employee hired in such taxable year or ten percent of
the gross wages paid by the eligible taxpayer to each
qualified employee hired in such taxable year: Provided,
however, That unused credit for an eligible employee
may be carried forward to the next tax year if necessary
65 and until the lesser of either one thousand dollars for each qualified employee or ten percent of the gross wages paid to the eligible employee during his or her first employment year is taken as a credit by the eligible taxpayer. The credit allowable by this section for a taxable year is not subject to the fifty percent limitation specified in section nine of this article, and any unused credit may be carried over to each of the next three taxable years following the unused credit year until used or forfeited due to lapse of time.

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.


1 When used in this article, unless the context clearly requires a different meaning:

3 (1) "Claimant" means a person sixty-five years of age or older who was domiciled in this state during any portion of the calendar year preceding the year in which the claimant is eligible to file a claim for relief under this article and who had a gross household income of not more than five thousand dollars during the calendar year preceding the year in which he is eligible to file a claim for relief under this article. If two or more individuals, who otherwise qualify as claimants under this article, occupy a single homestead, such individuals may determine between themselves as to which individual shall be the claimant; however, if such individuals are unable to agree, the matters shall be referred to the state tax commissioner for determination and his decision shall be final.

3 (2) "Claimant's spouse" means the spouse of the claimant if such spouse resides in the homestead during any portion of the calendar year preceding the year in which the claimant is eligible to file a claim for relief under this article.

3 (3) "Gross household income" means all actual income received by a claimant and the claimant's spouse during the calendar year preceding the year in which he is eligible to file a claim for relief under this article and such actual income shall be computed by adding to the
West Virginia adjusted gross income (as that term is
defined in section twelve, article twenty-one of this
chapter) of such claimant and the claimant's spouse all
of the following actually received by the claimant and
claimant's spouse during such calendar year:

(a) Amount of capital gains excluded from West
Virginia adjusted gross income;

(b) Support money;

(c) Nontaxable strike benefits;

(d) Cash public assistance, welfare and relief but not
any relief under this article;

(e) Gross amount of any pension or annuity, including
railroad retirement benefits;

(f) Social security benefits;

(g) Unemployment compensation benefits;

(h) Veterans disability pensions;

(i) Workers' compensation benefits; and

(j) Private disability insurance benefits.

Gross household income does not include gifts from
nongovernmental sources, or surplus foods or other
relief in kind supplied by a governmental agency.

(4) "Gross rent" means the total amount of money or
its equivalent actually paid by a claimant during a
particular calendar year to his landlord in a bona fide
manner solely for the right of occupancy of a homestead,
exclusive of any charges for utilities, services, furniture,
furnishings or electrical or other appliances furnished
by such landlord to such claimant; and if the state tax
commissioner determines that the rent charged was
excessive for the purposes of this article, he may adjust
the same, for the purposes of this article, to a reasonable
amount.

(5) "Homestead" means a single family residential
house and the land surrounding such structure; or a part
of a multi-dwelling building, multi-purpose building or
apartment house; or a mobile home which is used as a
permanent residence and the land upon which such
mobile home is situate; and it is immaterial for the
purposes of this article whether the foregoing are being
purchased, are owned or are rented.

(6) "Household" means a claimant, a claimant and the
claimant's spouse or a claimant and any other person or
persons who resides or reside in a homestead.

(7) "Property taxes" means the amount of the real
property taxes, exclusive of any interest or charges for
delinquency thereof, paid by a claimant on his home-
stead beginning with the calendar year one thousand
nine hundred seventy-two, and for any particular
calendar year thereafter: Provided, That if a homestead
is owned by a claimant and a person or persons (other
than the claimant's spouse) as joint tenants or as tenants
in common, and such person or persons owning such
interest in such homestead do not reside in such
homestead, then for the purposes of this article, the
property taxes paid by the claimant shall be prorated
according to such claimant's percentage of ownership of
such homestead: Provided, however, That if the claim-
ant's homestead is a single unit within any multi-
dwelling building, multi-purpose building or apartment
house, and such claimant owns the entirety of any such
structure, the property taxes paid by the claimant for
the purposes of this article shall be prorated so as to
reflect the percentage of value which the claimant's
homestead is to the value of the entire structure which
is assessed in a single assessment based upon the entire
property.

(8) "Rent constituting property taxes" means twelve
percent of the gross rent paid by a claimant for the right
of occupancy of his homestead beginning with the
calendar year one thousand nine hundred seventy-two,
and for any particular calendar year thereafter.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-5. Acceptance or rejection of loan package;
deposit agreement.
(a) The board of investments may accept or reject a linked deposit loan package or any portion thereof based on the ratio of state funds to be deposited to jobs sustained or created: Provided, That notwithstanding any provision of this article to the contrary, the board of investments may not accept any linked deposit loan package or any portion thereof unless the same has been reviewed and approved by the director in his sole discretion.

(b) The board of investments shall reject any linked deposit loan package if the small business requesting such loan is not in good standing with the state tax department and the bureau of employment programs, and these agencies shall provide the board of investments with such information as to the standing of each small business loan applicant, notwithstanding any provision of this code to the contrary.

(c) Any linked deposit loan package that is being made to refinance an existing debt, or any portion thereof, must meet one of the following criteria:

(1) The small business can demonstrate in good faith that it is experiencing a substantial loss in its current (fiscal or calendar) tax-year period;

(2) The small business recently experienced a natural disaster and suffered unreimbursable casualty losses;

(3) The small business has filed to recover under the Federal Bankruptcy Act and meets the criteria in (1) above; or

(4) The small business can provide compelling information to the board of investments that jobs will be saved and/or created as a result of loan refinancing.

(d) Upon acceptance of the linked deposit loan package or any portion thereof by the board of investments and the director, the board of investments may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the board of investments. Upon acceptance of the linked deposit loan package for flood victims or any portion thereof, the
board of investments may place certificates of deposit
with the eligible lending institution at five percent
below current market rates, as determined and calcu-
lated by the board of investments. When necessary, the
board may place certificates of deposit prior to accep-
tance of a linked deposit loan package.

(e) The eligible lending institution shall enter into a
deposit agreement with the board, which shall include
requirements necessary to carry out the purposes of this
article. Such requirements shall reflect the market
conditions prevailing in the eligible lending institution's
lending area. The agreement may include a specification
of the period of time in which the lending institution is
to lend funds upon the placement of a linked deposit and
shall include provisions for the certificates of deposit to
be placed for up to two-year maturities that may be
renewed for up to an additional two years. Interest shall
be paid at the times determined by the board.

CHAPTER 16. PUBLIC HEALTH.

Article
1. State Division of Health.
29D. State Health Care.

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-16. Investigations and hearings; power to adminis-
ter oaths, subpoena witnesses, etc.; use of
information and material acquired.

The state board of health, any member thereof, the
director of health, or any officer or employee of the
department of health designated by the board of health,
shall have the power to hold investigations, inquiries
and hearings concerning matters covered by the laws of
this state pertaining to public health and within the
authority of the state board of health, and the rules,
regulations and orders of the board. Hearings shall be
open to the public and shall be held upon such call or
notice as the board shall deem advisable.

Each member of the board, the director and every
officer or employee of the department of health desig-
nated to hold any inquiry, investigation or hearing shall
have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and testimony of witnesses in the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the board or its authorized representative may invoke the aid of any circuit court of this state. The court may thereupon order such person to comply with the requirements of the subpoena order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof.

Subject to the foregoing provision the board may in its discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigation and hearings:

Provided, That information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article shall not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workers' compensation act, but such information, if available, shall be furnished upon request to the commissioner of the bureau of employment programs for the sole purpose of adjusting claims presented to the said commissioner.

ARTICLE 29D. STATE HEALTH CARE.

*§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

(a) All departments and divisions of the state, including, but not limited to, the division of health and the division of human services within the department of health and human resources; the bureau of employment programs within the department of commerce, labor and environmental resources; the public employees insurance agency within the department of administration; the division of rehabilitation services or such other department or division as shall supervise or provide rehabilitation; and the West Virginia board of regents...
or such other department or division as shall govern the state medical schools, are authorized and directed to cooperate in order, among other things, to ensure the quality of the health care services delivered to the beneficiaries of such departments and divisions and to ensure the containment of costs in the payment for such services.

(b) It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency which administers the state's medicaid program. Thus, it is the intention of the Legislature that nothing contained in this article shall be interpreted, construed, or applied to interfere with the powers and actions of the single state agency which, in keeping with applicable federal law, shall administer the state's medicaid program as it perceives to be in the best interest of that program and its beneficiaries.

c) Such departments and divisions shall develop a plan or plans to ensure that a reasonable and appropriate level of health care is provided to the beneficiaries of the various programs including the public employees insurance agency and the workers' compensation fund, the division of rehabilitation services and, to the extent permissible, the state medicaid program. The plan or plans may include, among other things, and the departments and divisions are hereby authorized to enter into:

(1) Utilization review and quality assurance programs;

(2) The establishment of a schedule or schedules of the maximum reasonable amounts to be paid to health care providers for the delivery of health care services covered by the plan or plans. Such a schedule or schedules may be either prospective in nature or cost reimbursement in nature, or a mixture of both: Provided, That any payment methods or schedules for institutions which provide inpatient care shall be institution-specific and shall, at a minimum, take into account a disproportionate share of medicaid, charity care and medical education: Provided, however, That in no event may any rate set in this article for an institutional health care
provisions for making payments in advance of the receipt of health care services by a beneficiary, or in advance of the receipt of specific charges for such services, or both;

(4) Provisions for the receipt or payment of charges by electronic transfers;

(5) Arrangements, including contracts, with preferred provider organizations; and

(6) Arrangements, including contracts, with particular health care providers to deliver health care services to the beneficiaries of the programs of the departments and divisions at agreed upon rates in exchange for controlled access to the beneficiary populations.

(d) The director of the public employees insurance agency shall contract with an independent actuarial company for a review every four years of the claims experience of all governmental entities whose employees participate in the public employees insurance agency program, including, but not limited to, all branches of state government, all state departments or agencies (including those receiving funds from the federal government or a federal agency), all county and municipal governments, or any other similar entities for the purpose of determining the cost of providing coverage under the program, including administrative cost, to each such governmental entity.

(e) Except as provided in subsection (h) of this section, any health care provider who agrees to deliver health care services to any beneficiary of a health care program of a department or division of the state, including the public employees insurance agency, the state medicaid program, the workers' compensation fund and the division of rehabilitation services, the charges for which shall be paid by or reimbursed by any department or division which participates in a plan or
plans as described in this section, shall be deemed to have agreed to provide health care services to the beneficiaries of health care programs of all of the other departments and divisions participating in a plan or plans: Provided, That a health care provider shall be in compliance with this subsection if the health care provider actually delivers health care services to all such patients who request such services or if the health care provider actually delivers health care services to at least a sufficient number of patients who are beneficiaries under the state's medicaid program to equate to at least fifteen percent of the health care provider's total patient population: Provided, however, That the delivery of health care services immediately needed to resolve an imminent life-threatening medical or surgical emergency shall not be deemed to be an agreement under this subsection: Provided further, That nothing contained in this article may be deemed to, or purport to, imply any consent by any physician on the staff of any hospital or other health care institution to accepting or agreeing to deliver health care services to any beneficiary of a health care program of a division or department of this state in any such physician's private office or practice by virtue of the fact that such physician saw such patient in connection with such physician's duties as an on-call staff physician.

(f) The administrators of the divisions of health, human services, workers' compensation, and the public employees insurance agency shall report to the Legislature no later than the first day of the regular session of the Legislature of the year one thousand nine hundred ninety concerning the plan or plans developed: Provided, That the plan or plans may be implemented prior to the delivery of such report.

(g) Nothing in this section shall be construed to give or reserve to the Legislature any further or greater power or jurisdiction over the operations or programs of the various departments and divisions affected by this article than that already possessed by the Legislature in the absence of this article.

(h) A health care provider who provides health care
services to any beneficiary of a health care program of
a department or division of the state pursuant to the
plan or plans developed in accordance with this article
may withdraw from participation in said plan or plans:
Provided, That the health care provider shall provide
written notice of withdrawal from participation in said
plan or plans to the administrator of the public
employees insurance agency: Provided, however, That a
provider who has withdrawn from further participation
is not required to render services to any beneficiaries
under the plan or plans who are not his or her patients
at the time the notice of withdrawal is provided and the
provider may continue to provide services to his or her
preexisting patients for not more than forty-five days
after tendering the notice of withdrawal without
obligating his or herself to treat such other
beneficiaries.

(i) For the purchase of health care or health care
services by a health care provider participating in a
plan under this section or in a contract under subsection
(d) or (e) of section four of this article on or after the
first day of September, one thousand nine hundred
eighty-nine, by the public employees insurance agency,
the division of rehabilitation services and the division of
workers' compensation, a state check shall be issued in
payment thereof within sixty-five days after a legitimate
uncontested invoice is actually received by such division
or agency. Any state check issued after sixty-five days
shall include 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, which interest shall be calculated from the sixty-
sixth day after such invoice was actually received by the
division or agency until the date on which the state
check is mailed to the vendor.

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

ARTICLE 22. RIDESHARING.

§17C-22-3. Workers' compensation law does not apply to
ridesharing; exceptions thereto.
Chapter twenty-three of this code providing compensation for workers injured during the course of their employment shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and place of employment or termini near such places: Provided, That if the employer owns, leases or contracts for the motor vehicle used in such arrangement, chapter twenty-three shall apply.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-12. “Motor vehicle liability policy” defined; scope and provisions of policy.

(a) A “motor vehicle liability policy” as said term is used in this chapter means an “owner’s policy” or an “operator's policy” of liability insurance certified as provided in section ten or section eleven of this article as proof of financial responsibility, and issued, except as otherwise provided in section eleven, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is thereby to be granted; and

(2) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles 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 within the United States of America or the Dominion of Canada, subject to 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.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(e) Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage;
no statement made by the insured or on his behalf and
no violation of said policy shall defeat or void said policy.

(2) The satisfaction by the insured of a judgment for
such injury or damage shall not be a condition precedent
to the right or duty of the insurance carrier to make
payment on account of such injury or damage.

(3) The insurance carrier shall have the right to settle
any claim covered by the policy, and if such settlement
is made in good faith, the amount thereof shall be
deductible from the limits of liability specified in
subdivision (2), subsection (b) of this section.

(4) The policy, the written application therefor, if any,
and any rider or endorsement which does not conflict
with the provisions of this chapter shall constitute the
entire contract between parties.

(g) Any policy which grants the coverage required for
a motor vehicle liability policy may also grant any
lawful coverage in excess of or in addition to the
coverage specified for a motor vehicle liability policy
and such excess or additional coverage shall not be
subject to the provisions of this chapter. With respect
to a policy which grants such excess or additional
coverage, the term "motor vehicle liability policy"
applies only to that part of the coverage which is
required by this section.

(h) Any motor vehicle liability policy may provide that
the insured shall reimburse the insurance carrier for
any payment the insurance carrier would not have been
obligated to make under the terms of the policy except
for the provisions of this chapter.

(i) Any motor vehicle liability policy may provide for
the prorating of the insurance thereunder with other
valid and collectible insurance.

(j) The requirements for a motor vehicle liability
policy may be fulfilled by the policies of one or more
insurance carriers which policies together meet such
requirements.

(k) Any binder issued pending the issuance of a motor
vehicle policy shall be deemed to fulfill the requirements for such a policy.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-20. Investment of funds.

The members of the retirement board shall be the trustees of the several funds created by this article, and shall determine from time to time what part of the moneys belonging to the retirement system shall be invested. When such board shall determine to invest any moneys or to convert or sell any securities, it shall by resolution so direct the custodian. The board of public works is hereby empowered to determine in what securities the investments shall be made, but such investments shall be made only in those securities to which the board of public works is limited in the investment of workers' compensation funds under section two, article three, chapter twenty-three of this code, or in bonds, notes, or other instruments evidencing loans secured by mortgages or deeds of trust insured, or with respect to which commitments to insure have been made by the United States, or by the secretary of agriculture, pursuant to the Bankhead-Jones Farm Tenant Act of 1937, as heretofore or hereinafter amended. It shall be the duty of every county, school district or municipality issuing any bonds to offer them in writing to the board of public works, prior to advertising the bonds for sale. The board of public works, within fifteen days after receipt of such offer, may accept or reject such offer in whole or in part. It shall be the duty of the custodian to collect the principal and the interest on investments when they become due and payable and to credit such collections to the retirement system.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-16. Transmission and investment of proceeds of permanent improvement fund.
If a county board accumulates the permanent improvement fund for more than two years, the proceeds of the fund shall be transmitted to the state sinking fund commission on or before the first day of December of the year in which the second successive levy for the fund is laid. Amounts subsequently accruing to the fund as of the first day of July of each year shall be transmitted to the state sinking fund commission on or before the first day of December ensuing. The state sinking fund commission shall keep a separate account for the fund of the county and shall invest the proceeds in any obligations authorized for the investment of the state workers' compensation fund. The proceeds of the fund may be withdrawn by the county board of education as authorized by this article upon sixty days' notice in writing to the state sinking fund commission.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-14. Disposition of permit fees, registration fees and fines.

All permit fees, fees paid for the registration of colors or assumed names and fines imposed by the stewards, starters or other racing officials shall be paid into a relief fund and paid out on the order of the racing commission for hospitalization, medical care and funeral expenses occasioned by injuries or death resulting from an accident sustained by any permit holder while in the discharge of his duties under the jurisdiction of the racing commission. No payment shall be made, however, for any hospitalization, medical care or funeral expenses as to any permit holder who is covered under the workers' compensation fund of this state, or any insurance policy providing payments for hospitalization, medical care or funeral expenses. Any balance in said relief fund at any time in excess of five thousand dollars, less any relief obligations then outstanding, shall thereupon be transferred by the racing commission to the state treasurer for deposit to the credit of the general revenue fund of this state.
ARTICLE 5. WAGE PAYMENT AND COLLECTION.


(a) Bond required. — With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least five consecutive years next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer’s gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer’s gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer’s payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner’s approval and determination that there are not outstanding claims against the bond.

(b) Waiver. — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) Form of bond; filing in office of circuit clerk. — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of
an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows:

- Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's 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 state.

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 state treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer 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. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) Employee cause of action. — Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) Action of commissioner. — Any employee having wages and fringe benefits unpaid may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commis-
sioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the state treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting employer for that part of the claim the employee paid. The procedure specified herein shall not be construed to preclude other actions by the commissioner or employee to seek enforcement of the provisions of this article by any civil proceedings for the payment of wages and fringe benefits or by criminal proceedings as may be determined appropriate.

(f) Posting and reporting by employer. — With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post the following in a place accessible to his or its employees:

(1) A copy of the bond or other evidence of surety specifying the number of employees covered as provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner; and

(2) A copy of the notice in the form prescribed by the commissioner regarding the duties of employers under this section. During the first two years that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before the first day of February, May, August and November of each calendar year file with
the department a verified statement of the number of employees, or a copy of the quarterly report filed with the bureau of employment programs showing the accurate number of employees, unless the commissioner waives the filing of the report upon his determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) Termination of bond. — The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

Article
1. Bureau of Employment Programs.
2. The Commissioner of the Bureau of Employment Programs.
2A. Emergency Employment Supplemental Matching Program.
2B. Group Insurance Plans for Regular Employees.
2C. Veterans Incentive Program.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.

ARTICLE 1. BUREAU OF EMPLOYMENT PROGRAMS.

§21A-1-4. Bureau of employment programs created; division; “bureau” defined.
§21A-1-5. Federal-state cooperation.
§21A-1-7. State public employment agency to become state employment service division.

As used in this chapter, unless the context clearly requires otherwise:

"Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

"Annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending with the thirtieth day of June of any calendar year.

"Average annual payroll" means the average of the last three annual payrolls of an employer.

"Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.

"Base period employer" means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

"Base period wages" means wages paid to an individual during the base period by all his base period employers.

"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year; however, if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks, in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter shall be considered to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

"Benefits" means the money payable to an individual
39 with respect to his unemployment.

40 "Board" means board of review.

41 "Calendar quarter" means the period of three consecutive calendar months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, the thirty-first day of December, or the equivalent thereof as the commissioner may by regulation prescribe.

47 "Commissioner" means the bureau of employment programs' commissioner.

49 "Computation date" means the thirtieth day of June the year immediately preceding the first day of January on which an employer's contribution rate becomes effective.

53 "Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (b), subdivision (9) of the definition of "employment" in this section, institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has on the first day of January, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

66 "Employer" means:

67 (1) Until the first day of January, one thousand nine hundred seventy-two, any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year, or the preceding calendar year, has had in employment four or more individuals irrespective of whether the same individuals were or were not employed on each of such days;

76 (2) Any employing unit which is or becomes a liable
employer under any federal unemployment tax act;

(3) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

(4) Any employing unit which, after the thirty-first day of December, one thousand nine hundred sixty-three, and until the first day of January, one thousand nine hundred seventy-two, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

(5) Any employing unit which, after the thirty-first day of December, one thousand nine hundred sixty-three, and until the first day of January, one thousand nine hundred seventy-two, in any three-week period, in any calendar year, has in employment ten or more individuals;

(6) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(7) Any employing unit which, after the thirty-first day of December, one thousand nine hundred seventy-one, (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more, or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each such day) except as provided in subdivisions (11) and (12) thereof;

(8) Any employing unit for which service in employment, as defined in subdivision (9) of the definition of
“employment” in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-one;

(9) Any employing unit for which service in employment, as defined in subdivision (10) of the definition of “employment” in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employment, as defined in paragraphs (b) and (c) of subdivision (9) of the definition of “employment” in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-seven;

(11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of “employment” in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-seven; or

(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of “employment” in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-seven.

“Employment”, subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to the first day of January, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after the thirty-first day of December, one thousand nine hundred seventy-one, by an employee, as defined in section 3306 (i) of the Federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed prior to the first day of
January, one thousand nine hundred seventy-two, which
was employment as defined in this section prior to such
date and, subject to the other provisions of this section,
service performed after the thirty-first day of De-
cember, one thousand nine hundred seventy-one, includ-
ing service in interstate commerce, by any officer of a
corporation;

(4) An individual's entire service, performed within or
both within and without this state if: (a) The service is
localized in this state, or (b) the service is not localized
in any state but some of the service is performed in this
state and (i) the base of operations, or, if there is no base
of operations, then the place from which such service is
directed or controlled, is in this state; or (ii) the base of
operations or place from which such service is directed
or controlled is not in any state in which some part of
the service is performed but the individual's residence
is in this state;

(5) Service not covered under paragraph (4) of this
subdivision and performed entirely without this state
with respect to no part of which contributions are
required and paid under an unemployment compen-
tation law of any other state or of the federal government,
is employment subject to this chapter if the individual
performing such services is a resident of this state and
the commissioner approves the election of the employing
unit for whom such services are performed that the
entire service of such individual is employment subject
to this chapter;

(6) Service is localized within a state, if: (a) The
service is performed entirely within such state; or (b) the
service is performed both within and without such state,
but the service performed without such state is inci-
dental to the individual's service within this state, as, for
example, is temporary or transitory in nature or consists
of isolated transactions;

(7) Services performed by an individual for wages are
employment subject to this chapter unless and until it
is shown to the satisfaction of the commissioner that: (a)
Such individual has been and will continue to be free
(8) All service performed by an officer or member of
the crew of an American vessel (as defined in section
three hundred five of an act of Congress entitled Social
Security Act Amendment of 1946, approved the tenth
day of August, one thousand nine hundred forty-six), on
or in connection with such vessel, provided that the
operating office, from which the operations of such
vessel operating on navigable waters within and without
the United States is ordinarily and regularly supervised,
managed, directed and controlled, is within this state;

(9) (a) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-one, by
an individual in the employ of this state or any of its
instrumentalities (or in the employ of this state and one
or more other states or their instrumentalities) for a
hospital or institution of higher education located in this
state: Provided, That such service is excluded from
“employment” as defined in the Federal Unemployment
Tax Act solely by reason of section 3306 (c) (7) of that
act and is not excluded from “employment” under
subdivision (11) of the exclusion from employment in
this section;

(b) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-seven, in
the employ of this state or any of its instrumentalities
or political subdivisions thereof or any of its instrumen-
talities or any instrumentality of more than one of the
foregoing or any instrumentality of any foregoing and
one or more other states or political subdivisions:
Provided, That such service is excluded from “employ-
ment” as defined in the Federal Unemployment Tax Act
by section 3306 (c) (7) of that act and is not excluded
from "employment" under subdivision (15) of the exclusion from employment in this section; and

(c) Service performed after the thirty-first day of December, one thousand nine hundred seventy-seven, in the employ of a nonprofit educational institution which is not an institution of higher education;

(10) Service performed after the thirty-first day of December, one thousand nine hundred seventy-one, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that act; and

(b) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after the thirty-first day of December, one thousand nine hundred seventy-one (except in Canada and in the case of Virgin Islands after the thirty-first day of December, one thousand nine hundred seventy-one, and before the first day of January, the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than service which is considered "employment" under the provisions of subdivision (4), (5) or (6) of this definition of "employment" or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a
corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

An "American employer", for purposes of this subdivision (11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed after the thirty-first day of December, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (b) of this subdivision (12); or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (b) of this subdivision (12), ten or more individuals, regardless of whether they were employed at the same moment of time;

(b) Such service is not performed in agricultural labor if performed before the first day of January, one
thousand nine hundred ninety-three, by an individual
who is an alien admitted to the United States to perform
service in agricultural labor pursuant to sections 214 (c)
and 101 (a) (15) (H) of the Immigration and Nationality
Act;

(c) For the purposes of the definition of employment,
any individual who is a member of a crew furnished by
a crew leader to perform service in agricultural labor
for any other person shall be treated as an employee of
such crew leader (i) if such crew leader holds a valid
certificate of registration under the Migrant and
Seasonal Agricultural Worker Protection Act; or
substantially all the members of such crew operate or
maintain tractors, mechanized harvesting or crop-
dusting equipment, or any other mechanized equipment,
which is provided by such crew leader; and (ii) if such
individual is not an employee of such other person
within the meaning of subdivision (7) of the definition
of employer;

(d) For the purposes of this subdivision (12), in the
case of any individual who is furnished by a crew leader
to perform service in agricultural labor for any other
person and who is not treated as an employee of such
crew leader under subparagraph (c) of this subdivision
(12), (i) such other person and not the crew leader shall
be treated as the employer of such individual; and (ii)
such other person shall be treated as having paid cash
remuneration to such individual in an amount equal to
the amount of cash remuneration paid to such individual
by the crew leader (either on his own behalf or on behalf
of such other person) for the service in agricultural
labor performed for such other person; and

(e) For the purposes of this subdivision (12), the term
“crew leader” means an individual who (i) furnishes
individuals to perform service in agricultural labor for
any other person, (ii) pays (either on his own behalf or
on behalf of such other person) the individuals so
furnished by him for the service in agricultural labor
performed by them, and (iii) has not entered into a
written agreement with such other person under which
such individual is designated as an employee of such
other person;

(13) The term "employment" includes domestic service after the thirty-first day of December, one thousand nine hundred seventy-seven, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after the thirty-first day of December, one thousand nine hundred seventy-seven, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period are employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period are employment.

The term "employment" does not include:

(1) Service performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein until the thirty-first day of December, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in paragraph (a), subdivision (9) of the definition of "employment", until the thirty-first day of December, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment
fund under a state unemployment compensation law. all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603 (c) of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after the thirtieth day of June, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of "employment" in this section. For purposes of this subdivision (5), the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of
livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in clause (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of clauses (i) and (ii) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision (5), the term “farm” includes
stock, dairy, poultry, fruit, fur-bearing animals, truck
farms, plantations, ranches, greenhouses, ranges and
nurseries, or other similar land areas or structures used
primarily for the raising of any agricultural or horti-
cultural commodities;

(6) Domestic service in a private home except as
provided in subdivision (13) of the definition of “employ-
ment” in this section;

(7) Service performed by an individual in the employ
of his son, daughter or spouse;

(8) Service performed by a child under the age of
eighteen years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an
American vessel, performed on or in connection with
such vessel, if the operating office, from which the
operations of the vessel operating on navigable waters
within or without the United States are ordinarily and
regularly supervised, managed, directed and controlled,
is without this state;

(10) Service performed by agents of mutual fund
broker-dealers or insurance companies, exclusive of
industrial insurance agents, or by agents of investment
companies, who are compensated wholly on a commis-
sion basis;

(11) Service performed (i) in the employ of a church
or convention or association of churches, or an organi-
ization which is operated primarily for religious pur-
poses and which is operated, supervised, controlled or
principally supported by a church or convention or
association of churches; or (ii) by a duly ordained,
commissioned or licensed minister of a church in the
exercise of his ministry or by a member of a religious
order in the exercise of duties required by such order;
or (iii) prior to the first day of January, one thousand
nine hundred seventy-eight, in the employ of a school
which is not an institution of higher education; or (iv)
in a facility conducted for the purpose of carrying out
a program of rehabilitation for individuals whose
earning capacity is impaired by age or physical or
mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to the first day of January, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after the thirty-first day of December, one thousand nine hundred seventy-seven, by an inmate of a custodial or penal institution;

(12) Service performed in the employ of a school, college or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college or university; or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university; and (II) such employment will not be covered by any program of unemployment insurance;

(13) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
(14) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this section; and

(15) Service in the employ of a governmental entity referred to in subdivision (9) of the definition of "employment" in this section if such service is performed by an individual in the exercise of duties (i) as an elected official; (ii) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (iii) as a member of the state national guard or air national guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (v) in a position which, under or pursuant to the laws of this state, is designated as (I) a major nontenured policymaking or advisory position, or (II) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Notwithstanding the foregoing exclusions from the definition of "employment", services, except agricultural labor and domestic service in a private home, are in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act are required to be covered under this chapter.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

"Fund" means the unemployment compensation fund established by this chapter.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.
"Institution of higher education" means an educational institution which:

1. Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

2. Is legally authorized in this state to provide a program of education beyond high school;

3. Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-doctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

4. Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

1. An individual is totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

2. An individual who has not been separated from...
employment is partially unemployed in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.

"Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than twenty dollars each month and which are required to be reported to the employer by the employee, bonuses, and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after the thirty-first day of December, one thousand nine hundred thirty-nine, and prior to the first day of January, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight, has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after the first day of January, one thousand nine hundred sixty-two, the term "wages" does not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has
been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven; and shall not include that part of remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year after one thousand nine hundred eighty, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term “employment” includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars or six thousand dollars or eight thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer
shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term "wages" as contained in section 3306 (b) of the Internal Revenue Code of 1954, as amended, is amended: (a) Effective prior to the first day of January, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after the first day of January, one thousand nine hundred sixty-six, to include remuneration in excess of three thousand six hundred dollars, or (c) effective on or after the first day of January, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two hundred dollars, or (d) effective on or after the first day of January, one thousand nine hundred seventy-eight, to include remuneration in excess of eight thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal Unemployment Tax Act;

(2) The amount of any payment made after the thirty-first day of December, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law, or (C) medical or hospital-
(3) Any payment made after the thirty-first day of December, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made after the thirty-first day of December, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after the thirty-first day of December, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the Federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust or (B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the Federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under section 3101 of the Federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer after the thirty-first day of December, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;
(8) Any payment (other than vacation or sick pay) made by an employer after the thirty-first day of December, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed shall not be interpreted to include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

“Week” means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

“Weekly benefit rate” means the maximum amount of
benefit an eligible individual will receive for one week of total unemployment.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

§21A-1-4. Bureau of employment programs created; division; "bureau" defined.

There is created an agency designated as the bureau of employment programs, composed of a division of unemployment compensation, a division of employment service, a division of job training programs, a division of workers' compensation, and such other divisions or units as the commissioner determines to be necessary.

Wherever, within this chapter, or in chapter twenty-three of this code, the term "department", "bureau", "fund" or "workers' compensation fund" is used, it shall be taken to mean bureau of employment programs.

Notwithstanding the provisions of subsection (d) (11) and subsection (d) (12), section one, article two, chapter five-f of this code, the division of employment security and the division of workers' compensation programs are hereby consolidated in an agency designated as the bureau of employment programs, which bureau shall be administered as part of the department of commerce, labor and environmental resources created pursuant to subsection (b), section one, article two, chapter five-f of this code.

§21A-1-5. Federal-state cooperation.

The bureau shall cooperate with the United States department of labor, similar agencies of the several states, and such other agencies as are concerned with the problem of employment security and public assistance and relief.


The bureau, through the commissioner and the advisory council, shall take all steps to:

(1) Reduce and prevent unemployment.

(2) Encourage and assist in the adoption of practical
5 methods of vocational training and guidance.
6 (3) Encourage the establishment by the state and local
7 subdivisions of public works reserves to finance con-
8 struction programs in times of unemployment.
9 (4) Promote reemployment and employment readjust-
10 ment between industries.
11 (5) Conduct researches and investigations toward
12 these ends and publish the results.

§21A-1-7. State public employment agency to become
state employment service division.

1 The "state public employment agency" now main-
2 tained in the department of labor shall be transferred
3 on the first day of January, one thousand nine hundred
4 thirty-seven, and shall be made the state employment
5 service division of the bureau of employment programs.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EM-
PLOYMENT PROGRAMS.

§21A-2-1. Appointment; term of office.
§21A-2-5. Compensation; traveling expenses.
§21A-2-6b. Commissioner to be furnished information by state tax commis-
sioner; secrecy of information; violation a misdemeanor.
§21A-2-16a. Work incentive program.
§21A-2-23. Veteran's training program.

§21A-2-1. Appointment; term of office.

1 The bureau shall be under the supervision of a
2 commissioner of the bureau of employment programs.
3 The commissioner shall be appointed by the governor,
4 by and with the advice and consent of the Senate, and
5 shall hold his office subject to the will and pleasure of
6 the governor.

§21A-2-5. Compensation; traveling expenses.

1 Notwithstanding the provisions of section two-a,
2 article seven, chapter six of this code, the commissioner
3 of the bureau of employment programs shall receive a
yearly salary of sixty-five thousand dollars and the
necessary traveling expenses incident to the perform-
ance of his duties. Requisition for traveling expenses
shall be accompanied by a sworn itemized statement
which shall be filed with the auditor and preserved as
a public record.

The commissioner shall be the executive and adminis-
trative head of the bureau and shall have the power and
duty to:

(1) Exercise general supervision of and make regula-
tions for the government of the bureau;

(2) Prescribe uniform rules pertaining to investiga-
tions, departmental hearings, and promulgate rules and
regulations;

(3) Supervise fiscal affairs and responsibilities of the
bureau;

(4) Prescribe the qualifications of, appoint, remove,
and fix the compensation of the officers and employees
of the bureau, subject to the provisions of section ten,
article four of this chapter, relating to the board of
review;

(5) Organize and administer the bureau so as to
comply with the requirements of this chapter and
chapter twenty-three of this code and to satisfy any
conditions established in applicable federal legislation;

(6) Make reports in such form and containing such
information as the United States department of labor
may from time to time require, and comply with such
provisions as the United States department of labor may
from time to time find necessary to assure the correct-
ness and verification of such reports;

(7) Make available to any agency of the United States
charged with the administration of public works or
assistance through public employment, upon its request,
the name, address, ordinary occupation and employment
status of each recipient of unemployment compensation,
and a statement of the recipient's rights to further
compensation under this chapter;

(8) Keep an accurate and complete record of all bureau proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the bureau;

(9) Sign and execute in the name of the state, by “The Bureau of Employment Programs”, any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of the bureau;

(11) Make the original determination of right in claims for benefits;

(12) Make recommendations and an annual report to the governor concerning the condition, operation, and functioning of the bureau;

(13) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter and chapter twenty-three of this code;

(14) Exercise any other power necessary to standardize administration, expedite bureau business, assure the establishment of fair rules and regulations and promote the efficiency of the service; and

(15) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state, which report shall be made available upon request to members of the public and press.

§21A-2-6b. Commissioner to be furnished information by state tax commissioner; secrecy of information; violation a misdemeanor.

(a) Notwithstanding the provisions of any other statute in this code, specifically, but not exclusively, section five, article ten, chapter eleven of this code, the state tax commissioner shall deliver to the commissioner of the bureau of employment programs the following information: The names, addresses and other identifying
information of all business receiving a business franchise registration certificate.

(b) All information acquired by the bureau of employment programs commissioner pursuant to subsection (a) of this section shall be used to implement and administer a single point of registration program as created in section seven, article twelve, chapter eleven of this code. The commissioner of the bureau of employment programs, upon receiving the business franchise certificate information made available pursuant to subsection (a) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of article five of this chapter.

(c) Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein or authorized elsewhere in this code or who divulges or makes known in any manner any of the aforementioned information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for not more than one year, or both, together with cost of prosecution.

(d) Reasonable cost of compilation and production of any information made available pursuant to subsection (a) of this section shall be charged to the bureau of employment programs.

(e) Information acquired by the bureau of employment programs commissioner pursuant to subsection (a) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.


The commissioner shall appoint, upon a nonpartisan merit basis, the division and unit heads and such assistants and employees as may be necessary to the efficient operation of the bureau. He shall fix their compensation in accordance with the provisions of article six, chapter twenty-nine of this code.

1 The commissioner shall establish regulations governing dismissals, terminations, layoffs and suspensions. Severance of employees' relationship with the bureau shall be in accordance with these regulations. All severances shall be for good cause. Failure to maintain technical or professional qualifications shall be a good cause for severance.


1 For the original determination of claims under this chapter and chapter twenty-three of this code the commissioner shall appoint a necessary number of deputies as his representatives.


1 The commissioner shall have all powers and duties necessary to secure to the state the benefits of congressional action for the promotion and maintenance of a system of public employment offices. To this end the provisions of the act referred to in the preceding section and such additional congressional action consistent with the above act are accepted by the state and the state pledges its observance and compliance therewith.

The bureau of employment programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled “An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such systems, and for other purposes,” approved the sixth day of June, one thousand nine hundred thirty-three, as amended: Provided, That the functions formerly performed by the advisory council under article three of this chapter, which advisory council was required under the provisions of section eleven of the Wagner-Peyser Act, shall be performed by the state job training coordinating council in accordance with section 122 (c) of the Job Training Partnership Act.

The bureau of employment programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled
26 "An act to provide for a job training program, and for
27 other purposes," enacted the eighteenth day of October,
28 one thousand nine hundred eighty-two, as amended.

29 The bureau of employment programs, by its commis-
30 sioner, is designated the agent of this state for the
31 purpose of complying with and administering sections
32 sixteen and seventeen of an act of Congress entitled "An
33 act to extend and improve the unemployment compen-
34 sation program," approved the first day of September,
35 one thousand nine hundred fifty-four.

36 The bureau of employment programs, by its commis-
37 sioner, is designated the agent of this state for the
38 purpose of complying with and administering an act of
39 Congress entitled "An act to amend Title XV of the
40 Social Security Act to extend the unemployment
41 insurance system to exservicemen, and for other
42 purposes," approved the twenty-eighth day of August,
43 one thousand nine hundred fifty-eight.

44 The bureau of employment programs, by its commis-
45 sioner, is designated the agent of this state for the
46 purpose of complying with and administering an act of
47 Congress entitled "An act relating to manpower require-
48 ments, resources, development, and utilization, and for
49 other purposes," approved the fifteenth day of March,
50 one thousand nine hundred sixty-two.

51 The bureau of employment programs, by its commis-
52 sioner, is designated the agent of this state for the
53 purpose of complying with and administering an act of
54 Congress entitled "An act to establish an effective
55 program to alleviate conditions of substantial and
56 persistent unemployment and under employment in
57 certain economically distressed areas," approved the
58 first day of May, one thousand nine hundred sixty-one.

59 The bureau of employment programs, by its commis-
60 sioner, is designated the agent of this state for the
61 purpose of complying with and administering chapter
62 three of Title III of an act of Congress entitled "An act
63 to promote the general welfare, foreign policy, and
64 security of the United States through international
65 trade agreements and through adjustment assistance to
domestic industry, agriculture, and labor, and for other purposes," approved the eleventh day of October, one thousand nine hundred sixty-two.

The bureau of employment programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to provide for the establishment of a temporary program of extended unemployment compensation, to provide for a temporary increase in the rate of the federal unemployment tax, and for other purposes," approved the third day of January, one thousand nine hundred sixty-one.

The bureau of employment programs, by its commissioner, is also designated the agent of this state for the purpose of complying with and administering other programs of the United States government such as the foregoing.

The commissioner of the bureau of employment programs is designated as the officer of this state for the purpose of complying with and administering the tasks assigned to the bureau of employment programs pursuant to section six, article two-b, chapter eighteen of this code relating to the area vocational educational program of this state.

The commissioner is also authorized to apply for an advance to the unemployment compensation fund in accordance with the conditions specified in Title XII of the "Social Security Act," as amended, in order to secure to this state and its citizens the advantages available under the provisions of that title.

In the administration of this chapter the commissioner shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the "Social Security Act" which relate to unemployment compensation, the "Federal Unemployment Tax Act," the "Wagner-Peyser
In the administration of the provisions in article six-a of this chapter, which are enacted to conform with the requirements of the “Federal-State Extended Unemployment Compensation Act of 1970,” the commissioner shall take such action as may be necessary (i) to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act, and (ii) to secure this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter which are reimbursable under said federal act.

§21A-2-16a. Work incentive program.

The bureau of employment programs, by its commissioner, is hereby designated the sponsor or agent of the United States department of labor for the establishment and operation within the state of West Virginia of the work incentive program for recipients of aid under Part A of Title IV of the Social Security Act. Such work incentive program is provided for in Part C of said Title IV of said Social Security Act. Part C was enacted by the Ninetieth Congress in Social Security Amendments of 1967, Public Law 90-248, under Section 204 thereof.

The commissioner, on behalf of the bureau, may do any and all acts necessary to establish and operate such work incentive program within the state of West Virginia.

The commissioner is hereby empowered and authorized to enter into agreements with the secretary of labor, or his designee, for the purpose of establishing and operating said work incentive program, or any part thereof, within the state of West Virginia.

§21A-2-23. Veteran’s training program.

(1) The bureau of employment programs, by its commissioner, is hereby authorized and empowered to establish a training program for qualified veteran medical personnel and former military medical corpsmen under the “medex” training program for the training of medical assistants or any similar program.
(2) The commissioner, on behalf of the bureau, may do any and all acts necessary to establish and operate such training program within the state of West Virginia.

(3) The commissioner is hereby empowered and authorized to receive funds to finance such program from agencies of the United States government, including the department of labor, the veterans administration and the department of health, education and welfare, and from other appropriate fund sources.

(4) In order to assist in the administration of this program, the commissioner shall appoint an advisory committee consisting of not more than nine members which members shall be qualified medical professionals and shall consist of representatives of state medical departments and the state medical association. This committee shall be advisory to the commissioner and shall determine general guidelines for the development and promotion of the program.

(5) The trainee under this program shall work under the supervision of a licensed physician for a period of one year and shall receive an appropriate training allowance.

ARTICLE 2A. EMERGENCY EMPLOYMENT SUPPLEMENTAL MATCHING PROGRAM.

§21A-2A-4. Notice to private business employers; applications for prospective employers.


For the purposes of this article the following terms shall have the following meanings, unless the context in which they are used clearly indicates otherwise:

(1) “Commissioner” means the commissioner of the bureau of employment programs.

(2) “Private business” means any nongovernmental business or industry in the private sector which maintains an active, bona fide place of business in this state, is duly qualified to do business in the state, and
is in good standing under the laws of this state.

(3) "Eligible unemployed person" means any person who is a bona fide resident of this state who has been eligible for unemployment compensation benefits and has received all the benefits available to him or her, and who is not gainfully employed.

(4) "Head of household" means any person who: (A) claims one or more persons, other than the filing taxpayer, as a dependent on his or her federal income tax return; (B) has living in the same household one or more dependents; and (C) receives no income from the household and does not have a spouse or dependent living in the same household who is employed in regular full-time employment: Provided, That participation in any public assistance program or receipt of public assistance benefits shall not disqualify any person from entitlement to head of household status.

§21A-2A-4. Notice to private business employers; applications for prospective employers.

The commissioner, within fifteen days after the effective date of legislation appropriating funds for the implementation of this article, shall publish statewide a notice to private business employers of the opportunity to employ eligible unemployed persons as provided for under this article.

Any private business, as defined in section two of this article, seeking to employ eligible unemployed persons may make application at any local job service office on forms to be supplied by the commissioner. Such forms shall provide space for a listing of the nature of the employment position available and the minimum experience, skills and educational requirements therefore. The form shall also provide space for an affidavit by the employer that the employment position to be filled is not being used in lieu of the recall of laid-off workers, to replace existing employees or to supplement the compensation paid existing employees. This affidavit shall also contain a statement by the private business employer that there is a reasonable expectation that this employment may continue beyond the end of the six-
month reimbursement period provided for under this article. At each job service office of the bureau of employment programs, the commissioner shall cause to be compiled a list of job openings under this program. The list shall be available for inspection by any eligible unemployed person applying for employment hereunder. The commissioner is authorized to require, prior to approval of an application by an employer, examination of such records and documents of the employer as the commissioner may consider necessary to ensure the correctness and truthfulness of the employer's affidavit.

ARTICLE 2B. GROUP INSURANCE PLANS FOR REGULAR EMPLOYEES.

§21A-2B-1. Inaugurating group insurance plans.
§21A-2B-2. Acceptance of grants from United States department of labor, bureau of employment security; state not to pay premiums.

§21A-2B-1. Inaugurating group insurance plans.

The commissioner of the bureau of employment programs is hereby authorized and empowered to negotiate for, secure and adopt for the regular employees thereof (other than provisional, temporary, emergency, and intermittent employees) who are in employee status with the bureau of employment programs on and after effective date of this article, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care, and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the commissioner bear a reasonable relationship to the foregoing coverages; but subject to the terms and conditions of this article.

§21A-2B-2. Acceptance of grants from United States department of labor, bureau of employment security; state not to pay premiums.
The group insurance plans so authorized to be established shall be subject to the following terms and conditions:

The commissioner is hereby authorized and empowered to accept on behalf of the regular employees of the bureau of employment programs, who in writing agree to participate in any plan of group insurance, granted funds provided by the United States department of labor, bureau of employment security, to pay the agency's share of the premium cost of said group policy or policies. The state of West Virginia shall not pay, or be liable for the payment of, any portion of said premiums for such group insurance.


(a) Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis, the commissioner of the bureau of employment programs is hereby authorized and empowered to approve periodic premium deductions from the salary payments due such employees as specified in a written assignment furnished the commissioner by each such employee subscribing to a group insurance plan, which deductions shall be made by the auditor of the state of West Virginia.

(b) Upon proper requisition of the commissioner, the auditor shall periodically issue a warrant payable as specified in the requisition, for the total deductions from the salaries of employees participating in any such group insurance plan. To promote efficiency and economy in making deductions and issuing warrants as provided herein, the auditor is authorized to promulgate rules and regulations specifying the form and the time and manner of presentation of requisitions issued pursuant to this section.

(c) When a participating employee shall retire from his employment, he may, if he so elects and the insurance carrier or carriers agree, remain a member of the group plan by paying the entire premium for the
ARTICLE 2C. VETERANS INCENTIVE PROGRAM.

*§21A-2C-6. Program administration.

The program established by this article shall be conducted primarily under the direction of the division of employment service of the bureau of employment programs. Each veteran who qualifies under this article for participation in this program shall be given, upon request, a voucher from a local employment service office certifying that the veteran is eligible for participation in the program described in this article. The voucher shall be in a form prescribed by the commissioner of the bureau of employment programs and the commissioner may conduct such investigations and collect such data as he considers necessary to ensure that each veteran applying for the voucher is actually qualified for participation in the program.

When an employer employs a veteran who presents the voucher herein provided for, the employer shall submit the voucher along with basic information to the bureau of employment programs as may be required for participation in this program. Each year, the commissioner of the bureau of employment programs shall certify to the state tax commissioner a list of employers who may be qualified to receive a tax credit under this program. In order to receive the appropriate tax credit, an employer must file for the tax credit provided for under this article as required by section forty-two, article twenty-one, chapter eleven of this code or by section twelve, article twenty-four, chapter eleven of this code.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10a. Optional assessments on employers and employees.


§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 deter-

*Clerk's Note: This section was also amended by H.B. 2834 (Chapter 170), which passed subsequent to this act.
mines 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 suffi-
cient 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 assess-
ment 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 em-
ployer 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 bureau of employment programs on a
form prescribed by the commissioner, at the same time
and under the same conditions as the quarterly contri-
bution 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 employ-
ers, 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.


(1) The commissioner in the name of the state shall
commence a civil action against an employer who, after
due notice, defaults in any payment or interest thereon.
If judgment is against the employer he shall pay the
costs of the action. Civil actions under this section shall
be given preference on the calendar of the court over
all other civil actions except petitions for judicial review
under article seven of this chapter and cases arising
under the workers' compensation law.

(2) A payment and interest thereon due and unpaid
under this chapter shall be a debt due the state in favor
of the commissioner. It shall be a personal obligation of
the employer and shall, in addition thereto, be a lien,
enforceable by suit in equity, upon all the property of
the employer: Provided, That no such lien shall be
enforceable as against a purchaser (including lien
creditor) of real estate or personal property for a
valuable consideration, without notice, unless docketed
as provided in chapter ninety-nine, acts of the Legisla-
ture, regular session, one thousand nine hundred forty-
three.

(3) In addition to all other civil remedies prescribed
herein the commissioner may in the name of the state
distrain upon any personal property, including intan-
gibles, of any employer delinquent for any payment and
interest 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, he may likewise distrain 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 such sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payments and interest thereon shall be entitled to such compensation as is provided by law for his services in the levy and enforcement of executions.

(4) In case a business subject to the payments and interest 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 provision, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

(5) 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 another state and admitted to do business in this state, until notified by the commissioner that all payments and interest 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.

(6) In any case where an employer defaults in payments, or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains delinquent 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 continuing 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 tax due.

(7) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the commissioner to the effect that all payments and interest thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the commissioner have been made for payment. Any official violating this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars or imprisoned not exceeding one year in the county jail, or shall be subject to both such fine and imprisonment, in the discretion of the court.


The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commissioner in the name of this state is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties if any, due such state; in any such case the commissioner of the bureau of employment programs of this state may through his legal assistant or assistants institute and conduct such suit for such other state.

Notwithstanding any other provisions of this chapter, the commissioner may recover an overpayment of benefits paid to any individual under this state or another state law or under an unemployment benefit program of the United States.
ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-9. Place of payment.

Benefits shall be paid through employment offices or, if the commissioner by rules so prescribes, through the bureau of employment programs' offices, in accordance with such regulations as the commissioner shall prescribe.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-23. Trial; preference on calendar.

Except as limited by section twenty-one of this article, a decision of the board taken to the circuit court of Kanawha county for judicial review shall be tried as any other civil action: Provided, That such actions shall have preference on the calendar of the court over all other civil actions, except cases arising under the workers' compensation law.

ARTICLE 10. GENERAL PROVISIONS.

§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 XIX 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 I, Title II, Title X,
       Title XIV or Title XVI of the Social Security Act;
   (4) Those agencies of state government responsible for
       economic and community development; secondary, post-
       secondary and vocational education; vocational rehabil-
       itation, 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; and
   (9) The division of workers’ compensation for purposes
       of collection and enforcement: Provided, That the
       division of workers’ compensation shall provide similar
       information to the other divisions of the bureau of
       employment programs.

   (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 thereof, 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.


(1) The bureau of employment programs 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.

(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.

(3) The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.

(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.


(1) The bureau of employment programs shall disclose, upon request, to officers and employees of the United States department of agriculture and any state food stamp agency, with respect to an identified individual, any of the following information which is contained in its records:

(a) Wage information;

(b) Whether the individual is receiving, has received, or has made application for unemployment compensation and the amount of any compensation being received or to be received by such individual;

(c) The current or most recent home address of the individual; and

(d) Whether the individual has refused an offer of employment and if so, a description of the employment offered and the terms, conditions and rate of pay therefor.

(2) The term "state food stamp agency" means any agency described in section (3) (n) (1) of the Food Stamp Act of 1977 which administers the food stamp program
established under such act.

(3) The requesting agency shall agree that such information shall be used only for purposes of determining the applicant's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977.

(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 for improper disclosure of information obtained in the administration of this article shall apply to the use of such information by the officers and employees of any food stamp agency or the United States department of agriculture.


(1) The bureau of employment programs shall disclose, upon request, to officers and employees of the department of housing and urban development and to representatives of public housing agencies, any wage and benefit information with respect to an identified individual which is contained in its records. The term "public housing agencies" means any agency described in section 3 (b) (6) of the United States Housing Act of 1937.

(2) The requesting agency shall agree that such information is to be used only for the purpose of determining an individual's eligibility for benefits, or the amount of benefits under any housing assistance program of the department of housing and urban development.

(3) The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.

(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
Ch. 16] BUREAU OF EMPLOYMENT PROGRAMS 311

24 officers and employees of any public housing agency or
25 the department of housing and urban development.

CHAPTER 23. WORKERS’ COMPENSATION.

Article
2. Employers and Employees Subject to Chapter; Extraterritorial
   Coverage.
3. Workers’ Compensation Fund.
4. Disability and Death Benefits.
4A. Disabled Workers’ Relief Fund.
4B. Coal-Workers’ Pneumoconiosis Fund.
4C. Employers’ Excess Liability Fund.
5. Review.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Commissioner of the bureau of employment programs; official seal; legal services.


§23-1-3. Payment of salaries and expenses — Manner; limitation.

§23-1-6. Employment of secretary and other assistants; compensation and travel expenses thereof.

§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.


§23-1-16. Omission to subscribe to workers’ compensation fund or to perform duty required by commissioner; perjury.

§23-1-17. Annual report by commissioner and occupational pneumoconiosis board.

§23-1-18. Compensation programs advisory board created; membership; appointment; terms; meetings; duties; annual reports.

§23-1-1. Commissioner of the bureau of employment programs; official seal; legal services.

1 The commissioner of the bureau of employment programs appointed under the provisions of section one, article two of chapter twenty-one-a, has the sole responsibility for the administration of this chapter. In the administration of this chapter, the commissioner shall exercise all the powers and duties described in this chapter and in article two of chapter twenty-one-a of this code. The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words “West Virginia Commissioner of Employment Programs” and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal
of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia commissioner of employment programs shall be equal to the original in evidence.

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.


All expenses peculiar to the administration of this chapter, and, when on official business, the traveling and incidental expenses of the commissioner and salaries or other compensation, traveling and other expenses of all officers or employees of the commissioner, and all expenses for furniture, books, maps, stationery, appliances, property of all kinds and dues for membership in all organizations pertaining to workers' compensation or safety in which the commissioner considers it advisable to maintain membership, shall be paid out of the workers' compensation fund.

§23-1-3. Payment of salaries and expenses — Manner; limitation.

All payments of salaries and expenses in the administration of this chapter shall be made by the state treasurer upon requisitions signed by the commissioner, directed to the auditor of the state, who shall draw his warrant therefor, and any such payment shall be
charged to the workers’ compensation fund: Provided, That the total charges against such fund under this section for any one fiscal year shall not exceed the amount appropriated therefor.

§23-1-6. Employment of secretary and other assistants; compensation and travel expenses thereof.

The commissioner may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation, which shall be paid as provided in sections two and three of this article. The commissioner, secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants who may be employed shall be entitled to receive from the workers’ compensation fund their actual and necessary expense while traveling on business of the commissioner. Such expenses shall be itemized and sworn to by the person who incurred the expense, and shall be subject to the approval of the commissioner.

§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.

Each officer who serves such subpoenas shall receive the same fee as a sheriff, and each witness who appears in obedience to a subpoena before the commissioner, or an inspector, or an examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the circuit court, which shall be audited and paid out of the workers’ compensation fund in the same manner as other expenses are audited and paid, if such witness was subpoenaed without the request of either claimant or employer at the instance of the commissioner or an inspector or an examiner. The witness fees and mileage of any witness subpoenaed by, or at the instance of, either claimant or employer shall be paid by the party who subpoenas such witness.


The commissioner shall prepare and furnish free of cost blank forms (and provide in his rules for their distribution so that the same may be readily available)
of applications for benefits for compensation from the workers' compensation fund, or directly from employers, as the case may be, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks.

§23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; perjury.

Any person, firm or corporation which is required by the provisions of this chapter to subscribe to the workers' compensation fund, and which knowingly fails to subscribe thereto, or which knowingly fails to make any report or perform any other act or duty required by the commissioner within the time specified by the commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars. Any person or firm, or the officer of any corporation, who knowingly makes a false report or statement under oath, affidavit or certification respecting any information required by the commissioner, or who shall knowingly testify falsely in any proceeding before the commissioner, shall be considered guilty of perjury, and, upon conviction thereof, shall be punished as provided by law.

§23-1-17. Annual report by commissioner and occupational pneumoconiosis board.

Annually, on or about the fifteenth day of September in each year, the commissioner and the occupational pneumoconiosis board shall make a report as of the thirtieth day of June addressed to the governor, which shall include a statement of the causes of the injuries for which the awards were made, an explanation of the diagnostic techniques used by the occupational pneumoconiosis board and all examining physicians to determine the presence of disease, the extent of impairment attributable thereto, a description of the scientific support for such techniques, and a summary of public
and private research relating to problems and prevention of occupational diseases. The report shall include a detailed statement of all disbursements, and the condition of the fund, together with any specific recommendations for improvements in the workers' compensation law and for more efficient and responsive administration thereof, which the commissioner may consider appropriate. Copies of all annual reports shall be filed with the secretary of state and shall be made available to the Legislature and to the public at large.

§23-1-18. Compensation programs advisory board created; membership; appointment; terms; meetings; duties; annual reports.

There is hereby created an advisory board to the commissioner of the bureau of employment programs to be known as "the compensation programs advisory board".

The compensation programs advisory board consists of thirteen members. The commissioner of the bureau of employment programs is an ex officio member of the board whose term as such member continues for that period in which he holds that office. The other twelve members of the board shall be appointed by the governor with three members representing employees subject to this chapter and chapter twenty-one-a of this code, three members representing employers subject to this chapter and chapter twenty-one-a of this code, three members representing providers of medical services to such employees for which such providers are compensated under the provisions of this chapter, and three members representing the citizens of this state. The term of each member except the commissioner shall be three years. Of the persons originally appointed, four members, including one member of each of the four representative groups, shall be designated to serve for terms of one year each, four members, including one member of each of the four representative groups, shall be designated to serve for terms of two years each and four members, including one member of each of the four representative groups, shall be designated to serve for a term of three years each. The terms of all the initially
appointed members of the board shall begin on the first
day of July, one thousand nine hundred ninety-one.

Upon the expiration of each of such initial appointments
the term of each new appointee shall be three years, but
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 member shall serve until the
appointment and qualification of his successor.

Members shall be eligible for reappointment. No more
than seven of the twelve members appointed by the
governor may be of the same political party.

The commissioner shall serve as chairman of the
board. The other twelve members shall select one of
their number to serve as vice chairman of the board and
to preside in the absence of the commissioner. Meetings
may be held at any time at the call of the commissioner.
The commissioner shall call a meeting whenever a
majority of the other members of the board request the
commissioner to do so. At least one meeting shall be held
annually.

The purpose of the board and the duty of its members
are to advise the commissioner on matters pertinent to
the administration of the workers' compensation pro-
gram and the unemployment compensation program,
and such other matters as the commissioner may desire.
The board shall consider any matter brought before it
by the commissioner or any appointed member and may
consider any matter referred to it by a person not a
member of the board. At the conclusion of its consider-
ation of any proposal the board shall make its recom-
mendation to the commissioner. The commissioner is not
bound by any recommendation of the board. The board
also may formulate general or long-range plans for
improvements in the administration of the programs for
the consideration of the commissioner.

By the second Wednesday of January of each year the
board shall prepare and deliver to the commissioner and
to the Legislature a report of all the matters it
considered, recommendations it made and plans it
formulated during the preceding calendar year. The
report shall include any recommendations it may have for changes in the law which would be necessary to implement any of its administrative recommendations.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1c. Extraterritorial coverage.
§23-2-8. Liability of employer electing not to pay or defaulting in payment of premiums; certain common-law defenses prohibited; exceptions.

§23-2-1c. Extraterritorial coverage.

Whenever, with respect to an employee of an employer who is a subscriber in good standing to the workers' compensation fund or an employer who has elected to pay compensation directly, as provided in section nine of this article, there is a possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is performed or is to be performed in a state or states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of such other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and filed with the commissioner within ten days after execution thereof and shall remain in effect until terminated or modified by agreement of the parties similarly filed. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter shall be entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment.

If the parties agree to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents
under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment without regard to the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease.

If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workers' compensation law or similar laws of a state other than this state, such employee and his dependents shall not be entitled to the benefits payable under this chapter on account of injury, disease or death in the course of and as a result of employment temporarily within this state, and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease or death.

If any employee or his dependents be awarded workers' compensation benefits or recover damages from the employer under the laws of another state for an injury received in the course of and resulting from the employment, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited against the amount of any benefits payable under this chapter for the same injury.


Any employer subject to this chapter who shall subscribe and pay into the workers' compensation fund the premiums provided by this chapter or who shall elect to make direct payments of compensation as herein provided 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 so subscribing or electing, and during any period in which such employer shall not be in default in the payment of such premiums or direct payments and shall have complied fully with all other provisions of this chapter. The continuation in the service of such employer shall be considered a waiver by the employee and by the parents of any minor
employee of the right of action as aforesaid, which the
employee or his or her parents would otherwise have:
Provided, That in case of employers not required by this
chapter to subscribe and pay premiums into the
workers' compensation fund, the injured employee has
remained in such employer's service with notice that his
employer has elected to pay into the workers' compensa-
tion fund the premiums provided by this chapter, or
has elected to make direct payments as aforesaid.

§23-2-8. Liability of employer electing not to pay or
defaulting in payment of premiums; certain
common-law defenses prohibited; exceptions.

All employers required by this chapter to subscribe
to and pay premiums into the workers' compensation
fund, except the state of West Virginia, the governmen-
tal agencies or departments created by it, and munic-
ipalities and political subdivisions of the state, and who
do not subscribe to and pay premiums into the workers'
compensation fund as required by this chapter and have
not elected to pay individually and directly or from
benefit funds compensation and expenses to injured
employees or fatally injured employees' dependents
under the provisions of section nine of this article, or
having so subscribed or elected, shall be in default in
the payment of same, or not having otherwise fully
complied with the provisions of section five or section
nine of this article, shall be liable to their employees
(within the meaning of this article) for all damages
suffered by reason of personal injuries sustained in the
course of employment caused by the wrongful act,
neglect or default of the employer or any of the
employer's officers, agents or employees while acting
within the scope of their employment and in the course
of their employment and also to the personal represen-
tatives of such employees where death results from such
personal injuries, and in any action by any such
employee or personal representative thereof, such
defendant shall not avail himself of the following
common-law defenses: The defense of the fellow-servant
rule; the defense of the assumption of risk; or the defense
of contributory negligence; and further shall not avail
himself of any defense that the negligence in question was that of someone whose duties are prescribed by statute: Provided, That such provision depriving a defendant employer of certain common-law defenses under the circumstances therein set forth shall not apply to an action brought against a county court, board of education, municipality, or other political subdivision of the state or against any employer not required to cover his employees under the provisions of this chapter.


If any employer shall be adjudicated to be outside the lawful scope of this chapter, the chapter shall not apply to him or his employee; or if any employee shall be adjudicated to be outside the lawful scope of this chapter, because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this chapter in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of this chapter for the creation of the workers' compensation fund, or the provisions of this chapter making the compensation to the employee provided in it exclusive of any other remedy on the part of the employee, shall be held invalid, the entire chapter shall be thereby invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of invalidity of any part of this chapter shall not affect the validity of the chapter as a whole or any part thereof.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.

§23-3-2. Custody, investment and disbursement of fund.

§23-3-3. Investment of surplus funds required.

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.

Ten percent of the funds collected and held as the workers' compensation silicosis fund under the provisions of former article six of this chapter, which article
is by this act repealed, shall be transferred to and made
a part of the workers' compensation fund provided for
in the preceding section, and the balance thereof shall
be refunded to the subscribers thereto in proportion to
their contributions to the same under the provisions of
said former article six; and all awards heretofore made
under the provisions of article six shall be paid from the
workers' compensation fund, or directly by the em-
ployer, under order of the commissioner, if the employer
has elected to carry his own risk under the provisions
of section nine, article two of this chapter: Provided,
That notwithstanding the repeal of said article six, the
provisions thereof shall be applicable in all cases of the
disease or death, because of silicosis, or an employee
whose last exposure to silicon dioxide dust has occurred
prior to the effective date of this section, whose claim
or application for compensation benefits for silicosis, or
that of his dependent, has not been filed prior to said
date, and whose employer, at the time of such exposure,
was subject to the provisions of said article six.

§23-3-2. Custody, investment and disbursement of fund.

The state treasurer shall be the custodian of the
workers' compensation fund and all premiums, deposits
or other moneys paid thereto shall be deposited in the
state treasury to the credit of the workers' compensation
fund in the manner prescribed in section five, article
two of this chapter. The workers' compensation fund
shall consist of the premiums and deposits provided by
this chapter and all interest accruing thereto upon
investments and deposits in the state depositories, and
any other moneys or funds which may be given,
appropriated or otherwise designated or accruing
thereto. Said fund shall be a separate and distinct fund
and shall be so kept upon the books and records of the
 auditor and treasurer and the state depositories in
which any part is deposited. Disbursements therefrom
shall be made upon requisitions signed by the secretary
and approved by the commissioner of the bureau of
employment programs.

The board of investments shall have authority to
invest the surplus, reserve or other moneys belonging to
the fund in the bonds of the United States, notes or
bonds of this state, bridge revenue bonds of this state
issued prior to the first day of January, one thousand
nine hundred thirty-nine, or any bonds issued to refund
the same, bonds of any county, city, town, village or
school district of the state. No such investment shall be
made, nor any investment sold or otherwise disposed of
without the concurrence of a majority of all members
of the board of investments. It shall be the duty of every
county, school district or municipality issuing any
bonds, to offer the same in writing to the board of
investments, prior to advertising the same for sale, and
the board of investments shall, within fifteen days after
receipt of such offer, accept the same and purchase such
bonds, or any portion thereof at par and accrued
interest, or reject such offer. All securities purchased by
the board of investments for investment for the workers'
compensation fund shall be placed in the hands of the
state treasurer as the custodian thereof, and it shall be
his duty to keep and account for the same as he keeps
and accounts for other securities of the state, and to
collect the interest thereon as the same becomes due and
payable and the principal when the same is due. No
notes, bonds or other securities shall be purchased by
the board of investments until and unless the attorney
general shall investigate the issuance of such notes,
bonds or securities and shall give a written opinion to
the board that the same have been regularly issued
according to the constitution and the laws of this state,
which opinion, if such notes, bonds or securities be
purchased, shall be filed with the treasurer with such
bonds or securities.

§23-3-3. Investment of surplus funds required.

Whenever there shall be in the state treasury any
funds belonging to the workers' compensation fund not
likely, in the opinion of the commissioner, to be required
for immediate use, it shall be the duty of the board of
investments to invest the same as prescribed in the
preceding section. Whenever it may become necessary
or expedient to use any of the funds so invested, the
board of investments, at the direction of the commis-
§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

(a) In any claim for benefits under this chapter, the commissioner shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article, and he shall enter an order giving all parties immediate notice of such decision. Any party shall have the right to protest the order of the commissioner and obtain an evidentiary hearing as provided in section one, article five of this chapter.

(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in section five of this article, the commissioner may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and payment of the expenses provided for in subdivision (a), section three of this article, relating to said injury, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall enter an order commencing the
payment of temporary total disability or medical benefits within fifteen days of receipt of either the employee's or employer's report of injury, whichever is received sooner, and also upon receipt of either a proper physician's report or any other information necessary for a determination. The commissioner shall give to the parties immediate notice of any order granting temporary total disability or medical benefits.

(c) The commissioner may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of such benefits. In no claim shall the commissioner enter an order granting prospective temporary total disability benefits for a period of more than ninety days: Provided, That when the commissioner determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the commissioner shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed ninety days, and shall give immediate notice to all parties of such decision.

(d) Upon receipt of the first report of injury in claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commissioner with this information within fifteen days from the date the commissioner received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the commissioner believes would be justified by the usual rate of pay for the occupation of the injured employee. The commissioner shall adjust the rate of benefits both retroactively and prospectively upon receipt of proper wage information. The commissioner shall have access to all wage information in the possession of any state agency, including wage information received by the unemployment compensation commission under chapter twenty-one-a of this code, pertinent to such determination.
(e) Upon a finding of the commissioner that a claimant who has sustained a previous compensable injury which has been closed by any order of the commissioner, or by the claimant’s return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, the commissioner shall immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amount provided for in sections six and fourteen of this article, and the expenses provided for in subdivision (a), section three of this article, relating to said disability, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the parties of his order.

(f) Where the employer is a subscriber to the workers’ compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the commissioner shall mail all workers’ compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

(g) Where the employer has elected to carry his own risk under section nine, article two of this chapter, and upon the findings aforesaid, the commissioner shall immediately issue a pay order directing the employer to pay such amounts as are due the claimant for temporary total disability benefits. A copy of the order shall be sent to the claimant. The self-insured employer shall commence such payments by mailing or delivering the payments directly to the employee within ten days of the date of the receipt of the pay order by the employer. If the self-insured employer believes that his employee is entitled to benefits, he may start payments before receiving a pay order from the commissioner.

(h) In the event that an employer files a timely objection to any order of the commissioner with respect to compensability, or any order denying an application for modification with respect to temporary total
disability benefits, or with respect to those expenses outlined in subdivision (a), section three of this article, the commissioner shall continue to pay to the claimant such benefits and expenses during the period of such disability. Where it is subsequently found by the commissioner that the claimant was not entitled to receive such temporary total disability benefits or expenses, or any part thereof, so paid, the commissioner shall, when the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, when the employer has elected to carry its 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 in section one, article three of this chapter.

(i) When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in such case determines that the claimant was not entitled to such benefits or expenses, the amount of such benefits or expenses shall be considered overpaid. The commissioner may only recover the amount of such benefits or expenses 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.

(j) In the event that the commissioner finds that based upon the employer's report of injury, the claim is not compensable, the commissioner shall provide a copy of such employer's report in addition to the order denying the claim.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.

(a) Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the
workers' compensation fund, or to direct compensation
from any employer making the election and receiving
the permission mentioned in section nine, article two of
this chapter, or otherwise under the provisions of this
chapter, on account of any personal injury to or death
to any employee caused by a self-inflicted injury or the
intoxication of such employee. For the purpose of this
chapter, the commissioner may cooperate with the
division of energy and the state department of labor in
promoting general safety programs and in formulating
rules and regulations to govern hazardous employments.

(b) If injury or death result to any employee from the
deliberate intention of his employer to produce such
injury or death, the employee, the widow, widower, child
or dependent of the employee shall have the privilege
to take under this chapter, and shall also have cause of
action against the employer, as if this chapter had not
been enacted, for any excess of damages over the
amount received or receivable under this chapter.

(c) (1) It is declared that enactment of this chapter
and the establishment of the workers' compensation
system in this chapter was and is intended to remove
from the common law tort system all disputes between
or among employers and employees regarding the
compensation to be received for injury or death to an
employee except as herein expressly provided, and to
establish a system which compensates even though the
injury or death of an employee may be caused by his
own fault or the fault of a co-employee; that the
immunity established in sections six and six-a, article
two of this chapter, is an essential aspect of this workers'
compensation system; that the intent of the Legislature
in providing immunity from common law suit was and
is to protect those so immunized from litigation outside
the workers' compensation system except as herein
expressly provided; that, in enacting the immunity
provisions of this chapter, the Legislature intended to
create a legislative standard for loss of that immunity
of more narrow application and containing more specific
mandatory elements than the common law tort system
concept and standard of willful, wanton and reckless
misconduct; and that it was and is the legislative intent to promote prompt judicial resolution of the question of whether a suit prosecuted under the asserted authority of this section is or is not prohibited by the immunity granted under this chapter.

(2) The immunity from suit provided under this section and under section six-a, article two of this chapter, may be lost only if the employer or person against whom liability is asserted acted with "deliberate intention". This requirement may be satisfied only if:

(i) It is proved that such employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing of an actual, specific intent and may not be satisfied by allegation or proof of (A) conduct which produces a result that was not specifically intended; (B) conduct which constitutes negligence, no matter how gross or aggravated; or (C) willful, wanton or reckless misconduct; or

(ii) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(B) That the employer had a subjective realization and an appreciation of the existence of such specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by such specific unsafe working condition;

(C) That such specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of such employer, which statute,
rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C) hereof, such employer nevertheless thereafter exposed an employee to such specific unsafe working condition intentionally;

(E) That such employee so exposed suffered serious injury or death as a direct and proximate result of such specific unsafe working condition.

(iii) In cases alleging liability under the provisions of the preceding paragraph (ii):

(A) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

(B) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the court shall dismiss the action upon motion for summary judgment if it shall find, pursuant to Rule 56 of the Rules of Civil Procedure that one or more of the facts required to be proved by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii) do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court shall determine that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii); and

(C) The provisions of this paragraph and of each subparagraph thereof shall be severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any
provision of a subparagraph of this paragraph be held
void, the remaining provisions of this act and this code
shall remain valid.

(d) The reenactment of this section in the regular
session of the Legislature during the year one thousand
nine hundred eighty-three shall not in any way affect
the right of any person to bring an action with respect
to or upon any cause of action which arose or accrued
prior to the effective date of such reenactment.

§23-4-7. Release of medical information to employer;
legislative findings; effect of application for
benefits; duty of employer.

(a) The Legislature hereby finds and declares that
two of the primary objectives of the workers' compensa-
tion system established by this chapter are to provide
benefits to an injured claimant promptly and to
effectuate his return to work at the earliest possible
time; that the prompt dissemination of medical informa-
tion to the commissioner and employer as to diagnosis,
treatment and recovery is essential if these two objec-
tives are to be achieved; that claimants are increasingly
burdened with the task of contacting their treating
physicians to request the furnishing of detailed medical
information to the commissioner and their employers;
that the commissioner is increasingly burdened with the
administrative responsibility of providing copies of
medical reports to the employer involved, whereas in
other states the employer can obtain the necessary
medical information direct from the treating physician;
that much litigation is occasioned in this state because
of a lack of medical information having been received
by the employer as to the continuing disability of a
claimant; and that detailed narrative reports from the
treating physician are often necessary in order for the
commissioner, the claimant's representatives and the
employer to evaluate a claim and determine whether
additional or different treatment is indicated.

(b) In view of the foregoing findings, on and after the
effective date of this section, a claimant shall irrevo-
cably agree by the filing of his application for benefits
29 that any physician may release, to the claimant's
30 employer or its representative, from time to time to such
31 claimant's employer medical reports containing detailed
32 information as to the claimant's condition, treatment,
33 prognosis and anticipated period of disability and dates
34 as to when the claimant will reach or has reached his
35 maximum degree of improvement or will be or was
36 released to return to work. Whenever a copy of any such
37 medical report is obtained by the employer or their
38 representative and the physician has not also forwarded
39 a copy of the same to the commissioner, the employer
40 shall forward a copy of such medical report to the
41 commissioner within ten days from the date such
42 employer received the same from such physician.


1 The average weekly wage earnings, wherever earned,
2 of the injured person at the date of injury, and the
3 average weekly wage in West Virginia as determined
4 by the commissioner, in effect at the date of injury, shall
5 be taken as the basis upon which to compute the
6 benefits.

7 In cases involving occupational pneumoconiosis or
8 other occupational diseases, the “date of injury” shall be
9 the date of the last exposure to the hazards of occupa-
10 tional pneumoconiosis or other occupational diseases.

11 In computing benefits payable on account of occupa-
12 tional pneumoconiosis, the commissioner shall deduct
13 the amount of all prior workers' compensation benefits
14 paid to the same claimant on account of silicosis, but a
15 prior silicosis award shall not, in any event, preclude an
16 award for occupational pneumoconiosis otherwise
17 payable under this article.

18 The expression “average weekly wage earnings,
19 wherever earned, of the injured person, at the date of
20 injury”, within the meaning of this chapter, shall be
21 computed based upon the daily rate of pay at the time
22 of the injury or upon the average pay received during
23 the two months, six months or twelve months imme-
24 diately preceding the date of the injury, whichever is
25 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 Virgi-
"nation", within the meaning of this chapter, shall be the
average weekly wage in West Virginia as determined
by the commissioner 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, occur-
ing on or after the first day of July, 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.

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-2. To whom benefits paid.
§23-4A-5. Employers providing own system of compensation.
§23-4A-8. Disabled workers' relief fund; how funded.

§23-4A-2. To whom benefits paid.

In order to participate in the disabled workers' relief
fund, an individual must be receiving workers' compen-
sation benefits by virtue of and under the laws of this
state in amounts less than those set forth in section one
of this article, and be receiving such benefits under a
permanent total disability award or be receiving such
benefits because of the death of an employee: Provided,
That a child of an employee deceased before the first day of July, one thousand nine hundred sixty-seven, who is under the age of twenty-three and is a full-time student, and, who, at the time of injury causing death, was dependent in whole or part upon the earnings of the deceased employee, shall be eligible for benefits payable from the fund established by this article in the same manner and amount as if death had occurred after the first day of July, one thousand nine hundred sixty-seven.


Each individual entitled to participate in the disabled workers' relief fund shall be entitled to receive payments without application (except that an application shall be required under section five of this article) from said fund of an amount equal to the difference between the amounts set forth in section one of this article, and the amount said individual is in fact receiving by virtue of and under the laws of this state. The first such payment shall be made concurrently with the payment to him of workers' compensation on the first day of August, one thousand nine hundred seventy-six and subsequent payments shall be made during the period thereafter in which such participant shall be entitled to workers' compensation benefits by virtue of and under the laws of this state.


Payments to an individual entitled to participate in the disabled workers' relief fund may be made from said fund by separate check or may be made from said fund and from the workers' compensation fund by one check, but each such check drawn on the two funds shall be so written as to show plainly the payments made from each fund. No disbursements shall be made from the workers' compensation fund on account of any provisions of this article.

§23-4A-5. Employers providing own system of compensation.

The commissioner shall promptly require of each employer who has elected to pay compensation direct under the provisions of section nine, article two of this
chapter a verified list of the names and addresses of all persons to whom such employer is paying workers' compensation on account of permanent total disability or because of the death of an employee and such evidence respecting such persons as the commissioner may reasonably consider necessary to determine the eligibility of any such person to participate in the disabled workers' relief fund. Any person claiming the right to participate in said fund under the provisions of this section may file his application therefor with the commissioner and shall be accorded a hearing thereon.

§23-4A-8. Disabled workers' relief fund; how funded.

For the purpose of carrying out the provisions of this article, the commissioner shall transfer annually, out of the interest earned during the previous year on investments held by the workers' compensation fund, and out of the amount assessed against self-insured employers pursuant to the provisions of article two, section nine, an amount estimated by the commissioner to be necessary to carry out the provisions of this article for one year.

Such money shall be deposited by the commissioner in the disabled workers' relief fund, as required by this article.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.


§23-4B-7. Administration.


For the relief of persons who are entitled to receive benefits by virtue of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, there is hereby established a fund to be known as the coal-workers' pneumoconiosis fund, which fund shall be separate from the workers' compensation fund. The coal-workers' pneumoconiosis fund shall consist of premiums and other funds paid thereto by employers, subject to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, who shall
11 The state treasurer shall be the custodian of the coal-
12 workers' pneumoconiosis fund, and all premiums, 
13 deposits or other moneys paid thereto shall be deposited 
14 in the state treasury to the credit of the coal-workers' 
15 pneumoconiosis fund. Disbursements from such fund 
16 shall be made upon requisition signed by the commis-
17 sioner to those persons entitled to participate therein. 
18 The West Virginia state board of investments shall have 
19 authority to invest any surplus, reserve or other moneys 
20 belonging to the coal-workers' pneumoconiosis fund in 
21 accordance with article six, chapter twelve of this code. 

§23-4B-7. Administration.

1 The coal-workers' pneumoconiosis fund shall be 
2 administered by the commissioner of the bureau of 
3 employment programs, who shall employ such em-
4 ployees as may be necessary to discharge his duties and 
5 responsibilities under this article. All payments of 
6 salaries and expenses of such employees and all 
7 expenses peculiar to the administration of this article 
8 shall be made by the state treasurer from the coal-
9 workers' pneumoconiosis fund upon requisitions signed 
10 by the commissioner.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-2. Employers' excess liability fund established.
§23-4C-5. Administration.

§23-4C-2. Employers' excess liability fund established.

1 To provide insurance coverage for employers subject 
2 to this chapter who may be subjected to liability for any 
3 excess of damages over the amount received or receiv-
4 able under this chapter, there is hereby established a 
5 fund to be known as the employers' excess liability fund, 
6 which fund shall be separate from the workers' compen-
7 sation fund. The employers' excess liability fund shall 
8 consist of premiums paid thereto by employers who may 
9 voluntarily elect to subscribe to the fund for coverage 
10 of potential liability to any person who may be entitled
to any excess of damages over the amount received or receivable under this chapter.

§23-4C-5. Administration.

1 The employers’ excess liability fund shall be admin-
2 istered by the commissioner of employment programs,
3 who shall employ such employees as may be necessary
4 to discharge his duties and responsibilities under this
5 article. All payments of salaries and expenses of the
6 employees and all expenses peculiar to the administra-
7 tion of this article shall be made by the state treasurer
8 from the employers’ excess liability fund upon requisi-
9 tions signed by the commissioner.

ARTICLE 5. REVIEW.

§23-5-2. Workers’ compensation appeal board — Gener-
ally.

1 There shall be a board to be known as the “Workers’
2 Compensation Appeal Board”, which shall be referred
3 to in this article as the “board”, to be composed of three
4 members.

5 Two members of such board shall be of opposite
6 politics to the third, and all three shall be citizens of this
7 state who have resided therein for a period of at least
8 five years. All members of the board shall be appointed
9 by the governor and shall receive an annual salary in
10 accordance with the provisions of section two-a, article
11 seven, chapter six of this code. The salaries shall be
12 payable in monthly installments, and the members shall
13 also be entitled to all reasonable and necessary traveling
14 and other expenses actually incurred while engaged in
15 the performance of their duties. The governor shall
16 designate one of the members of the board as chairman
17 thereof, and the board shall meet at the capitol or at
18 such other places throughout the state as it may consider
19 proper at regular sessions designated as “Appeal Board
20 Hearing Days” commencing on the first Tuesday of
21 every month or the next regular business day, for a
22 period of at least three days, for the purpose of
23 conducting hearings on appeals, and continuing as long
24 as may be necessary for the proper and expeditious
transaction of the hearings, decisions and other business before it. All clerical services required by the board shall be paid for by the commissioner from any funds at his disposal. The board shall, from time to time, compile and promulgate such rules of practice and procedure as to it shall appear proper for the prompt and efficient discharge of its business and such rules shall be submitted to the supreme court of appeals for approval, and if approved by such court shall have the same force and effect as the approved rules of procedure of circuit courts. The board shall employ such clerical staff as may be necessary for the efficient conduct of its business but the number of such employees shall not exceed four. Salaries of the board, and its employees, and all of its necessary operating expenses shall be paid from the workers' compensation fund. The board shall submit its annual budget to the commissioner for inclusion as a separate item in the budget estimates prepared by him annually and within the limits of such budget, all expenses of the board shall be by the requisition of the commissioner. Salaries of the employees of the board shall be fixed by the board.

The board shall report monthly to the governor and commissioner on the status of all claims on appeal.

CHAPTER 26.
STATE BENEVOLENT INSTITUTIONS.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-2. Patients; expenses; disposition of receipts.

The state commissioner of public institutions shall admit to said hospitals, under its rules and regulations, persons requiring hospital care, and shall treat free of charge persons accidentally injured in this state while engaged in their usual employment, but preference at all times shall be given to persons accidentally injured: Provided, That the commissioner of the bureau of employment programs shall pay to said hospitals for the treatment of anyone entitled to benefits or aid out of the workers' compensation fund the same fee or expenses as would be paid to a private hospital for similar treatment. All moneys collected under this section shall be
paid into the state treasury through the state commissioner of public institutions as required in section thirteen, article one, chapter twenty-five of this code.

CHAPTER 29.
MISCELLANEOUS BOARDS AND OFFICERS.

Article
18. West Virginia Railroad Maintenance Authority.

ARTICLE 12. STATE INSURANCE.

§29-12-2. Definitions.

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

(a) “Board” means the “State Board of Insurance of West Virginia”.

(b) “Company” means and includes corporations, associations, partnerships and individuals.

c) “Insurance” means all forms of insurance and bonding services available for protection and indemnification of the state and its officials, employees, properties, activities and responsibilities against loss or damage or liability, including fire, marine, casualty, and surety insurance.

(d) “Insurance company” means all insurers or insurance carriers, including, but not limited to, stock insurance companies, mutual insurance companies, reciprocal and interinsurance exchanges, and all other types of insurers and insurance carriers, including life, accident, health, fidelity, indemnity, casualty, hospitalization and other types and kinds of insurance companies, organizations and associations, but excepting and excluding workers’ compensation coverage.

(e) “State property activities” and “state responsibilities” shall mean and include all operations, boards, commission, works, projects and functions of the state, its properties, officials, agents and employees which, within the scope and in the course of governmental employment, may be subject to liability, loss, damage,
risks and hazards recognized to be and normally included within insurance and bond coverages.

(f) "State property" means all property belonging to the state of West Virginia and any boards or commissions thereof wherever situated and which is the subject of risk or reasonably considered to be subject to loss or damage or liability by any single occurrence of any event insured against.

ARTICLE 18. WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY.


The West Virginia railroad maintenance authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose.

(a) The authority shall have the power and capacity to:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections ten, eleven and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County. The location of the principal office of the authority shall be determined by the governor.

(5) Make loans and grants to governmental agencies
and persons for carrying out railroad projects by any
such governmental agency or person and, in accordance
with chapter twenty-nine-a of this code, adopt rules and
procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve,
furnish, equip, maintain, repair, operate, lease or rent
to, or contract for operation by a governmental agency
or person, railroad projects, and, in accordance with
chapter twenty-nine-a of this code, adopt rules and
regulations for the use of such projects.

(7) Make available the use or services of any railroad
project to one or more persons, one or more governmen-
tal agencies, or any combination thereof.

(8) Issue railroad maintenance authority bonds and
notes and refunding bonds of the state, payable solely
from revenues as provided in section ten of this article
unless the bonds are refunded by refunding bonds, for
the purpose of paying any part of the cost of one or more
railroad projects or parts thereof.

(9) Acquire, by gift or purchase, hold and dispose of
real and personal property in the exercise of its powers
and the performance of its duties as set forth in this
article.

(10) Acquire in the name of the state, by purchase or
otherwise, on such terms and in such manner as it
deems proper, or by the exercise of the right of eminent
domain in the manner provided in chapter fifty-four of
this code, rail properties and appurtenant rights and
interests necessary for carrying out railroad projects.

(11) 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. When the cost under any such contract or
agreement, other than compensation for personal
services, involves an expenditure of more than two
thousand dollars, the authority shall make a written
contract with the lowest responsible bidder after public
notice published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, the publication area for such
publication to be the county wherein the work is to be
performed or which is affected by the contract, which
notice shall state the general character of the work and
the general character of the materials to be furnished,
the place where plans and specifications therefor may
be examined and the time and place of receiving bids,
but a contract or lease for the operation of a railroad
project constructed and owned by the authority or an
agreement for cooperation in the acquisition or construc-
tion of a railroad project pursuant to section sixteen of
this article is not subject to the foregoing requirements
and the authority may enter into such contract or lease
or such agreement pursuant to negotiation and upon
such terms and conditions and for such period as it finds
to be reasonable and proper under the circumstances
and in the best interests of proper operation or of
efficient acquisition or construction of such railroad
project. The authority may reject any and all bids. A
bond with good and sufficient surety, approved by the
authority, shall be required of all contractors in an
amount equal to at least fifty percent of the contract
price, conditioned upon the faithful performance of the
contract.

(12) Appoint a director and employ managers, super-
intendents and other employees and retain or contract
with consulting engineers, financial consultants, account-
tants, attorneys and such other consultants and inde-
pendent 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 from the proceeds of railroad maintenance
authority revenue bonds or notes issued by the authority,
from revenues and funds appropriated for such purpose
by the Legislature or from grants from the federal
government which may be used for such purpose.

(13) Receive and accept from any state or federal
agency, grants for or in aid of the construction of any
railroad project or for research and development with
respect to railroads and receive and accept aid or
contributions from any source of money, property, labor
or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to railroads.

(15) Purchase fire and extended coverage and liability insurance for any railroad project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and be a member of, and to participate in, the state workers' compensation program.

(16) Charge, alter and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(b) In addition, the authority shall have the power to:

(1) Acquire rail properties both within and not within the jurisdiction of the interstate commerce commission and rail properties within the purview of the federal Regional Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.

(2) Enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both of rail properties upon such terms, conditions, rates or rentals as can best effectuate the purposes of this article.

(3) Acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(4) Establish a state plan for rail transportation and local rail services.

(5) Administer and coordinate such state plan.

(6) Provide in such state plan for the equitable distribution of federal rail service continuation subsidies among state, local and regional transportation authorities.
(7) Promote, supervise and support safe, adequate and efficient rail services.

(8) Employ sufficiently trained and qualified personnel for these purposes.

(9) Maintain adequate programs of investigation, research, promotion and development in connection with such purposes and to provide for public participation therein.

(10) Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(11) Comply with the regulations of the secretary of transportation of the United States department of transportation affecting federal rail service continuation programs.

(12) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 and to qualify for rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-5. Exceptions.

The provisions of this article shall not apply to the workers' compensation fund, the bureau of employment programs, the state tax commissioner, the state road commissioner, the state road commission, and the teachers' retirement board.

CHAPTER 31. CORPORATIONS.

Article 1. BUSINESS AND NONPROFIT CORPORATIONS.

1. Business and Nonprofit Corporations.

18B. Mortgage and Industrial Development Investment Pool.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

Except as provided in section six of this article, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section:

Provided, That the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(a) A provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision.
of insurance in the state where the insured resided at
the time this policy was issued; but if such filing was
not required, then the classification of occupational risk
and the premium rates shall be those last made effective
by the insurer in such state prior to the occurrence of
the loss or prior to the date of proof of change in
occupation.”

(b) A provision as follows:

“Misstatement of Age: If the age of the insured has
been misstated, all amounts payable under this policy
shall be such as the premium paid would have pur-
chased at the correct age.”

(c) A provision as follows:

“Other Insurance in This Insurer: If an accident or
sickness or accident and sickness policy or policies
previously issued by the insurer to the insured be in
force concurrently herewith, making the aggregate
indemnity for __________ (insert type of coverage or
coverages) in excess of $ ____ (insert maximum
limit of indemnity or indemnities) the excess insurance
shall be void and all premiums paid for such excess shall
be returned to the insured or to his estate.”

Or, in lieu thereof:

“Insurance effective at any one time on the insured
under a like policy or policies in this insurer is limited
to the one such policy elected by the insured, his
beneficiary or his estate, as the case may be, and the
insurer will return all premiums paid for all other such
policies.”

Provided that no policy hereafter issued for delivery
in this state which provides, with or without other
benefits, for the payment of benefits or reimbursement
for expenses with respect to hospitalization, nursing
care, medical or surgical examination or treatment, or
ambulance transportation shall contain any provision
for a reduction of such benefits or reimbursement, or
any provision for avoidance of the policy, on account of
other insurance of such nature carried by the same
insured with the same or another insurer.
(d) A provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definitions shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provisions with respect to any insured any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".

(e) A provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the
same loss under all valid loss of time coverage upon the 
insured, whether payable on a weekly or monthly basis, 
shall exceed the monthly earnings of the insured at the 
time disability commenced or his average monthly 
earnings for the period of two years immediately 
preceding a disability for which claim is made, which-
ever is the greater, the insurer will be liable only for 
such proportionate amount of such benefits under this 
policy as the amount of such monthly earnings or such 
average monthly earnings of the insured bears to the 
total amount of monthly benefits for the same loss under 
all such coverage upon the insured at the time such 
disability commences and for the return of such part of 
the premiums paid during such two years as shall 
exceed the pro rata amount of the premiums for the 
benefits actually paid hereunder; but this shall not 
operate to reduce the total monthly amount of benefits 
payable under all such coverage upon the insured below 
the sum of two hundred dollars or the sum of the 
monthly benefits specified in such coverages, whichever 
is the lesser, nor shall it operate to reduce benefits other 
than those payable for loss of time."

The foregoing policy provision may be inserted only 
in a policy which the insured has the right to continue 
in force subject to its terms by the timely payment of 
premiums (1) until at least age fifty, or (2) in the case 
of a policy issued after age forty-four, for at least five 
years from its date of issue. The insurer may, at its 
option, include in this provision a definition of “valid loss 
of time coverage”, approved as to form by the commis-
sioner, which definition shall be limited in subject 
matter to coverage provided by governmental agencies 
or by organizations subject to regulation by insurance 
law or by insurance authorities of this or any other state 
of the United States or any province of Canada, or to 
any other coverage the inclusion of which may be 
approved by the commissioner or any combination of 
such coverages. In the absence of such definition such 
term shall not include any coverage provided for such 
insured pursuant to any compulsory benefit statute 
(including any workers’ compensation or employer’s 
liability statute), or benefits provided by union welfare
plans or by employer or employee benefit organizations.

(f) A provision as follows:

"Unpaid Premium: Upon the payment of a claim under this policy, any premiums then due and unpaid or covered by any note or written order may be deducted therefrom."

(g) A provision as follows:

"Return of Premium on Cancellation: If the insured cancels this policy, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

(h) A provision as follows:

"Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

(i) A provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

(j) A provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1. Scope of article.

(a) Nothing in this article shall apply to or affect any
policy of liability or workers' compensation insurance,
or any policy of individual accident and sickness
insurance issued in accordance with article fifteen of
this chapter, or any policy issued by a fraternal benefit
society.

(b) Nothing in this article shall apply to or in any way
affect life insurance, endowment or annuity contracts or
contracts supplemental thereto which contain no
provisions relating to accident or sickness insurance
except (a) such as provide additional benefits in case of
death by accidental means and except (b) such as
operate to safeguard such contracts against lapse, or to
give a special surrender value or special benefit or an
annuity in the event that the insured or annuitant shall
become totally and permanently disabled as defined by
the contract or supplemental contract.

(c) No accident and sickness policy or certificate shall
be delivered or issued for delivery in this state insuring
more than one individual (subject to the same exceptions
provided for group life insurance in section one of article
fourteen of this chapter) unless to one of the groups set
forth in section two of this article and unless otherwise
in compliance with this article.

ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.

This article shall apply to all kinds of direct insu-
rance, except life, title, surety, disability, credit,
mortgage guaranty, ocean marine, and workers' com-
pensation insurance.

CHAPTER 38. LIENS.
ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL
SUBDIVISIONS; GARNISHMENT AND SUGGEST-
TION OF PUBLIC OFFICERS.

§38-5B-12. Exemptions.

A judgment debtor to whom money is due or to
become due which would otherwise be subject to
suggestion under this article may have the same
exempted from levy in the manner and to the extent
provided by article eight of this chapter. In the case of
salary or wages the exemption may be claimed for sums currently accruing but must be asserted anew as to any salary or wages which shall begin to accrue after the next payment date. Such exemption shall not be binding upon the state, state agency or political subdivision of which the judgment debtor is an officer or employee unless and until a certificate of exemption or true copy thereof shall have been delivered to the proper officer upon whom to make service of a suggestee execution under this article.

Money due to any lawful beneficiary thereof from any workers' compensation, unemployment compensation, pension or retirement, public assistance or relief fund or system, or under the state's emergency employment program as provided by section six, Title II of Enrolled Senate Bill No. 1 (Budget Bill), enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, or any laws amendatory of, supplementary or successor to, such program that may hereafter be enacted, shall not be subject to suggestion under this article.

Public obligations, whether in the form of bonds, notes, certificates of indebtedness, or otherwise, and whether negotiable or nonnegotiable, shall not be subject to suggestion under this article.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48-2-17. Obtaining support from unemployment compensation benefits.

§48A-2-17. Obtaining support from unemployment compensation benefits.

(a) The director shall determine on a periodic basis whether individuals receiving unemployment compensation owe child support obligations which are being enforced or have been requested to be enforced by the office. If an individual is receiving such compensation and owes any such child support obligation which is not being met, the office shall enter into an agreement with
such individual to have specified amounts withheld 
otherwise payable to such individual, and shall submit 
a copy of such agreement to the bureau of employment 
programs. In the absence of such agreement, the office 
shall bring legal process to require the withholding of 
amounts from such compensation.

(b) The director shall enter into a written agreement 
with the bureau of employment programs for the 
purpose of withholding unemployment compensation 
from individuals with unmet support obligations being 
enforced by the office. The office shall agree only to a 
withholding program that it expects to be cost effective, 
and, as to reimbursement, shall agree only to reimburse 
the bureau of employment programs for its actual, 
icremental costs of providing services to the office.

(c) The director shall establish and use written 
criteria for selecting cases to pursue through the 
withholding of unemployment compensation for support 
purposes. These criteria shall be designed to insure 
maximum case selection and minimal discretion in the 
selection process.

(d) The director shall, not less than annually, provide 
a receipt to an individual who requests a receipt for the 
support paid through the withholding of unemployment 
compensation, if receipts are not provided through other 
means.

(e) The director shall, through direct contact with the 
bureau of employment programs, process cases through 
the bureau of employment programs in this state, and 
shall process cases through support enforcement agen-
cies in other states. The director shall receive all 
amounts withheld by the bureau of employment pro-
grams in this state, forwarding any amounts withheld 
on behalf of support enforcement agencies in other 
states to those agencies.

(f) The director shall, not less than annually, review 
and document program operations, including case 
selection criteria established under subsection (c) of this 
section, and the costs of the withholding process versus 
the amounts collected and, as necessary, modify proce-
dures and renegotiate the services provided by the
bureau of employment programs to improve program
and cost effectiveness.

(g) For the purposes of this section:

(1) "Legal process" means a writ, order, summons or
other similar process in the nature of garnishment
which is issued by a court of competent jurisdiction or
by an authorized official pursuant to an order to such
court or pursuant to state or local law.

(2) "Unemployment compensation" means any comp-
ensation under state unemployment compensation law
(including amounts payable in accordance with agree-
ments under any federal unemployment compensation
law). It includes extended benefits, unemployment
compensation for federal employees, unemployment
compensation for ex-servicemen, trade readjustment
allowances, disaster unemployment assistance, and
payments under the Federal Redwood National Park
Expansion Act.

§48A-2-18. Obtaining support from workers' compen-
sation.

(a) The director shall determine on a periodic basis
whether individuals receiving workers' compensation
benefits owe child support obligations which are being
enforced or have been requested to be enforced by the
office. If an individual is receiving such compensation
and owes any such child support obligation which is not
being met, the office shall enter into an agreement with
such individual to have specified amounts withheld
otherwise payable to such individual, and shall submit
a copy of such agreement to the commissioner of the
bureau of employment programs. In the absence of such
agreement, the office shall bring legal process to require
the withholding of amounts from such compensation.

(b) The director shall enter into a written agreement
with the commissioner of the bureau of employment
programs for the purpose of withholding workers' compen-
sation benefits from individuals with unmet
support obligations being enforced by the office. The
office shall agree only to a withholding program that it
expects to be cost effective, and, as to reimbursement,
shall agree only to reimburse the commissioner of the
bureau of employment programs for the commissioner’s
actual, incremental costs of providing services to the
support enforcement agency.

(c) The director shall establish and use written
criteria for selecting cases to pursue through the
withholding of workers’ compensation benefits for
support purposes. These criteria shall be designed to
insure maximum case selection and minimal discretion
in the selection process.

(d) The director shall, not less than annually, provide
a receipt to an individual who requests a receipt for the
support paid through the withholding of workers’
compensation benefits, if receipts are not provided
through other means.

(e) The director shall, through direct contact with the
commissioner of the bureau of employment programs,
process cases through the commissioner of the bureau
of employment programs in this state, and shall process
cases through support enforcement agencies in other
states. The director shall receive all amounts withheld
by the commissioner of the bureau of employment
programs in this state, forwarding any amounts with­
held on behalf of support enforcement agencies in other
states to those agencies.

(f) The director shall, not less than annually, review
and document program operations, including case
selection criteria established under subsection (c) of this
section, and the costs of the withholding process versus
the amounts collected and, as necessary, modify proce­
dures and renegotiate the services provided by the
commissioner of the bureau of employment programs to
improve program and cost effectiveness.
(g) For the purposes of this section:

(1) "Legal process” means a writ, order, summons or other similar process in the nature of garnishment which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to state or local law.

(2) "Workers’ compensation benefits” means any compensation payable under state workers’ compensation law as temporary total disability benefits.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

57-5-4d. Hospital records; opening of sealed envelopes.

Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, court, officer, body or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition or hearing. Before directing that such inner-envelope or wrapper be opened, the judge, court, officer, body or tribunal shall first ascertain that either (1) the records have been subpoenaed at the insistence of the patient involved or his counsel of record, or (2) the patient involved or someone authorized in his behalf to do so for him has consented thereto and waived any privilege of confidence involved. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

The provisions of this section shall not apply in a workers’ compensation proceeding if the pertinent record is the record of the claimant therein or a claimant’s decedent: Provided, That nothing in this section, or the preceding section, shall limit in any manner the availability of and access to documents as
25 provided in the rules of civil procedure or elsewhere in
26 this code by the parties to any civil action and their
27 counsel.

CHAPTER 60.
ALCOHOL BEVERAGE CONTROL.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-30. Employees.

1 The department of health and human resources, the
2 bureau of employment programs, the public employees
3 retirement system, the public employees insurance
4 agency, any state agency or local community action
5 agency receiving job training partnership act funds and
6 any other agency of the state involved with benefits or
7 services to the unemployed, shall work individually with
8 all employees whose jobs have been terminated by this
9 chapter in order to recommend benefits, services,
10 training, interagency employment transfer or other
11 employment. The alcohol beverage control commission
12 director and directors of all other state agencies shall
13 use best efforts to employ qualified employees who were
14 employed at the facility immediately prior to such sale
15 or transfer: Provided, That notwithstanding any other
16 provision of the code to the contrary, in filling vacancies
17 at other facilities or other state agencies the director and
18 the directors of other agencies shall, for a period of
19 twenty-four months after such transfer or sale give
20 preference over all but existing employees to qualified
21 employees who were permanently employed at the
22 facility immediately prior to such transfer or sale:
23 Provided, however, That qualified persons who were
24 permanently employed at an alcohol beverage control
25 commission facility immediately prior to such transfer
26 or sale shall not supersede those employees with recall
27 rights in other state agencies.
CHAPTER 17

(H. B. 2837—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections eighteen, nineteen, twenty and twenty-one, all relating to the West Virginia capital company act; declaration of policy and purposes; definitions; rules; standards; tax credits; recapture provisions; unqualified investments; disclosure requirements; application requirements; qualified investments; liquidation and dissolution; restrictions on investments; conflict of interest; investment reporting and record keeping; examinations; results of failure to comply; ruling procedure; effective date; transition rules; limitation on financial institutions and confidentiality.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article one, chapter five-e 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 four new sections, designated sections eighteen, nineteen, twenty and twenty-one, all to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-2. Declaration of policy.
§5E-1-3. Purposes.
§5E-1-4. Definitions.
§5E-1-5. Rules.
§5E-1-6. Qualification of West Virginia capital companies.
§5E-1-7. Minimum standards of qualified West Virginia capital companies.
§5E-1-8. Tax credits.
§5E-1-9. Recaptures; unqualified investments.
§5E-1-10. Application requirements.
§5E-1-12. Qualified investments; liquidation or dissolution.
§5E-1-14. Conflict of interest.
§5E-1-15. Investment reporting and record keeping.
§5E-1-16. Examination.
§5E-1-17. Failure to comply.
§5E-1-19. Effective date; transition rules.
§5E-1-20. Limitation on financial institutions.

§5E-1-2. Declaration of policy.

(a) The Legislature finds and declares that the West Virginia economy can be strengthened by promoting private investment in West Virginia businesses.

(b) The Legislature further finds that:

(1) Investment of capital in the West Virginia economy can be promoted by making tax credits available to taxpayers investing in West Virginia capital companies;

(2) Demands on state revenues restrict the financial ability of this state to make unlimited tax credits available for investment purposes and require that this state place reasonable limits on the total amount of tax credits to be made available for investment incentives;

(3) Establishment of a tax credit program, which gives priority to investments in capital companies in the order in which they are qualified as such, will encourage investment in West Virginia businesses; and

(4) The promotion of private investment in West Virginia businesses will tend to reduce unemployment by creating new or maintaining existing employment opportunities for the citizens of this state.

§5E-1-3. Purposes.

(a) The purpose of this article is to promote the development of the human resources and the diversification of the economy of West Virginia. The investment capital generated by this article must be used to encourage and assist the strengthening of the economy
through loans, equity investments, and other business transactions for purposes of developing new business and industry in West Virginia, rehabilitating existing business and industry, and stimulating and assisting in the expansion of business activities that promote and maintain the economic stability of this state by providing maximum opportunities for employment of West Virginians and improving the standard of living of the people of this state.

(b) This article is aimed at:

(1) Increasing the availability of development capital in order to encourage and assist in the creation, development and expansion of businesses based in West Virginia;

(2) Developing, preserving, diversifying, expanding and strengthening the agricultural, industrial and business base of West Virginia's economy, particularly for those businesses utilizing this state's technical, managerial and research resources in domestic and international markets; and

(3) Providing the residents of West Virginia with greater opportunities to invest and participate in the economic development and potential of this state.

§5E-1-4. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided:

(a) “Authority” means the West Virginia economic development authority, provided for in article fifteen, chapter thirty-one of this code.

(b) “Capital base” means equity capital or net worth.

(c) “Certified West Virginia capital company” means:

(1) A West Virginia business development corporation created pursuant to article fourteen, chapter thirty-one 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. The investment by a West Virginia capital company in purchases of property to be leased by it, as lessor, through a capital lease to a West Virginia business lessee engaged in one of the above enumerated activities is a qualified investment.

(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.

(g) “Capital lease” means a lease meeting one or more of the following criteria:

(1) The lease transfers ownership of the property to the lessee at the end of the lease term by the lessee’s exercise of a purchase option which is de minimis in amount; or

(2) The lease term is equal to seventy-five percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last twenty-five percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used; or

(3) Under generally accepted accounting principles,
the lessee cannot treat payments to the capital company as payments under an operating lease; or

(4) For federal income tax purposes, the parties are required to treat payments as amortization of principal and interest.

§5E-1-5. Rules.

1 The authority shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article, and to efficiently provide for the general administration of this article.

§5E-1-6. Qualification of West Virginia capital companies.

1 (a) The authority shall qualify West Virginia capital companies commencing after the effective date of this article. A company seeking to be qualified as a West Virginia capital company must make written application to the authority on forms provided by the authority. The application must contain the information required by section ten of this article. Further, the application must specify the level of capitalization of the company.

2 (b) The application shall set forth the applicant's purpose.

3 (c) The authority may certify West Virginia capital companies in existence after the first day of July, one thousand nine hundred eighty-six.

4 (d) An applicant shall establish an escrow account located in West Virginia, into which account funds invested in the applicant shall be deposited and held for the period of time between their receipt by the applicant and the designation of the applicant as a qualified company. Such funds shall not be invested by the applicant until such designation by the authority. In the event the authority does not designate the applicant a qualified company, such funds shall be returned to the investors, if requested by the investors.

5 (e) A West Virginia capital company may not qualify
or be issued a certification under this article unless the company holds a valid business registration certificate issued pursuant to article twelve, chapter eleven of this code. A company exempt from registration under said article twelve may qualify and be certified under this article upon proof of its exemption.

§5E-1-7. Minimum standards of qualified West Virginia capital companies.

The following requirements apply to all qualified companies:

(a) A qualified company shall be a certified West Virginia capital company.

(b) A qualified company shall have a reasonably accessible business office located within the state of West Virginia, which office shall have a listed telephone number and shall be open to the public during normal business hours.

(c) A qualified company shall maintain all of its capital base, except that which has been invested to meet the purposes of this article, in bank accounts and financial institutions which are located in the state of West Virginia, or in such other interest bearing instruments with a maturity of less than one year which are obtained from and managed by a West Virginia corporation.

(d) A qualified company shall have a capital base of at least one million dollars, but not greater than four million dollars, which capital base must be raised after the first day of July, one thousand nine hundred eighty-six. If the amount of the investment in a qualified company in any fiscal year exceeds four million dollars, such amount in excess of four million dollars is not eligible for tax credits under this article.

(e) No more than twenty-five percent of each separate capital base of a qualified company shall be in the form of full recourse, interest bearing demand notes, backed by an irrevocable letter of credit or bond from a reputable source, as determined by the authority.
(f) A qualified company's stated purpose must be to encourage and assist in the creation, development or expansion of West Virginia businesses.

(g) A qualified company, seeking to establish a separate capital base or increase its capital base, shall establish an escrow account located in West Virginia, into which account funds invested in the qualified company shall be deposited and held for the period of time between their receipt by the qualified company and the designation as qualified of a separate capital base or an increase to capital base. Such funds shall not be invested by the qualified company until such designation by the authority. In the event the authority does not designate as qualified a separate capital base or an increase to capital base, such funds shall be returned to the investors, if requested by the investors.

(h) A qualified company, when soliciting funds for its capital base, must disclose that no tax credit for the investor's investment will be available until the authority designates as qualified a capital base or an increase to capital base and issues to the qualified company notice of such qualification and a certificate of tax credit.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to rule of the authority.

(b) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year. The authority shall allocate these credits to qualified companies in the order that said companies are qualified.

(c) Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company is entitled to a tax credit equal to fifty percent of the investment. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It
shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership or by a corporation electing to be treated as a Subchapter S corporation may be divided pursuant to election of partners or shareholders.

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full, or until forfeited: Provided, That (i) tax credits may not be carried forward beyond fifteen years, and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted under this article for any tax year beginning on or after the first day of January, one thousand nine hundred ninety-one. The categories by dollar amount of credit received shall be as follows:

(1) More than $1.00, but not more than $50,000;

(2) More than $50,000, but not more than $100,000;

(3) More than $100,000, but not more than $250,000;
§5E-1-9. Recaptures; unqualified investments.

A taxpayer receiving a credit hereunder is not subject to a recapture provision for any credit claimed by the taxpayer but the company is subject to the civil penalty provided for in subsection (e), section twelve of this article.

§5E-1-10. Application requirements.

Each company shall make application to the authority on forms provided therefor, which shall set forth:

1. Capitalization level of capital company;
2. Purpose of the company;
3. Names of investors;
4. A process for disclosing to investors the tax credit available pursuant to this article. Such disclosure shall clearly set forth that no tax credit will be available until the qualification of said company shall be granted by the authority and the disclosure of immunity of the state for damages is provided to said investors; and
5. The location of the escrow account which has been established for investors for the period of time between the investment and the qualification of the capital company by the authority.

§5E-1-12. Qualified investments; liquidation or dissolution.

(a) A qualified West Virginia capital company must use its capital base to make qualified investments according to the following schedule:

1. At least thirty-five percent of its capital base within the first year of the date on which the capital company was designated as qualified by the authority;
2. At least fifty-five percent of its capital base within two years of the date on which the capital company was designated as qualified by the authority; and
(3) At least seventy-five percent of its capital base within three years of the date on which the capital company was designated as qualified by the authority.

(b) A qualified West Virginia capital company shall maintain its qualified investments for a period of at least five years, except that a qualified West Virginia capital company receiving repayment or return of a qualified investment (exclusive of interest, dividends or other earnings on such investment) shall reinvest the company's repaid or returned cost basis in the investment in a qualified investment which remains outstanding for a period of time at least equal to the remainder of the initial five-year term, such reinvestment to be made within twenty-four months from the date of repayment or return, unless a waiver is obtained from the authority prior to the end of said twenty-four month period: Provided, That such returned amounts may be accumulated for six months before the aforesaid twenty-four month period commences.

(c) A qualified West Virginia capital company may be dissolved or liquidated only after notice and approval of such dissolution or liquidation by the authority. The authority shall provide by rule a procedure for application for approval to dissolve or liquidate a capital company and such approval shall not be unreasonably withheld, the intention of this provision being to ensure compliance with subsection (b) of this section. Unless waived by the authority, no dissolution or liquidation of any qualified West Virginia capital company may be made if such dissolution or liquidation would cause the provisions of subsection (b) of this section to be violated.

(d) The authority shall annually audit the certified audit of each qualified company, as required by section sixteen of this article, and the results of said audit shall be used to notify the tax commissioner of any companies that are not in compliance with this section.

(e) A qualified West Virginia capital company that fails to make or maintain qualified investments pursuant to this section shall pay to the tax commissioner a penalty equal to all of the tax credits allowed to the
taxpayers investing in said company with interest at the
rate of one and one-half percent per month, compounded
monthly, from the date the tax credits were certified as
allocated to the qualified West Virginia capital com-
pany. The tax commissioner shall give notice to the
company of any penalties under this section. The tax
commissioner may abate said penalty upon written
request if the capital company establishes reasonable
cause for the failure to make qualified investments. The
tax commissioner shall deposit any amounts received
under this subsection in the state general fund.


(a) No more than thirty percent of the equity raised
by a West Virginia capital company under this article
may be invested in any one West Virginia business.

(b) No portion of the capital base of a West Virginia
capital company may be invested in a business that is
the “alter ego” of that West Virginia capital company.
Furthermore, after the effective date of this article no
investments shall be made by a West Virginia capital
company to a business that is an “alter ego” of the West
Virginia capital company: Provided, That this restric-
tion on investments shall not effect any contracts
entered into prior to the effective date of this article. For
purposes of this subsection, a business is an “alter ego”
of the West Virginia capital company if any one or more
of the following criteria are satisfied:

(1) The ownership of the business is substantially
related to the ownership of the capital company; or

(2) The board of directors of the business is controlled
by the capital company: Provided, That a capital
company may control the board of directors of a
business if control consists of no more than a simple
majority of the board.

(c) No owner, director, officer or employee of a West
Virginia capital company may occupy any management
position in any business in which that capital company
has invested, unless such person is filling that manage-
ment position in an effort to remedy problems arising
from a lack of profitability of the business or from
dishonesty of the persons otherwise managing the
business.

(d) Each qualified West Virginia capital company
may not invest any of its capital base in any of the
following businesses:

(1) Banks;
(2) Savings and loan associations;
(3) Credit companies;
(4) Financial or investment advisors;
(5) Brokerage or financial firms;
(6) Other capital companies;
(7) Charitable and religious institutions;
(8) Conventional oil and gas exploration;
(9) Insurance companies;
(10) Residential housing or development; or
(11) Any other business which the authority deter-
mines to be against the public interest, the purposes of
this article or in violation of any law.

The authority, by the promulgation of rules in
accordance with section five of this article, may
designate, in addition to those listed in this subsection,
other businesses in which capital companies may not
invest any of their capital base.

§5E-1-14. Conflict of interest.

No officer, member or employee of the authority shall
be financially interested, directly or indirectly, in any
capital company.

§5E-1-15. Investment reporting and record keeping.

(a) Each qualified West Virginia capital company
shall report, at a minimum, to the tax commissioner and
the authority on a semiannual basis:

(1) The name of each investor in the qualified West
Virginia capital company who is entitled to a tax credit;

(2) The amount of each investor's investment in the capital company;

(3) The amount of the tax credit allowed to the investor and the date on which the qualified investment that generated the tax credit was made;

(4) All qualified investments the company has made;

(5) An affidavit for each business invested in, prepared by any officer or partner of each such respective business which sets forth (A) that it is a business located in or principally based in West Virginia; (B) that more than fifty percent of its assets, operations and employees are located in West Virginia; and (C) a brief description of the activities the business is engaged in; and

(6) An affidavit pertaining to each business invested in, prepared by an officer, partner or trustee of the qualified West Virginia capital company which demonstrates with respect to such business (A) that the business invested in is not a business engaged in an activity prohibited by subsection (d), section thirteen of this article; (B) that more than fifty percent of the assets, operations and employees of the business invested in are located in West Virginia; and (C) that, if a qualified investment, the business invested in is engaged in activities that meet the requirements of a qualified investment as listed in subdivision (d), section four of this article.

(b) The authority, by the promulgation of rules, in accordance with section five of this article, may require that each qualified West Virginia capital company, in its semiannual report to the tax commissioner and the authority, disclose information in addition to the disclosures required by subsection (a) of this section.

(c) The company shall provide each investor in a qualified West Virginia capital company with a certificate authorizing the tax credits, and a true copy of the certificate shall be submitted with each taxpayer's tax return claiming a credit under section eight of this article.
§5E-1-16. Examination.

(a) Annually each qualified capital company shall cause its books and records to be audited by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. In addition to the performance of a financial audit, the audit shall address the methods of operation and conduct of the business of the West Virginia capital company to determine compliance with this article and that the funds received by the company have been invested within the time limits required by this article. Upon completion, a copy of the audit report shall be certified and sent to the authority.

(b) The authority may examine, under oath, any of the officers, directors, agents, employees or investors of a West Virginia capital company regarding the affairs and business of the company. The authority may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may at once be reported to the circuit court of the county in which the company is located or the persons subpoenaed reside and the circuit court shall enforce obedience to the subpoena or subpoena duces tecum in the manner provided by law for compliance with a subpoena or subpoena duces tecum issued by a circuit court of this state.

(c) In addition to the audits herein required, the authority and the tax commissioner may jointly audit any capital company or number of capital companies in any year on a random basis, or for cause, or for any other basis the authority or the tax commissioner may select. The tax commissioner may also audit any company or business in which a capital company has made an investment, or which a capital company proposes to invest, on a random audit selection basis, or for cause, or on any other basis the tax commissioner may select. Nothing herein shall be construed to prohibit the tax commissioner from conducting any audit relating to the administration or enforcement of the tax laws of this state which the tax commissioner may, in his discretion, determine to be appropriate.
§5E-1-17. Failure to comply.

(a) If the examination conducted pursuant to section sixteen discloses that a West Virginia capital company is not in compliance with the provisions of this article, the authority may exercise any of the powers necessary and appropriate to protect the authority's interest.

(b) The authority shall give a West Virginia capital company written notice of any inadequacies in its compliance with the provisions of this article, and specify a period of time the company has to redress such inadequacies. Failure within said time period to make corrections will result in further action by the authority pursuant to this section.


(a) The authority may issue an informal ruling as to its position on the application of this article and the rules promulgated thereunder to a stated transaction or event.

(b) Such rulings will only be issued after receipt of a written request and payment of a nonrefundable filing fee.

(c) Such rulings shall not constitute binding precedent, and are issued solely for the guidance of those persons requesting the ruling. Such rulings may be modified prospectively at any time with notice to the recipient of the ruling at said recipient's last address known to the authority and may be published or released by the authority with facts or characteristics identifying the person or persons requesting the ruling omitted or modified.

(d) Notwithstanding any provision of this section, rulings relating to issues of taxation may be issued only by the state tax commissioner and may not be issued by the authority.

§5E-1-19. Effective date; transition rules.

(a) The provisions of subsection (d), section eight of this article relating to credit carryback that were in effect on the first day of January, one thousand nine
hundred ninety, apply to any credit earned prior to the
effective date of the amendments to that subsection,
notwithstanding the fact that the taxpayer's taxable
year does not end until a date on or after the effective
date of the amendments to that subsection. The provi-
sions of subsections (d) and (f), section eight of this
article, as amended, prohibiting credit carryback and
application of credit against interest, penalties and
additions to tax apply to any credit earned on or after
the effective date of the amendments to that subsection.

(b) The provisions of section twelve of this article
relating to minimum investment time limitations that
were in effect on the first day of January, one thousand
nine hundred ninety, apply to any capital base qualified
prior to the effective date of the amendments to that
subsection. The provisions of subsection (a), subsection
(b), subsection (c), section twelve of this article, as
amended, apply to any capital base qualified on a date
on or after the effective date of the amendments to that
section.

(c) The provisions of section twenty of this article
relating to financial institutions are applicable to
investments by financial institutions made on a date on
or after the effective date of that section. Investments
made on a date prior to the effective date of that section
remain unaffected by the provisions of that section.

(d) The provisions of subsections (b) through (d),
section thirteen of this article relating to investment
restrictions are applicable to investments made on a
date on or after the effective date of those subsections.
Investments made on dates prior to the effective date of
those subsections remain unaffected by the provisions of
those subsections.

(e) As used in this section “amendments” means
changes made in this article during the regular session
of the Legislature in the year one thousand nine hundred
ninety-one.

§5E-1-20. Limitation on financial institutions.

Not more than forty-nine percent of the total capital
2 base of any capital company may be owned by banks,
3 savings and loan associations, savings banks or other
4 financial institutions, or any affiliate thereof, as
5 investors. No officer, employee or director of any such
6 financial institution may serve on the board of any
7 capital company formed under the provisions of this
8 article.


(a) The authority shall, by the promulgation of rules,
1 determine which records, reports, or information
2 obtained from any person or entity under this article are
3 to be treated by the agency as confidential and not
4 subject to disclosure, except as hereinafter provided in
5 subsection (c) of this section: Provided, That notwith-
6 standing any other provision of law to the contrary, the
7 authority shall make available to the public the name
8 of any business or company receiving a qualified
9 investment from a capital company and the name of the
10 capital company so investing.

(b) Any other records, reports, or information ob-
12 tained from any person or entity under this article shall
13 be made available to the public, except that upon a
14 showing at the time of submission, satisfactory to the
15 authority, by any person or entity, that records, reports
16 or information, or a particular part thereof, to which the
17 authority or any officer, employee or representative
18 thereof has or will have access under this section, if
19 made public, would divulge information entitled to
20 protection under Section 1905 of Title 18 of the United
21 States Code as said section reads on the twentieth day
22 of December, one thousand nine hundred ninety, such
23 information or particular portion thereof is confidential
24 in accordance with the purposes of this section. In
25 submitting data under this article, a person required to
26 provide such data may designate the data which he or
27 she believes is entitled to protection under this subsec-
28 tion and submit such designated data separately from
29 other data submitted under this article. A designation
30 under this subsection shall be made in writing and in
31 such manner as the authority may prescribe.
(c) Notwithstanding the foregoing provisions of this section, any record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of this state charged with administering the provisions of this article and may be disclosed pursuant to proceeding under subsection (b), section sixteen of this article. Notwithstanding the previous sentence, and notwithstanding any provision of this article, the provisions of this code regarding confidentiality and the disclosure of tax returns and tax information, including specifically section five-d, article ten, chapter eleven of this code, apply to the authority, its agents and employees and to information submitted to the authority under this article.

CHAPTER 18
(S. B. 108—By Senators Spears and Brackenrich)

[Passed March 7, 1991; 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 continuation of 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.

1 (a) There is hereby established within the department of human services the child advocate office.

3 (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-two, to allow for the completion of an audit by the joint committee on government operations.
CHAPTER 19
(S. B. 393—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the administration of programs for handicapped children by the bureau of public health.

Be it enacted by the Legislature of West Virginia:

That article four, 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 4. HANDICAPPED CHILDREN.

§49-4-1. Purpose.
§49-4-2. Children to whom article applies.
§49-4-3. Powers of state bureau.
§49-4-5. Assistance by other agencies.

§49-4-1. Purpose.

1 The purpose of this article is to provide for the continuation and development of services for handicapped children. The state bureau of public health within the department of health and human resources shall formulate and apply administrative policies concerning the care and treatment of physically handicapped children and shall cooperate with other agencies responsible for such care and treatment.

9 In the development of administrative policies, the state bureau shall cooperate with the United States department of health and human services and shall comply with the regulations that agency prescribes under the authority of the "Social Security Act", and is hereby authorized to receive and expend federal funds for these services.
§49-4-2. Children to whom article applies.
1 It is the intention of this article that services for
2 handicapped children shall be extended only to those
3 children for whom adequate care, treatment and
4 rehabilitation are not available from other than public
5 sources.

§49-4-3. Powers of state bureau.
1 In the care and treatment of handicapped children the
2 state bureau of public health shall, so far as funds are
3 available for the purpose:
4 (1) Locate handicapped children requiring medical,
5 surgical, or other corrective treatment and provide
6 competent diagnosis to determine the treatment
7 required.
8 (2) Supply to handicapped children treatment, includ-
9 ing hospitalization and aftercare leading to correction
10 and rehabilitation.
11 (3) Guide and supervise handicapped children to
12 assure adequate care and treatment.

1 Within thirty days after the birth of a child with a
2 congenital deformity, the physician, midwife, or other
3 person attending the birth shall report to the state
4 bureau of public health, on forms prescribed by them,
5 the birth of such child.
6 The report shall be solely for the use of the state
7 department of health and human resources and shall not
8 be open for public inspection.

§49-4-5. Assistance by other agencies.
1 So far as practicable, the services and facilities of the
2 state departments of health, education, vocational
3 rehabilitation and corrections or their successors shall
4 be available to the state bureau of public health for the
5 purposes of this article.

1 All payments from any corporation, association,
2 program or fund providing insurance coverage or other
payment for medicine, medical, surgical and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required for a handicapped child, shall be applied toward the total cost of treatment.

CHAPTER 20
(Com. Sub. for S. B. 29—By Senators Burdette, Mr. President, Holliday, M. Manchin, Pritt, Wehrle and J. Manchin)

[Passed March 7, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend chapter forty-nine 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 providing services to families of people with developmental disabilities through the West Virginia family support program; setting forth findings; defining terms; specifying services which may be provided under the program; setting forth eligibility criteria; setting forth the primary focus of the program; specifying the administering agency and setting forth its duties; providing for the establishment of state and regional family support councils; and providing for the reimbursement of certain expenses.

Be it enacted by the Legislature of West Virginia:

That chapter forty-nine 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. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

§49-4A-1. Findings.
§49-4A-3. Family support services.
§49-4A-4. Eligibility; primary focus.
§49-4A-5. Program administration.
§49-4A-6. Regional and state family support councils.
§49-4A-1. Findings.

(a) The West Virginia Legislature finds that families are the greatest resource available to individuals with developmental disabilities, and they must be supported in their role as primary caregivers. It further finds that supporting families in their effort to care for their family members at home is more efficient, cost effective and humane than placing the developmentally disabled person in an institutional setting.

(b) The Legislature accepts the following as basic principles for providing services to support families of people with developmental disabilities:

(1) The quality of life of children with developmental disabilities, their families and communities is enhanced by caring for the children within their own homes. Children with disabilities benefit by growing up in their own families, families benefit by staying together and communities benefit from the inclusion of people with diverse abilities.

(2) Adults with developmental disabilities should be afforded the opportunity to make decisions for themselves, live in typical homes and communities and exercise their full rights as citizens. Developmentally disabled adults should have the option of living separately from their families but when this is not the case, families of disabled adults should be provided the support services they need.

(3) Services and support for families should be individualized and flexible, should focus on the entire family and should promote the inclusion of people with developmental disabilities in all aspects of school and community life.

(4) Families are the best experts about what they need. The service system can best assist families by supporting families as decision makers as opposed to making decisions for them.

(c) The Legislature finds that there are at least ten thousand West Virginians with developmental disabilities who live with and are supported by their families,
and that the state's policy is to prevent the institutionalization of people with developmental disabilities.

(d) To maximize the number of families supported by this program, each family will contribute to the cost of goods and services based on their ability to pay, taking into account their needs and resources.

(e) Therefore, it is the intent of the Legislature to initiate, within the resources available, a program of services to support families who are caring for family members with developmental disabilities in their homes.


(a) "Family or primary caregiver" means the person or persons with whom the developmentally disabled person resides and who is primarily responsible for the physical care, education, health and nurturing of the disabled person. The term does not include hospitals, sanitariums, nursing homes, personal care homes or any other such institution.

(b) "Legal guardian" means the person who is appointed legal guardian of a developmentally disabled person and who is responsible for the physical and financial aspects of caring for such person, regardless of whether the disabled person resides with his or her legal guardian or another family member.

(c) "Family support" means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

(d) "Family support program" means a coordinated system of family support services administered by the department of health and human resources through initial contracts with agencies within four of the state's behavioral health regions.

(e) "Developmental disability" means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;
(2) Is manifested before the person attains age twenty-two;

(3) Results in substantial functional limitations in three or more of the following areas of major life activity: (A) Self-care; (B) receptive and expressive language; (C) learning; (D) mobility; (E) self-direction; (F) capacity for independent living; and (G) economic self-sufficiency; and

(4) Reflects the person’s need for services and supports which are of lifelong or extended duration and are individually planned and coordinated.

The term “developmental disability”, when applied to infants and young children, means individuals from birth to age five, inclusive, who have substantial developmental delays or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(f) “Regional family support council” means the council established by the regional family support agency under the provisions of section six of this article to carry out the responsibilities specified in this article.

(g) “State family support council” means the council established by the department of health and human resources under section six of this article to carry out the responsibilities specified in this article.

§49-4A-3. Family support services.

(a) The regional family support agency, designated under section five of this article, shall direct and be responsible for the individual assessment of each developmentally disabled person which it has designated and shall prepare a service plan with such developmentally disabled person’s family. The needs and preferences of the family will be the basis for determining what goods and services will be made available within the resources available.

(b) The family support program may provide funds to families to purchase goods and services included in the family service plan. Such goods and services related to
the care of the developmentally disabled person may include, but are not limited to:

(1) Respite care;
(2) Personal and attendant care;
(3) Child care;
(4) Architectural and vehicular modifications;
(5) Health-related costs not otherwise covered;
(6) Equipment and supplies;
(7) Specialized nutrition and clothing;
(8) Homemaker services;
(9) Transportation;
(10) Utility costs;
(11) Integrated community activities; and
(12) Training and technical assistance.

(c) As part of the family support program, the regional family support agency, designated under section five of this article, shall provide case management for each family to provide information, service coordination and other assistance as needed by the family.

(d) The family support program shall assist families of developmentally disabled adults in planning and obtaining community living arrangements, employment services and other resources needed to achieve, to the greatest extent possible, independence, productivity and integration of the developmentally disabled adult into the community.

(e) The family support program shall conduct outreach to identify families in need of assistance and shall maintain a waiting list of individuals and families in the event that there are insufficient resources to provide services to all those who request them.

(f) The family support program may provide for differential fees for services under the program or for
appropriate cost participation by the recipient families consistent with the goals of the program and the overall financial condition of the family.

(g) Funds, goods or services provided to eligible families by the family support program under this article shall not be considered as income to those families for any purpose under this code or under the rules and regulations of any agency of state government.

§49-4A-4. Eligibility; primary focus.

(a) To be eligible for the family support program, a family must have at least one family member who has a developmental disability, as defined in this article, living with the family.

(b) The primary focus of the family support program is supporting: (1) Developmentally disabled children, school age and younger, within their families; (2) adults with developmental disabilities who choose to live with their families; and (3) adults with developmental disabilities for whom other community living arrangements are not available and who are living with their families.

§49-4A-5. Program administration.

(a) The administering agency for the family support program is the department of health and human resources.

(b) The department of health and human resources shall initially implement the family support program through contracts with an agency within four of the state's behavioral health regions, with the four regions to be determined by the department of health and human resources in consultation with the state family support council. These regional family support agencies of the family support program will be responsible for implementing the provisions of this article and subsequent policies for the families of persons with developmental disabilities residing within their respective regions. Each regional family support agency must serve at least twenty-five families from each fifty thousand dollars allocated. The total appropriation from
general revenue funds for this program shall not exceed two hundred thousand dollars for the fiscal year beginning the first day of July, one thousand nine hundred ninety-one.

(c) The department of health and human resources, in conjunction with the state family support council, shall adopt policies and procedures regarding:

(1) Development of annual budgets;

(2) Program specifications;

(3) Criteria for awarding contracts for operation of regional family support programs and the role of regional family support councils;

(4) Annual evaluation of services provided by each regional family support agency, including consumer satisfaction;

(5) Coordination of the family support program and the use of its funds, throughout the state and within each region, with other publicly funded programs, including medicaid;

(6) Performance of family needs assessments and development of family service plans;

(7) Methodology for allocating resources to families within the funds available; and

(8) Resolution of grievances filed by families pertaining to actions of the family support program.

(d) The department of health and human resources shall submit a report to the governor and the Legislature on the family support program, by the fifteenth day of January, one thousand nine hundred ninety-two, and by the fifteenth day of September every year thereafter, so long as the program is funded.

§49-4A-6. Regional and state family support councils.

(a) Each regional family support agency shall establish a regional family support council comprised of at
least seven members, of whom at least a majority shall be persons with developmental disabilities or their parents or primary caregivers. Each regional family support council shall meet at least quarterly to advise the regional family support agency on matters related to local implementation of the family support program and to communicate information and recommendations regarding the family support program to the state family support council.

(b) The secretary of the department of health and human resources shall appoint a state family support council comprised of at least twenty-two members, of whom at least a majority shall be persons with developmental disabilities or their parents or primary caregivers. A representative elected by each regional council shall serve on the state council. The state council shall also include a representative from each of the following agencies: The state developmental disabilities planning council, the state protection and advocacy agency, the university affiliated center for developmental disabilities, the office of special education, the association of community mental health/mental retardation programs and the early intervention interagency coordinating council.

(c) The state council shall meet at least quarterly. The state council will participate in the development of program policies and procedures, annual contracts and perform such other duties as are necessary for statewide implementation of the family support program.

(d) Members of the state and regional councils who are a member of the family or the primary caregiver of a developmentally disabled person shall be reimbursed for travel and lodging expenses incurred in attending official meetings of their councils. Child care expenses related to the developmentally disabled person shall also be reimbursed. Members of regional councils who are eligible for expense reimbursement shall be reimbursed by their respective regional family support agencies.
CHAPTER 21
(Com. Sub. for H. B. 2897—By Delegates Douglas and Staton)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to noncustodial counseling of a child and his or her parent or guardian.

Be it enacted by the Legislature of West Virginia:

That section three, article five, 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 5. JUVENILE PROCEEDINGS.

§49-5-3. Noncustodial counseling of a child.

1 The court at any time, or the state department or other official upon a request from a parent, guardian, or custodian, may, without institution of proceedings under this article, refer a child alleged to be delinquent to a counselor at the state department or a community mental health center or other professional counselor in the community. In the event the child refuses to respond to such reference the state department may serve a notice by first-class mail or personal service of process upon the child, setting forth the facts and stating that the department will seek a noncustodial order from the court directing the child to submit to counseling. The notice shall set forth the time and place for the hearing on the matter. The court or referee after hearing may direct the child to participate in a noncustodial period of counseling not to exceed six months. Upon recommendation of the department, and with the consent of the child’s parent or guardian, the court or referee may also allow the participation of such parent or guardian in said counseling. No information obtained as the result of such counseling shall be admissible in a subsequent proceeding under this article except a dispositional proceeding.
AN ACT to amend article six, 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 twenty-six, relating to employee representative organization bulletin boards.

Be it enacted by the Legislature of West Virginia:

That article six, 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 twenty-six, to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-26. Employee representative organization bulletin boards.

1 A bulletin board of a limited size shall be provided for posting notices of employee representative organizations. Such bulletin boards will be placed in convenient and generally accessible locations in all workplaces where the members of such organizations are employed.
2 Provisions shall be made for separate bulletin boards for each employee representative organization. The cost of such bulletin boards will be assumed by the requesting employee or the employee’s representative organization.
3 Such boards shall be used exclusively by the employee representative organization and for organization purposes only.
CHAPTER 23
(Com. Sub. for H. B. 2726—By Delegates Murensky and Stemple)

[Passed March 5, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of administration; department of education; department of health and human resources; division of corrections; 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) **Claim against the Department of Administration:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

<table>
<thead>
<tr>
<th>Claim</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Xerox Corporation</td>
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(b) **Claims against the Department of Education:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

<table>
<thead>
<tr>
<th>Claim</th>
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<tbody>
<tr>
<td>Trilla J. Daubenspeck</td>
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<tr>
<td>Sherry S. Hetzel</td>
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<tr>
<td>Steven J. Klos</td>
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<tr>
<td>Patricia F. Stine</td>
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<tr>
<td>Dennis L. Venderlic</td>
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<tr>
<td>Salena M. Williams</td>
<td>$250.00</td>
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</table>

(c) **Claims against the Department of Health and Human Resources:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

<table>
<thead>
<tr>
<th>Claim</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Blue Ridge Funeral Homes</td>
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<tr>
<td>Copeland &amp; Associates of West Virginia</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>

(d) **Claims against the Division of Corrections:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

<table>
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<th>Claim</th>
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<td>Richard E. McCray, DDS</td>
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<td>Reynolds Memorial Hospital</td>
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(e) **Claims against the Workers' Compensation Fund:**

**(TO BE PAID FROM WORKERS' COMPENSATION FUND)**

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<td>West Virginia American Water Company</td>
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CHAPTER 24
(H. B. 2727—By Delegates Murensky and Stemple)

[Passed March 7, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

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:

(To be paid from Crime Victims Compensation Fund)

(1) Adkins, Debra L. $ 5,000.00
(2) Adkins, Debra L., as guardian of Eric Wayne Adkins $ 5,000.00
(3) Adkins, Debra L., as guardian of Tracy Lynn Adkins $ 5,000.00
(4) Ball, Juanita $ 5,000.00
(5) Barrett, Edna S. $ 15,000.00
(6) Clark, Jacquelyn M. $ 15,000.00
(7) Davison, Joyce E. $ 2,500.00
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<td>23</td>
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<td>Escue, Jesse A.</td>
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<td>Escue, Noah A.</td>
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<td>26</td>
<td>Escue, Shirley</td>
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<td>27</td>
<td>Farrar, Debra M.</td>
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<td>Fields, Rickey L.</td>
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<td>Fowler, Joseph E.</td>
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<td>30</td>
<td>Hitchings, Susan F., as guardian of Cheryl E. Hitchings</td>
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<td>Honaker, Sueanne B.</td>
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<td>Jackson, Margaret L.</td>
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<td>Jackson, Margaret L., as guardian of Jamey S. Jackson</td>
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<td>34</td>
<td>Jackson, Margaret L., as guardian of Matthew D. Jackson</td>
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<td>35</td>
<td>Johnson, Eunice D., as guardian of Faith A. Coles</td>
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<td>Kerry, Thomas E.</td>
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<td>Kimbler, Brady</td>
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<td>Mason, Floyd L., III</td>
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<td>40</td>
<td>Mason, L. Hope, as guardian of the estate of Brandon C. Mason</td>
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<td>41</td>
<td>Mason, L. Hope, as guardian of the estate of Lisa C. Mason</td>
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<td>42</td>
<td>Mays, James A.</td>
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<td>McEwan, Jane, as guardian of Amanda Beth Murphy</td>
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<td>Miller, Charles W., as guardian of Joshua W. Miller</td>
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<td>45</td>
<td>Norman, Cheryl, as guardian of Casey Nuckols</td>
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<td>Radcliffe, Rex A.</td>
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<td>Rhodes, Patricia S.</td>
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<td>Rinard, Phyllis J.</td>
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<td>Stafford, Judy Nuckols</td>
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<td>Stafford, Judy Nuckols, as guardian of Brittany Nuckols</td>
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<td>Townsend, Joyce A.</td>
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<td>52</td>
<td>Wallace, Reginald N.</td>
<td>$500.00</td>
</tr>
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</table>
CLAIMS

65 (39) Watts, Warren C. ........................................ $ 1,000.00
66 TOTAL ......................................................... $253,000.00

67 The Legislature finds that the above moral obligations
68 and the appropriations made in satisfaction thereof shall
69 be the full compensation for all claimants herein.

CHAPTER 25
(S. B. 625—Originating in the Committee on Finance)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT finding and declaring certain claims against the
state and its agencies to be moral obligations of the state
and directing the auditor to issue warrants for the
payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the
adjutant general; alcohol beverage control administration; attorney general; board of education; board of trustees of the university of West Virginia; commission on aging; department of administration; department of health and human resources; department of public safety; department of tax and revenue; department of veterans affairs; division of corrections; division of culture and history; division of forestry; division of highways; division of motor vehicles; division of tourism and parks; ethics commission; farm management commission; governor’s office of community and industrial development; human rights commission; public employees insurance agency; railroad maintenance authority; real estate commission; state treasurer; supreme court of appeals; and West Virginia public defender services; workers’ compensation fund, to be moral obligations of the state and directing payment thereof.
The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each 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) **Claims against the Adjutant General:**

*(TO BE PAID FROM GENERAL REVENUE FUND)*

1. Appalachian Power Company  ... $ 1,971.62
2. Enviro-San, Inc  .................. $ 33.00
3. West Virginia Power Gas Service ... $ 3,171.71

(b) **Claims against the Alcohol Beverage Control Administration:**

*(TO BE PAID FROM SPECIAL REVENUE FUND)*

1. Greenbrier County Public Service District No. 2 ........ $ 235.17
2. J. Don McClung  .................. $ 76.80
3. Ryder Truck Rental, Inc  .......... $ 1,607.17

(c) **Claims against the Attorney General:**

*(TO BE PAID FROM GENERAL REVENUE FUND)*

1. American Telephone and Telegraph Company ......... $ 1,378.77
2. Federal Express Corporation ................ $ 39.00
3. Government Institutes, Inc ................ $ 52.50
4. National Association of Attorneys General ........ $ 225.00
5. National Business Institute, Inc ............... $ 420.00
6. Barbara Steinke  .................. $ 381.75
7. Viking Way Limited Partnership .......... $ 74.59
8. Xerox Corporation  .................. $ 2,864.47

(d) **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. ........ $ 461,163.32
    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, That
the Board of Education of the County of McDowell shall
be paid the full amount provided for in this bill no later
than the last day of June, one thousand nine hundred
ninety-five.

(2) The Board of Education of the
    County of Grant .................. $ 336,049.05
    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, That the
Board of Education of the County of Grant shall be paid
the full amount provided for in this bill no later than
the last day of June, one thousand nine hundred ninety-
two.

(3) The Board of Education of the
    County of Ritchie ............... $ 198,318.00
    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, That the
Board of Education of the County of Ritchie shall be
paid the full amount provided for in this bill no later than the last day of June, one thousand nine hundred ninety-two.

(e) Claims against the Board of Trustees of the University of West Virginia:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Larry James Williams ............ $ 844.23
(2) Xerox Corporation .................. $ 6,001.45

(f) Claim against the Commission on Aging:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Robert C. Bianchinotti ........... $ 576.00

(g) Claim against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) William F. Moore ................ $ 32.78

(h) Claims against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Area Psychiatric and Psychotherapy Group ........... $ 2,205.00
(2) The Douglas Mortuary ............... $ 325.00
(3) Greenbrier Medical Arts Pharmacy ............. $ 290.62
(4) Hamilton Business Systems .......... $ 375.00
(5) HCA River Park Hospital,
    formerly known as
    HCA Huntington Hospital ....... $ 2,979.00
(6) Manpower Temporary Services ....... $ 105.40
(7) Res-Care, Inc. ...................... $ 182,299.45
(8) Saint Albans
    Psychiatric Hospital .............. $ 18,560.00
(9) Allan Saoud, D.O ................... $ 450.00
(10) Scott Funeral Home, Inc ......... $ 800.00
(11) Mary Swim ....................... $ 10,000.00
(12) Xerox Corporation ................. $ 7,639.76

(i) Claims against the Department of Public Safety:
CLAIMS

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Kanawha Valley Radiologists $ 42.00
(2) Richard Wayne Kocher $ 25,000.00
(3) Orthopaedic Associates, Inc. $ 74.00
(4) Charles Winkler, Sr. $ 35,000.00

(j) Claim against the Department of Tax and Revenue:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) F.W. Dodge $ 354.77

(k) Claim against the Department of Veterans Affairs:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T $ 125.81

(l) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Michael W. Blatt, M.D. $ 865.00
(2) Builders Service and Supply Company $ 542.46
(3) Cabell Huntington Surgery Center $ 676.00
(4) County Commission of Barbour County $ 2,850.00
(5) County Commission of Cabell County $ 25,470.00
(6) County Commission of Fayette County $ 35,184.17
(7) County Commission of Gilmer County $ 2,415.00
(8) County Commission of Greenbrier County $ 34,286.86
(9) County Commission of Logan County $ 23,505.00
(10) County Commission of Marion County $ 27,594.06
(11) County Commission of Marshall County $ 1,669.97
(12) County Commission of McDowell County $ 25,407.90
(13) County Commission of
Ch. 25]  

CLAIMS  

149  Mercer County ....................... $46,605.00
150  (14) County Commission of
151  Mineral County ....................... $44,751.46
152  (15) County Commission of
153  Mingo County ....................... $15,290.00
154  (16) County Commission of
155  Morgan County ....................... $8,160.00
156  (17) County Commission of
157  Nicholas County ..................... $13,880.89
158  (18) County Commission of
159  Pendleton County .................... $1,530.00
160  (19) County Commission of
161  Putnam County ....................... $5,295.00
162  (20) County Commission of
163  Raleigh County ....................... $31,597.62
164  (21) County Commission of
165  Randolph County ..................... $10,050.00
166  (22) County Commission of
167  Roane County ......................... $19,232.44
168  (23) County Commission of
169  Wirt County ......................... $1,407.29
170  (24) Nephrology Associates, Inc. .... $1,378.00
171  (25) Pinewood Medical Corporation ... $212.00
172  (26) Princeton Community Hospital ... $250.78
173  (27) Radiology, Inc. ................. $27.00
174  (28) West Virginia
175  University Hospital ................... $1,325.00
176  (29) James D. Weinstein ............. $150.00
177  (30) Wheeling Clinic ................. $410.75
178  (m) Claims against the Division of Culture and History:

   (TO BE PAID FROM GENERAL REVENUE FUND)
179  
180  (1) Alpine Festival, Inc. ............ $4,282.83
181  (2) Charleston Cash Register
182  Co., Inc. ............................ $1,688.00
183  (3) Xerox Corporation ................ $310.00
184  (n) Claims against the Division of Forestry:

   (TO BE PAID FROM GENERAL REVENUE FUND)
185  
186  (1) Robert E. Smith .................. $483.04
187  (2) Juergen Wildman .................. $718.00
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<th>#</th>
<th>Name</th>
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**Claims against the Division of Highways:**

*(TO BE PAID FROM STATE ROAD FUND)*
CLAIMS

(1) Paul H. Anderson .................. $ 1,666.67
(2) Joe O. Baldwin and
   Elaine Baldwin .................. $ 200.00
(3) Edith R. Bence .................. $ 1,666.67
(4) Mary Berkley .................. $ 11,153.40
(5) Craig Callison .................. $ 500.00
(6) Trudy L. Corr .................. $ 341.78
(7) Esther Deal .................. $ 1,400.00
(8) Angela M. DeMary ........... $ 88.99
(9) Berniece E. Fatony .......... $ 6,425.00
(10) Kimberly D. Golden .......... $ 170.97
(11) Neva D. Graziani ........... $ 231.28
(12) David T. Holcomb, Jr. ........ $ 800.00
(13) Rodney Shawn Johnson ........ $ 3,000.00
(14) L. G. DeFelice, Inc ........... $ 142,513.88
(15) Connie Michael ............... $ 220.39
(16) Mathilda Mae Miller ........... $ 1,666.66
(17) Virgil O’Neal ............... $ 98.57
(18) Junior J. Orsburn .......... $ 10,312.11
(19) Margaret Orsburn .......... $ 1,000.00
(20) Blanche Osborne and
    Arthur Osborne ............... $ 818.00
(21) Wanita Sommerville ........... $ 100.00
(22) Tri-State Asphalt Corporation $ 10,030.45
(23) Sheri Waggoner ............... $ 500.00
(24) Westbrook Construction, Inc. $ 613,245.92
(25) Bonnie H. Woody ............. $ 151.62
(26) Chiquita Rose Yanero ........ $ 116.32
(27) Betty J. Zator ............... $ 2,250.00

(p) Claims against the Division of Tourism and Parks:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Avis/Checker Leasing, Inc .... $ 1,234.78
(2) Hamilton Business Systems .... $ 23.72
(3) Cecil E. Lacy ............... $ 300.00

(q) Claim against the Ethics Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Lyne Ranson .................. $ 2,037.50

(r) Claims against the Farm Management Commission:
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<td>(1) Associated Fabricators, Inc.</td>
<td>General Revenue Fund</td>
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<td>(2) Beckley Veterinary Hospital</td>
<td>General Revenue Fund</td>
<td>$265.50</td>
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<td>(3) MGM/Farm City, Inc.</td>
<td>General Revenue Fund</td>
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<td>(s) Claim against the Governor’s Office of Community and Industrial Development:</td>
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<td>(t) Claim against the Human Rights Commission:</td>
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<td>(u) Claims against the Public Employees Insurance Agency:</td>
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<td>(v) Claim against the Railroad Maintenance Authority:</td>
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<td>(w) Claim against the Real Estate Commission:</td>
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<td>(x) Claims against the State Treasurer:</td>
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<td>(y) Claims against the Supreme Court of Appeals:</td>
<td>General Revenue Fund</td>
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CHAPTER 26
(S. B. 620—By Senator Felton)

An Act to amend and reenact sections fourteen, nineteen and twenty-six, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment of guardian when a
minor has received an award; attorneys’ fees to be the same as those allowed attorneys in indigent criminal cases; and rules and regulations of court of claims.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, nineteen and twenty-six, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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.


§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.

(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
designate or commissioner shall reduce an award of
compensation or deny a claim for an award of compen-
sation 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 the claimant. 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.

(h) If an award of compensation of five thousand dollars or more is made to a minor, a guardian shall be appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the minor's estate.


(a) By separate order, the court, or a judge or commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered and reimbursement for reasonable and necessary expenses actually incurred shall be paid from the crime victims compensation fund to the attorney representing a claimant in a proceeding under this article at the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-nine of this code. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section. In no event may a prosecuting attorney or assistant prosecuting attorney represent any victim seeking compensation under this article.

(b) Each witness called by the court to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the crime victims compensation fund.

1 (a) The court of claims may promulgate rules and regulations to implement the provisions of this article.

2 (b) The court of claims shall promulgate rules and regulations 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 27
(Com. Sub. for H. B. 2873—By Delegate Rollins)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

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 West Virginia consumer credit and protection act.

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; rules relating to insurance.

1 (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;
(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;

(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;

(e) Reasonable closing costs with respect to a debt secured by an interest in land; and

(f) Documentary charge or any other similar charge for documentary services in relation to securing a title, so long as said charge is applied equally to cash customers and credit customers alike and so long as such documentary charge does not exceed fifty dollars.

(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 employ-
ment, 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 insur-
ance 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 provid-
ing 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 insurance 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-insured has not received repayment of or a credit for the amount of any unearned premiums by the seller of such insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer. An insurer, seller or creditor who fails to refund any unused insurance premium or provide the proper notification of payoff shall be liable for civil damages up to three times the amount of the unused premium as well as other remedies as provided for by section one hundred nine, article seven of this chapter.

(3) The insurance commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance, and the authority of the insurance commissioner to promulgate the same shall be exclusive notwithstanding any other provisions of this code to the contrary.
CHAPTER 28
(Com. Sub. for H. B. 2632—By Delegates Susman and Rutledge)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-c, relating to the regulation of credit services organizations; definitions; conduct prohibited; requiring a bond or surety account; registration with secretary of state, disclosure statement; form and terms of contracts; waiver action for damages; criminal penalties; examinations; and providing that the remedies are cumulative.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-c, to read as follows:

ARTICLE 6C. CREDIT SERVICES ORGANIZATIONS.

§46A-6C-1. Definitions.
§46A-6C-2. Credit services organization.
§46A-6C-3. Prohibited conduct.
§46A-6C-4. Bond; surety account.
§46A-6C-5. Registration.
§46A-6C-6. Disclosure statement.
§46A-6C-7. Form and terms of contract.
§46A-6C-8. Waiver.
§46A-6C-10. Criminal penalty.
§46A-6C-12. Remedies cumulative.

§46A-6C-1. Definitions.

1 (1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization as defined in section two of this article.

5 (2) "Consumer reporting agency" has the meaning assigned by Section 603(f), Fair Credit Reporting Act
7 (15 U.S.C. Section 1681a(f)).

8 (3) "Extension of credit" means the "right to defer
9 payment of debt or to incur debt and defer its payment
10 offered or granted primarily for personal, family,
11 household or agriculture purposes."

§46A-6C-2. Credit services organization.

1 (a) A credit services organization is a person who,
2 with respect to the extension of credit by others and in
3 return for the payment of money or other valuable
4 consideration, provides, or represents that the person
5 can or will provide, any of the following services:

6 (1) Improving a buyer's credit record, history or
7 rating;

8 (2) Obtaining an extension of credit for a buyer; or

9 (3) Providing advice or assistance to a buyer with
10 regard to subdivision (1) or (2) of this subsection.

11 (b) The following are exempt from this article:

12 (1) A person authorized to make loans or extension of
13 credit under the law of this state or the United States
14 who is subject to regulation and supervision by this state
15 or the United States, or a lender approved by the United
16 States secretary of housing and urban development for
17 participation in a mortgage insurance program under
18 the National Housing Act (12 U.S.C. Section 1701 et
19 seq.);

20 (2) A bank or savings and loan association whose
21 deposit or accounts are eligible for insurance by the
22 federal deposit insurance corporation or the federal
23 savings and loan insurance corporation, or a subsidiary
24 of such a bank or savings and loan association;

25 (3) A credit union doing business in this state;

26 (4) A nonprofit organization exempt from taxation
27 under Section 501(c)(3) of the Internal Revenue Code of
28 1986;

29 (5) A person licensed as a real estate broker or
30 salesman under the Real Estate Brokers License Act
acting within the course and scope of that license;
(6) A person licensed to practice law in this state acting within the course and scope of the person’s practice as an attorney;
(7) A broker-dealer registered with the securities and exchange commission or the commodity future trading commission acting within the course and scope of that regulation;
(8) A consumer reporting agency;
(9) A person whose primary business is making loans secured by liens on real property; and
(10) A person licensed to practice public accounting in this state acting within the course and scope of the person’s practice as an accountant.

§46A-6C-3. Prohibited conduct.

A credit services organization, a salesperson, agency or representative of a credit services organization or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with section four of this article a surety bond in the amount required by section four of this article issued by a surety company authorized to do business in this state or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in which the amount required is held in trust as required by section four of this article;
(2) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public from other sources;
(3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:

(A) Guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

(B) Guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit.

(4) Engage, directly or indirectly, in an unfair or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization;

(5) Make, or advise a buyer to make a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

(6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the secretary of state, unless otherwise provided by this chapter.

§46A-6C-4. Bond; surety account.

(a) This section applies to a credit services organization required by section three of this article to obtain a surety bond or establish a surety account.

(b) If a bond is obtained, a copy of it shall be filed with the secretary of state. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the secretary of state.

(c) The bond or surety account required must be in favor of the state of the benefit of any person who is damaged by any violation of this article. The bond or
CONSUMER CREDIT AND PROTECTION

12 surety account must also be in favor of any person
13 damaged by such a violation.

14 (d) Any person claiming against the bond or surety
15 account for a violation of this article may maintain an
16 action at law against the credit services organization
17 and against the surety or trustee. The surety or trustee
18 shall be liable only for damages awarded under section
19 nine of this article and not the punitive damages
20 permitted under that section. The aggregate liability of
21 the surety or trustee to all persons damaged by a credit
22 services organization's violation of this chapter may not
23 exceed the amount of the surety account or bond.

24 (e) The bond or the surety account shall be in the
25 amount of fifteen thousand dollars.

26 (f) A depository holding money in a surety account
27 under this chapter may not convey money in the account
28 to the credit services organization that established the
29 account or a representative of the credit services
30 organization unless the credit services organization or
31 representative presents a statement issued by the
32 secretary of state indicating that section five of this
33 article has been satisfied in relation to the account. The
34 secretary of state may conduct investigations and
35 require submission of information as necessary to
36 enforce this subsection.

§46A-6C-5. Registration.

1 (a) A credit services organization shall file a registra-
2 tion statement with the secretary of state before
3 conducting business in this state. The registration
4 statement must contain:

5 (1) The name and address of the credit services
6 organization; and

7 (2) The name and address of any person who directly
8 or indirectly owns or controls ten percent or more of the
9 outstanding shares of stock in the credit services
10 organization.

11 (b) The registration statement must also contain
12 either:
(1) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

(2) A notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

(c) The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

(d) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(e) The secretary of state may charge each credit services organization that files a registration statement with the secretary of state a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The secretary of state may not require a credit services organization to provide information other than that provided in the registration statement.

(f) The bond or surety account shall be maintained until two years after the date that the credit services organization ceases operations.

§46A-6C-6. Disclosure statement.

(a) Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(2) A statement explaining the buyer's right to proceed against the bond or surety account required by
(3) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account;

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided by the Fair Credit Reporting Act.(15 U.S.C. Sec. 1681 et seq.);

(5) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty days after the date of receipt of notice that credit has been denied, and that the buyer's file is available for a minimal charge at any other time;

(6) A complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) A complete and accurate statement of when consumer information becomes obsolete, and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

(b) The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

§46A-6C-7. Form and terms of contract.

(a) Each contract between the buyer and a credit services organization for the purchase of the services of
the credit services organization must be in writing, dated, signed by the buyer, and must include:

(1) A statement in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written materials so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows: “You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right”;

(2) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(3) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated length of time, not to exceed one hundred eighty days, for performing the services; and

(4) The address of the credit services organization’s principal place of business and the name and address of its agent in the state authorized to receive service or process.

(b) The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

“Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or other written notice to:
(name of seller) at (address of seller) (place of business) not later than midnight (date)

I hereby cancel this transaction.

(date)

(purchaser's signature)"

(c) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

(d) The breach by a credit services organization of a contract under this article, or of any obligation arising from this article, is an unfair or deceptive act or practice.

§46A-6C-8. Waiver.

(a) A credit services organization may not attempt to cause a buyer to waive a right under this article.

(b) A waiver by a buyer of any part of this article is void.


(a) A buyer injured by a violation of this article may bring any action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

(b) The buyer may also be awarded punitive damages.

§46A-6C-10. Criminal penalty.

A person who violates the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars, imprisoned in the county jail not more than one year, or both fined and imprisoned.


In an action under this article, the burden of proving an exemption under section two of this article is on the person claiming the exemption.
§46A-6C-12. Remedies cumulative.

1 The remedies provided by this article are in addition to other remedies provided by law.

CHAPTER 29
(S. B. 453—By Senator Humphreys)

[Passed March 9, 1991: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six and two hundred eight, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article eight, all relating to the uniform controlled substances act; changing the lists of controlled substances in Schedule I, Schedule II and Schedule III; relating to licensing of those engaged in wholesale distribution of prescription drugs; and wholesale drug distributor advisory committee.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Standards and Schedules.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.
§60A-2-206. Schedule II.
§60A-2-208. Schedule III.

§60A-2-204. Schedule I.

1 (a) The controlled substances listed in this section are included in Schedule I.
(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

2. Acetylmethadol;

3. Allylprodine;

4. Alphacetylmethadol;

5. Alphameprodine;

6. Alphamethadol;

7. Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl]-N-phenylpropanamide);

8. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);

9. Benzethidine;

10. Betacetylmethadol;

11. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

12. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

13. Betameprodine;

14. Betamethadol;

15. Betaprodine;

16. Clonitazene;

17. Dextromoramide;

18. Diampromide;

19. Diethylthiambutene;
(20) Difenoxin;  
(21) Dimenoxadol;  
(22) Dimepheptanol;  
(23) Dimethyldihambutene;  
(24) Dioxaphetyl butyrate;  
(25) Dipipanone;  
(26) Ethylmethylthiambutene;  
(27) Etonitazene;  
(28) Etoxeridine;  
(29) Furethidine;  
(30) Hydroxypethidine;  
(31) Ketobemidone;  
(32) Levomoramide;  
(33) Levophenacylmorphan;  
(34) 3-Methylfentanyl  
(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);  
(35) 3-Methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);  
(36) Morpheridine;  
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);  
(38) Noracymethadol;  
(39) Norlevorphanol;  
(40) Normethadone;  
(41) Norpipanone;  
(42) Para-fluorofentanyl (N-(4-fluorophenyl)  
(N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);  
(43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxyppiperidine);
(44) Phenadoxone;
(45) Phenampromide;
(46) Phenomorphan;
(47) Phenoperidine;
(48) Piritramide;
(49) Proheptazine;
(50) Properidine;
(51) Propiram;
(52) Racemoramide;
(53) Thiofentanyl
(54) Tilidine;
(55) Trimeperidine.

(c) Opium derivatives. — Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Phoclodine;
(23) Thebacon.

(d) Hallucinogenic substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of the salts, isomers and salts of isomers is possible within the specific chemical designation (for the purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;
(2) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;
(3) 4-methoxyamphetamine; some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA;
(4) 5-methyloxy-3, 4-methylenedioxy-amphetamine;
(5) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; “DOM”; and “STP”;
<table>
<thead>
<tr>
<th></th>
<th>Substance</th>
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<tbody>
<tr>
<td>130</td>
<td>(6) 3,4-methylenedioxy amphetamine;</td>
</tr>
<tr>
<td>131</td>
<td>(7) 3,4-methylenedioxymethamphetamine (MDMA);</td>
</tr>
<tr>
<td>132</td>
<td>(8) 3,4,5-trimethoxy amphetamine;</td>
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<tr>
<td>133</td>
<td>(9) Bufotenine; some trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole;</td>
</tr>
<tr>
<td>134</td>
<td>3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine;</td>
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<tr>
<td>135</td>
<td>mappine;</td>
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<tr>
<td>136</td>
<td>(10) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;</td>
</tr>
<tr>
<td>137</td>
<td>(11) Dimethyltryptamine; some trade or other names: DMT;</td>
</tr>
<tr>
<td>138</td>
<td>(12) Ibogaine; some trade and other names: 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;</td>
</tr>
<tr>
<td>139</td>
<td>(13) Lysergic acid diethylamide;</td>
</tr>
<tr>
<td>140</td>
<td>(14) Marihuana;</td>
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<tr>
<td>141</td>
<td>(15) Mescaline;</td>
</tr>
<tr>
<td>142</td>
<td>(16) Parahexyl—7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-triethyl-6H-dibenzo [b,d] pyran; Synhexyl;</td>
</tr>
<tr>
<td>143</td>
<td>(17) Peyote; meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or extracts;</td>
</tr>
<tr>
<td>144</td>
<td>(18) N-ethyl-3-piperidyl benzilate;</td>
</tr>
<tr>
<td>145</td>
<td>(19) N-methyl-3-piperidyl benzilate;</td>
</tr>
<tr>
<td>146</td>
<td>(20) Psilocybin;</td>
</tr>
<tr>
<td>147</td>
<td>(21) Psilocyn;</td>
</tr>
<tr>
<td>148</td>
<td>(22) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances,</td>
</tr>
</tbody>
</table>
derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

- Cis or trans tetrahydrocannabinol, and their optical isomers;
- Cis or trans tetrahydrocannabinol, and their optical isomers;
- Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(23) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclo-hexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(24) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(25) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

(26) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(27) N-ethylamphetamine;

(28) Parahexyl;

(29) 4-Methylaminorex;

(30) 3,4-Methylenedioxy-N-Ethylamphetamine;

(31) N-Hydroxy-3, 4-Methylenedioxyamphetamine.

(e) Unless specifically excepted or unless listed in another schedule, any of the following depressants, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is
possible within the specific chemical designation:

(1) Mecloqualone;
(2) Methaqualone.

(f) Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Acetyl-alphamethylfentanyl;
(2) Alpha-methylthiofentanyl;
(3) Benzylfentanyl;
(4) Beta-hydroxyfentanyl;
(5) Beta-hydroxy-3-methylfentanyl;
(6) 3-Methylthiofentanyl;
(7) Thenylfentanyl;
(8) Thiofentanyl;
(9) 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers;
(10) 1-(2-Phenylethyl)-4-phenyl-4-acetyloxyypiperidine (PEPAP), its optical isomers, salts and salts of isomers;
(11) 3-Methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers.

§60A-2-206. Schedule II.

(a) The controlled substances listed in this section are included in Schedule II.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding nalorphine, nalmefene, naloxone and naltrexone and their respective salts, but including the following:
(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid extracts;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Ethrophine HCL;
(J) Hydromorphone;
(K) Metopon;
(L) Morphine;
(M) Oxycodone;
(N) Oxymorphone;
(O) Thebaine;

(2) Any salt, compound, isomer derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine 9041) and ecgonine (9180) and their salts, isomers, derivatives (and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of
poppy straw in either liquid, solid or powder form which
contains the phenanthrine alkaloids of the opium poppy),
9670.

(c) Opiates. — Unless specifically excepted or unless
in another schedule, any of the following opiates,
including its isomers, esters, ethers, salts and salts of
isomers, esters and ethers whenever the existence of
such isomers, esters, ethers and salts is possible within
the specific chemical designation, dextrorphan and
levopropoxyphene excepted:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk dextropropoxyphene (nondosage forms);
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levomethorphan;
(12) Levorphanol;
(13) Metazocine;
(14) Methadone;
(15) Methadone-Intermediate,
4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(16) Moramide-Intermediate, 2-methyl-3-morpholino-
1, 1-diphenyl-propane-carboxylic acid;
(17) Pethidine; (meperidine);
(18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
phenylpiperidine;
(19) Pethidine-Intermediate-B, ethyl-4-phenylpiperi-
dine-ethyl-4-phenylpiper-idin-4-carboxylate;

(20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(21) Phenazocine;

(22) Piminodine;

(23) Racemethorphan;

(24) Racemorphan;

(25) Sufentanil.

(d) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers and salts of isomers;

(3) Methylphenidate;

(4) Phenmetrazine and its salts.

(e) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine.

(f) Hallucinogenic substances:

(1) Dronabinol (synthetic) in sesame oil and encapsu-
lated in a soft gelatin capsule in a United States food
and drug administration approved drug product. (Some
other names for dronabinol: (6aRtrans)-6a, 7, 8, 10a-
tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo 9b,d)
pyran-1-od or (-) delta-9-(trans)-tetrahydrocanna-bonil);

(2) Nabilone: THC-like antiemetic/cancer chemothera-

(g) Immediate precursors. Unless specifically ex-
cepted or unless listed in another schedule, any material,
compound, mixture, or preparation which contains any
quantity of the following substances:

(1) Immediate precursor to amphetamine and
methamphetamine:

(A) Phenylacetone; Some trade or other names:
phenyl-2-propanone; P2P; benzylmethyl ketone; methyl
benzyl ketone;

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine;

(B) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-208. Schedule III.

(a) Schedule III shall consist of the drugs and other
substances, by whatever official name, common or usual
name, chemical name or brand name designated, listed
in this section.

(b) Stimulants. — Unless specifically excepted or
unless listed in another schedule, any material, com-
pound, mixture or preparation which contains any
quantity of the following substances having a stimulant
effect on the central nervous system, including its salts,
isomers (whether optical, position or geometric), and
salts of such isomers whenever the existence of such
salts, isomers and salts of isomers is possible within the
specific chemical designation:

(1) Those compounds, mixtures or preparations in
dosage unit form containing any stimulant substances
listed in Schedule II which compounds, mixtures or
preparations were listed on the twenty-fifth day of
August, one thousand nine hundred seventy-one, as excepted compounds under §308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(2) Benzphetamine;

(3) Chlorthalamine;

(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;

(4) Chlorhexadol;

(5) Glutethimide;

(6) Lysergic acid;

(7) Lysergic acid amide;

(8) Methyprylon;
CONTROLLED SUBSTANCES

51 (9) Sulfondiethylmethane;
52 (10) Sulfonethylmethane;
53 (11) Sulfonmethane;
54 (12) Tiletamine and zolazepam or any salt thereof;
some trade or other names for a tiletamine-zolazepam
combination product: Telazol; some trade or other
names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-
cyclohexanone; some trade or other names for zolaze-
pam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpy-
razolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon;
56 (13) Human growth hormones or anabolic steroids.

ARTICLE 8. WHOLESALE DRUG DISTRIBUTION LICENSING

§60A-8-1. Short title.
§60A-8-2. Scope.
§60A-8-3. Purpose.
§60A-8-4. West Virginia board of pharmacy wholesale drug distributor
advisory committee; composition; duties.
§60A-8-5. Definitions.
§60A-8-6. Prohibited drug purchases or receipt; penalties.
§60A-8-7. Wholesale drug distributor licensing requirements.
§60A-8-8. License renewal application procedures.
§60A-8-9. West Virginia board of pharmacy powers to promulgate rules.
§60A-8-10. West Virginia board of pharmacy complaint provisions.
§60A-8-11. The West Virginia board of pharmacy inspection powers and
access to wholesale drug distributor records.
§60A-8-12. Judicial enforcement of the article.
§60A-8-13. Criminal penalties.

§60A-8-1. Short title.

This article may be cited as the “Wholesale Drug
Distribution Licensing Act of 1991”.

§60A-8-2. Scope.

This article applies to any person, partnership,
corporation or business firm engaging in the wholesale
distribution of human prescription drugs within this
state.

§60A-8-3. Purpose.

The purpose of this article is to implement the federal
prescription drug marketing act of one thousand nine
hundred eighty-seven (“PDMA”), U.S. Public Law 100-
293, 102 Stat. 95, codified at 21 U.S. Code §321; and particularly PDMA requirements that no person or entity may engage in the wholesale distribution of human prescription drugs in any state unless such person or entity is licensed by such state in accordance with federally-prescribed minimum standards, terms and conditions as set forth in guidelines issued by United States food and drug administration (FDA) regulations pursuant to 21 U.S. Code §§353(e)(2)(A) and (B); and such regulations as are set forth in 21 C.F.R. Part 205.

§60A-8-4. West Virginia board of pharmacy wholesale drug distributor advisory committee; composition; duties.

The board of pharmacy shall appoint a wholesale drug distributor advisory committee composed of five members. The committee shall be composed and shall perform its duties and responsibilities as follows:

(a) At least one member shall be a pharmacy distributor as defined in subdivision (c), section five of this article, but who shall be neither a member of the West Virginia board of pharmacy nor a board of pharmacy employee, except that if no such pharmacy distributor is available to be a committee member, the member required by this subdivision shall be a representative of wholesale drug distributors in addition to those representatives provided for in subdivision (b).

(b) At least two members shall be representatives of wholesale drug distributors as defined in subdivision (b), section five of this article, except that the wholesale drug distributors in this subdivision shall not include any drug manufacturer.

(c) At least one member shall be a representative of drug manufacturers.

(d) The advisory committee shall review and make recommendations to the board of pharmacy on the merit of all rules dealing with wholesale drug distributors, pharmacy distributors and drug manufacturers which are proposed by the board of pharmacy. No rule
affecting wholesale drug distributors or pharmacy distributors promulgated by the board of pharmacy shall be approved without first being submitted to the committee reasonably ahead of time for review and comment.

(e) In making advisory committee appointments, the board of pharmacy shall consider recommendations received from each of the wholesale drug distributor, pharmacy distributor and drug manufacturer classes cited in subdivisions (a) through (c) herein and shall promulgate rules which provide for solicitation of such recommendations.

§60A-8-5. Definitions.

As used in this article:

(a) "Wholesale distribution" and "wholesale distributions" mean distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(1) Intracompany sales, being defined as any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity;

(2) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug by a charitable organization described in section 501(c)(3) of the United States Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug among hospitals or other health care entities that are under common control. For purposes of this article, "common control" means the power to direct or cause the direction of the
management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(5) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug for "emergency medical reasons" for purposes of this article includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any twelve consecutive month period;

(6) The sale, purchase or trade of a drug, an offer to sell, purchase, or trade a drug or the dispensing of a drug pursuant to a prescription;

(7) The distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(8) The sale, purchase or trade of blood and blood components intended for transfusion.

(b) "Wholesale drug distributor" means any person or entity engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers, repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug traders, prescription drug repackagers, physicians, dentists, veterinarians, birth control and other clinics, individuals, hospitals, nursing homes and/or their providers, health maintenance organizations and other health care providers, and retail and hospital pharmacies that conduct wholesale distributions, including, but not limited to, any pharmacy distributor as defined in this section. A wholesale drug distributor shall not include any for hire carrier or person or entity hired solely to transport prescription drugs.

(c) "Pharmacy distributor" means any pharmacy licensed in this state or hospital pharmacy which is
engaged in the delivery or distribution of prescription drugs either to any other pharmacy licensed in this state or to any other person or entity, including, but not limited to, a wholesale drug distributor as defined in subdivision (b) of this section engaged in the delivery or distribution of prescription drugs and who is involved in the actual, constructive or attempted transfer of a drug in this state to other than the ultimate consumer except as otherwise provided for by law.

(d) "Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging or labeling of a prescription drug.

(e) "West Virginia board of pharmacy" means the agency of this state authorized to license wholesale drug distribution except where otherwise provided.

(f) "Prescription drug" means any human drug required by federal law or regulation to be dispensed only by prescription, including finished dosage forms and active ingredients subject to section 503(b) of the federal food, drug and cosmetic act.

(g) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(h) "Blood component" means that part of blood separated by physical or mechanical means.

(i) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

§60A-8-6. Prohibited drug purchases or receipt; penalties.

It is unlawful for any person or entity to knowingly purchase or receive any prescription drug from any source other than a person or entity licensed pursuant to the laws of this state except where otherwise provided, such person or entity to include, but not be limited to, a wholesale distributor, manufacturer, pharmacy distributor or pharmacy. Any person violat-
§60A-8-7. Wholesale drug distributor licensing requirements.

All wholesale distributors and pharmacy distributors shall be subject to the following requirements:

(a) No person or distribution outlet may act as a wholesale drug distributor without first obtaining a license to do so from the board of pharmacy and paying any reasonable fee required by the board of pharmacy, such fee not to exceed two hundred dollars per year.

(b) The board of pharmacy may grant a temporary license when a wholesale drug distributor first applies for a license to operate within this state and such temporary license shall remain valid until the board of pharmacy finds that the applicant meets or fails to meet the requirements for regular licensure, except that no such temporary license shall be valid for more than ninety days from the date of issuance. Any temporary license issued pursuant to this subdivision shall be renewable for a similar period of time not to exceed ninety days pursuant to policies and procedures to be prescribed by the board of pharmacy.

(c) No license may be issued or renewed for a wholesale drug distributor to operate unless the distributor operates in a manner prescribed by law and according to the rules promulgated by the board of pharmacy with respect thereto.

(d) The board of pharmacy may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subsidiaries, or affiliate companies within this state when operations are conducted at more than one location and there exists...
joint ownership and control among all the entities.

(e) (1) As a condition for receiving and retaining any wholesale drug distributor license issued pursuant to this article, each applicant shall satisfy the board of pharmacy that it has and will continuously maintain:

(A) Acceptable storage and handling conditions plus facilities standards;

(B) Minimum liability and other insurance as may be required under any applicable federal or state law;

(C) A security system which includes after hours central alarm or comparable entry detection capability, restricted premises access, adequate outside perimeter lighting, comprehensive employment applicant screening and safeguards against employee theft;

(D) An electronic, manual or any other reasonable system of records describing all wholesale distributor activities governed by this article for the two-year period following disposition of each product and being reasonably accessible as defined by board of pharmacy regulations during any inspection authorized by the board of pharmacy;

(E) Officers, directors, managers and other persons in charge of wholesale drug distribution, storage and handling, who must at all times demonstrate and maintain their capability of conducting business according to sound financial practices as well as state and federal law;

(F) Complete, updated information to be provided the board of pharmacy as a condition for obtaining and retaining a license about each wholesale distributor to be licensed under this article including all pertinent licensee ownership and other key personnel and facilities information deemed necessary for enforcement of this article, with any changes in such information to be submitted at the time of license renewal or within twelve months from the date of such change, whichever occurs first;

(G) Written policies and procedures which assure
reasonable wholesale distributor preparation for protection against and handling of any facility security or operation problems, including, but not limited to, those caused by natural disaster or government emergency, inventory inaccuracies or product shipping and receiving, outdated product or other unauthorized product control, appropriate disposition of returned goods and product recalls;

(H) Sufficient inspection procedures for all incoming and outgoing product shipments; and

(I) Operations in compliance with all federal legal requirements applicable to wholesale drug distribution.

(2) The board of pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs with this state:

(A) Any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(B) Any felony convictions of the applicant under federal, state or local laws;

(C) The applicant’s past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(E) Suspension or revocation by federal, state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drug, including controlled substances;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Compliance with requirements to maintain and/or make available to the board of pharmacy or to federal,
state or local law-enforcement officials those records required by this article; and

(H) Any other factors or qualifications the board of pharmacy considers relevant to and consistent with the public health and safety, including whether the granting of the license would not be in the public interest.

(3) All requirements set forth in this subsection shall conform to wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration (FDA); and in case of conflict between any wholesale drug distributor licensing requirement imposed by the board of pharmacy pursuant to this subsection and any food and drug administration wholesale drug distributor licensing guideline, the latter shall control.

(f) An agent or employee of any licensed wholesale drug distributor need not seek licensure under this section and may lawfully possess pharmaceutical drugs when such agent or employee is acting in the usual course of business or employment.

(g) The issuance of a license pursuant to this article does not change or affect tax liability imposed by this state's department of tax and revenue on any wholesale drug distributor.

(h) The board of pharmacy may adopt rules pursuant to section nine of this article which permit out-of-state wholesale drug distributors to obtain any license required by this article on the basis of reciprocity to the extent that: (i) An out-of-state wholesale drug distributor possesses a valid license granted by another state pursuant to legal standards comparable to those which must be met by a wholesale drug distributor of this state as prerequisites for obtaining a license under the laws of this state; and (ii) such other state would extend reciprocal treatment under its own laws to a wholesale drug distributor of this state.

§60A-8-8. License renewal application procedures.

1 Application blanks for renewal of any license required by this article shall be mailed to each licensee at least
Ch. 29] CONTROLLED SUBSTANCES 441

3 thirty days before the first day of July of each calendar
4 year by the board. All licenses issued under this section
5 are not transferable and expire on the thirtieth day of
6 June of each calendar year. If application for renewal
7 of such license with required fee is not made before the
8 expiration date of the license, the existing license, or
9 renewal thereof, shall lapse and become null and void
10 upon the last day of June of each calendar year.

§60A-8-9. West Virginia board of pharmacy powers to
promulgate rules.

1 The board of pharmacy shall promulgate rules not
2 inconsistent with law, as may be necessary to carry out
3 the purposes and enforce the provisions of this article
4 pursuant to chapter twenty-nine-a of this code. Rules
5 which incorporate and set detailed standards for
6 meeting each of the license prerequisites set forth in
7 section seven of this article shall be promulgated in final
8 form by no later than the fourteenth day of September,
9 one thousand nine hundred ninety-two. All rules
10 promulgated pursuant to this section shall conform to
11 wholesale drug distributor licensing guidelines formally
12 adopted by the food and drug administration at 21
13 C.F.R. Part 205; and in case of conflict between any rule
14 adopted by the board of pharmacy and any food and
15 drug administration wholesale drug distributor guide-
16 line, the latter shall control.

§60A-8-10. West Virginia board of pharmacy complaint
provisions.

1 Complaints arising under any provision of this article
2 shall be handled as follows:

3 (a) The board of pharmacy is hereby authorized and
4 empowered, when complaints or examinations or
5 inspections of a wholesale drug distributor disclose that
6 a wholesale drug distributor is not operating or
7 conducting business according to the state and federal
8 laws, to file a written complaint with the board
9 charging the holder of a license to operate a wholesale
10 drug distributorship operation with violations of this
11 article which are grounds for restriction, suspension or
12 revocation of the wholesale drug distributor’s license.
(b) If the board of pharmacy concludes that a wholesale drug distributor has committed an act or is engaging in a course of conduct which constitutes a clear and present danger to the public health and safety in this state, the board of pharmacy may hold an expedited hearing. Within fifteen days after service of the complaint on a wholesale drug distributor, the West Virginia board of pharmacy shall conduct a preliminary hearing to determine whether the alleged activities of the wholesale drug distributor appear to constitute a clear and present danger to the public health and safety which justify that the wholesale drug distributor's license be immediately restricted or suspended. The burden of proving that a wholesale drug distributor is a clear and present danger to the public health and safety shall be upon the board. The board shall issue its decision immediately after the hearing and shall dismiss the action or suspend, restrict or revoke the license. The board shall require any wholesale drug distributor found in violation of this article to take all necessary measures for compliance.

(c) If the board restricts, revokes or suspends the wholesale drug distributor's license, such temporary restriction, revocation or suspension shall become a final restriction or suspension if there is no request by the wholesale drug distributor for a final hearing within thirty days of the preliminary hearing. The board shall, if requested by the wholesale drug distributor named in the complaint, set a date to hold a final hearing which shall be held pursuant to the provisions of chapter twenty-nine-a of this code.

§60A-8-11. The West Virginia board of pharmacy inspection powers and access to wholesale drug distributor records.

(a) A person authorized by the board may inspect during normal business hours any premises being used by a wholesale drug distributor in this state in the course of its business. Any wholesale drug distributor providing adequate documentation of the most recent satisfactory inspection less than three years old of such distributor's wholesale drug distribution activities and
facilities by either the food and drug administration or
a state agency, or any person or entity lawfully
designated by a state agency to perform such inspection,
determined to be comparable by the board shall be
exempt from further inspection for a period of time to
be determined by the board of pharmacy. Such exemp-
tion shall not bar the board from initiating an investi-
gation pursuant to a public or governmental complaint
received by the board regarding a wholesale drug
distributor.

(b) Wholesale drug distributors may keep records
regarding purchase and sales transactions at a central
location apart from the principal office of the wholesale
drug distributor or the location at which the drugs were
stored and from which they were shipped: Provided,
That such records shall be made available for inspection
within two working days after a request to inspect by
the board is made. Such records may be kept in any
form permissible under federal law applicable to
prescription drugs record keeping.

§60A-8-12. Judicial enforcement of the article.

(a) Upon proper application by the board, a court of
competent jurisdiction may grant an injunction, re-
training order or other order as may be appropriate to
enjoin a person from offering to engage or engaging in
the performance of any acts or practices for which a
certificate of registration or authority, permit or license
is required by any applicable federal or state law,
including, but not limited to, this act upon a showing
that such acts or practices were or are likely to be
performed or offered to be performed without a
certificate of registration or authority, permit or license.

(b) Any such judicial actions shall be commenced
either in the county in which such conduct occurred or
in the county in which defendant resides.

(c) Any action brought under this section shall be in
addition to and not in lieu of any other penalty provided
by law and may be brought concurrently with other
actions to enforce this article.
§60A-8-13. Criminal penalties.

1. Every person who violates any provision of section seven of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars.

CHAPTER 30

(Com. Sub. for H.B. 2792—By Delegates Rutledge and Williams)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to building and loan associations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§1. Repeal of article relating to building and loan associations.

1. Article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 31

(H.B. 2763—By Delegates Rutledge and Williams)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the federal savings and loan insurance corporation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.
§1. Repeal of article relating to the federal savings and loan insurance corporation.

1 Article six-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 32
(H. B. 2548—By Delegates Murensky and Moore)

[Passed February 27, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to compensation of correctional officers required to work certain holidays.

Be it enacted by the Legislature of West Virginia:

That article fourteen-b, chapter 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 eighteen-a, to read as follows:

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-18a. Correctional officers who are required to work during holidays; how compensated.

1 From the effective date of this section, if any correctional officer is required to work during a legal holiday as is specified in section one, article two, chapter two of this code, or if a legal holiday falls on the member's regular scheduled day off, he or she shall be allowed equal time off at such time as may be approved by the sheriff under whom he or she serves, or in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay.
CHAPTER 33
(H. B. 2688—By Mr. Speaker, Mr. Chambers, and Delegate Roop)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article seven of said chapter, all relating to additional duties of county officials and compensation therefor.

Be it enacted by the Legislature of West Virginia:

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

Article
1. County Commissions Generally.
7. Training Programs for County Employees, Etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees; Their Number and Compensation.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-5a. Excusal of commissioner from voting where conflict of interest involved.

1 Each county commissioner present during any county commission meeting when any question is put shall vote unless he is immediately and particularly interested therein. Before such question is put, any member having a direct personal or pecuniary interest therein should announce this fact, and request to be excused from voting. The disqualifying interest must be such as affects the member directly, and not as one of a class.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.
§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

(a) (1) All county commissioners shall be paid compensation out of the county treasury in amounts and according to the schedule hereafter set forth for each class of county as determined by the provisions of section three, article seven, chapter seven: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of such county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$20,000</td>
</tr>
<tr>
<td>II</td>
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<td>V</td>
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<td>VI</td>
<td>$4,000</td>
</tr>
</tbody>
</table>

The compensation hereinabove provided shall be paid on and after January one, one thousand nine hundred eighty-five, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-five, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

(2) For the purpose of determining the compensation to be paid to the elected county officials of each county, the following compensations for each county office by class are hereby established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission:
Class I

$24,200

Class II

$24,200

Class III

$24,200

Class IV

$22,300

Class V

$20,400

Class VI

$17,200

Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county, and any prosecuting attorney of a Class II county shall devote full time to his public duties to the exclusion of any other employment: Provided, That any such public official, whose term of office begins when his county's classification imposes no restriction on his outside activities, shall not be restricted on his outside activities during the remainder of the term for which he is elected. The compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each elected county official.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

The Legislature finds, as a fact, that the duties imposed upon county clerks by the provisions of chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred eighty-two, and by chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, constitute new and additional duties for county clerks and as such justify the additional compensation provided in this section without violating the provisions of section thirty-eight, article six of the constitution of West Virginia.
The Legislature further finds as a fact that the duties imposed upon circuit clerks by the provisions of chapters sixty-one and one hundred eighty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-one, and by chapter sixty, acts of the Legislature, regular session, one thousand nine hundred eighty-three, constitute new and additional duties for circuit clerks and as such justify the additional compensation provided by this section without violating the provisions of section thirty-eight, article six of the constitution of West Virginia.

(b) Prior to the primary election in the year one thousand nine hundred ninety-two, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-two, or for any subsequent fiscal year if the approval set out herein is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the public of the date and time of the meeting and that the purpose of the meeting of the county commission is to decide upon their budget certification to the tax department. Upon submission by the county commission to the chief inspector division of the department of tax and revenue of a proposed annual budget which contains anticipated receipts into the county's general revenue fund, less anticipated moneys from the unencumbered fund balance, equal to anticipated receipts into the county's general revenue fund, less anticipated moneys from the unencumbered fund balance and any federal or state special grants, for the immediately preceding fiscal year, plus such additional amount as is necessary for payment of the increases in the salaries set out herein and related employment taxes over that paid for the immediately preceding fiscal year, and upon approval thereof by the chief inspector, which approval shall not be granted for any proposed annual budget containing anticipated receipts which are unreasonably greater or lesser than that of the immediately preceding fiscal year, for the purpose of determining the compensation to be paid to the elected county officials of each county office by class are hereby
established and shall be used by each county commission in determining the compensation of each of their county officials: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of such county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.

COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>II</th>
<th>III</th>
<th>IV</th>
<th>V</th>
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<tr>
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<tr>
<td>Class</td>
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<td>V</td>
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</tr>
<tr>
<td>V</td>
<td>$8,400</td>
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</tbody>
</table>

If the approval set out hereinabove is granted, the compensation hereinabove provided shall be paid on and after January one, one thousand nine hundred ninety-three, to each county commissioner. Within each county, every county commissioner shall receive the same annual compensation by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter one hundred seventy-two, acts of the Legislature, second regular session, one thousand nine hundred ninety, and chapter five, acts of the Legislature, third extraordinary session, one thousand nine hundred ninety.

OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th></th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
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<td>$28,200</td>
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</table>

Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I
county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county, and any prosecuting attorney of a Class II county shall devote full time to his or her public duties to the exclusion of any other employment: Provided, That any such public official, whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. If the approval set out hereinabove is granted, the compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each elected county official.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

Prior to the primary election in the year one thousand nine hundred ninety-two, in the case of a Class III, Class IV or Class V county which has a part-time prosecuting attorney, the county commission may find that such facts and circumstances exist that require the prosecuting attorney to devote full time to his or her public duties for the four-year term, beginning the first day of January, one thousand nine hundred ninety-three. If the county commission makes such a finding, it may by proper order adopted and entered, require the prosecuting attorney who takes office on the first day of January, one thousand nine hundred ninety-three, to devote full time to his or her public duties and the county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class II county.
CHAPTER 34
(H. B. 2908—By Delegates Flanigan and J. Martin)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one-a through one-ee, inclusive, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one of said article; to amend and reenact section ten, article nine of said chapter; and to amend and reenact section nine, article twelve, chapter sixty-two, relating to circuit court judges; providing twenty-third circuit with three judges; reconstituting eleventh and thirty-first circuits; providing for concurrent jurisdiction as to single judge circuits; providing for term of office for new judges; providing that supreme court shall set terms of court; providing for a panel of senior judges; payment of senior judges; and conditions of probation.

Be it enacted by the Legislature of West Virginia:

That sections one-a through one-ee, inclusive, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one of said article be amended and reenacted; that section ten, article nine of said chapter be amended and reenacted; and that section nine, article twelve, chapter sixty-two be amended and reenacted to read as follows:

Chapter
51. Courts and Their Officers.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
2. Circuit Courts; Circuit Judges.

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 Raleigh 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 Pocahontas 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 three judges; 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 constitute 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 Monroe and Summers shall constitute the thirty-first circuit and shall have one judge: Provided, That the Kanawha County circuit court shall be a court of concurrent jurisdiction with each single judge circuit where the sitting judge in such single judge circuit is unavailable by reason of sickness, vacation or other reason.

The term of office of the second and third circuit court judges of the twenty-third circuit created by the provisions of this section shall commence on the first day of January, one thousand nine hundred ninety-three. Any judge in office at the time of the effective date of this section shall continue as a judge of the circuit as constituted under prior enactments of this section, unless sooner removed or retired as provided by law, until the thirty-first day of December, one thousand nine hundred ninety-two.

(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.

(d) The supreme court shall, by rule, establish the terms of court of circuit judges. Until such rule is effective, terms of court shall continue to be set in accordance with the last enactment of sections one-a through one-ee of this article prior to the repeal of such sections.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-10. Services of senior judges.

1 The West Virginia supreme court of appeals is authorized and empowered to create a panel of senior judges to utilize the talent and experience of former circuit court judges and supreme court justices of this state. The supreme court of appeals shall promulgate rules providing for said judges and justices to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing speedier trials to litigants throughout the state: Provided, That reasonable payment shall be made to said judges and justices on a per diem basis: Provided, however, That the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge, and allowances shall also be made for necessary expenses as provided for special judges under articles two and nine of this chapter.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

Release on probation shall be upon the following conditions:

(1) That the probationer shall not, during the term of his probation, violate any criminal law of this or any other state or of the United States.

(2) That he shall not, during the term of his probation, leave the state without the consent of the court which placed him on probation.

(3) That he shall comply with the rules and regulations prescribed by the court or by the board of probation and parole, as the case may be, for his supervision by the probation officer.

In addition, the court may impose, subject to modification at any time, any other conditions which it may deem advisable, including, but not limited to, any of the following:

(1) That he shall make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he has been convicted.

(2) That he shall pay any fine assessed and the costs of the proceeding in such installments as the court may direct.

(3) That he shall make contribution from his earnings, in such sums as the court may direct, for the support of his dependents.

(4) That he shall, in the discretion of the court, be required to serve a period of confinement in the county jail of the county in which he was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case shall such period of confinement exceed six consecutive months. The court shall have authority to sentence the defendant within such six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant unto the defendant intermittent periods of release in order that
he may work at his employment or for such other
reasons or purposes as the court may deem appropriate:
Provided, That the provisions of article eleven-a of this
chapter shall not apply to such intermittent periods of
confinement and release except to the extent that the
court may direct. If a period of confinement is required
as a condition of probation, the court shall make special
findings that other conditions of probation are inade-
quate and that a period of confinement is necessary.

CHAPTER 35
(H. B. 2544—By Delegates Damron and Beach)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four,
chapter seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to full-
time investigators of crime.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL
ADVICE.

§7-4-2. Rewards for apprehension of persons charged
with crime and expenditure of money for
detection of crime; appointment of investiga-
tors of crime.

1 The prosecuting attorney of any county, with the
2 approval of the county commission, or of the governor,
3 or of the court of the county vested with authority to try
4 criminal offenses, or of the judge thereof in vacation,
5 may, within his discretion, offer rewards for the
6 apprehension of persons charged with crime, or may
7 expend money for the detection of crime. Any money
8 expended under this section shall, when approved by the
9 prosecuting attorney, be paid out of the county fund, in
the same manner as other county expenses are paid:

Provided, That the prosecuting attorneys of the several counties of the state may, with the approval of the county commissions of their respective counties, entered of record, appoint to assist them in the discharge of their official duties, trained and qualified full-time or part-time investigators of crime. Such full-time investigators shall accept no other public employment or employment in a private police or investigative capacity during the term of their appointment and shall be paid such salary and expenses as may be fixed by the county commission. Such expenses shall be itemized and sworn to by the investigator upon presentation to the county commission.

Notwithstanding any other provision of this code to the contrary, the prosecuting attorney of any county, with the consent of the judge of the court of competent jurisdiction and the county commission, may appoint an investigator of crime who need not be a resident of this state.

CHAPTER 36

(Com. Sub. for H. B. 2297—By Delegates Spencer and Gallagher)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]
forth when ownership may be forfeited; requiring owner to pay for costs of animal care; permitting veterinarian to determine when animal should be humanely destroyed; limiting liability of certain persons; requiring veterinarians and permitting other persons to report acts of cruelty; defining the crime of forcibly interfering with the reporting of acts of cruelty and providing criminal penalties therefor; expanding the circumstances under which it is a crime to administer drugs to animals participating in contests; exempting certain activities and practices under certain circumstances; prohibiting certain participation in animal fighting ventures; and providing for and increasing certain civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article ten, chapter seven 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 a new section, designated section four-a; and that sections nineteen and nineteen-a, article eight, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.

61. Crimes and Their Punishment.

CHAPTER 7.
COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-2. Duty of humane officers; interference with.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

§7-10-4a. Reporting of animals abandoned, neglected or cruelly treated; enforcement.

§7-10-2. Duty of humane officers; interference with.

1 It is the duty of such officers to prevent the perpetra-
2 tion or continuance of any act of cruelty upon any
3 animal and to investigate, and upon probable cause, to
4 cause the arrest and assist in the prosecution of any
person engaging in such cruel and forbidden practices.

Upon reasonable cause, and as provided by law, such officers have the right to access and inspection of records and property as may be reasonably necessary to any investigation. Any person who interferes with, obstructs or resists any such officer in the discharge of his duty is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars, or confined in the county jail not more than thirty days, or both so fined and confined. Any such penalties are in addition to any penalties such person may incur for cruel or inhumane treatment of any animal.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

(a) A humane officer shall take possession of any animal, including birds or wildlife in captivity, known or believed to be abandoned, neglected, deprived of necessary sustenance, shelter or medical care or cruelly treated or used, as defined in sections nineteen and nineteen-a, article eight, chapter sixty-one of this code:

(b) The owner, or person in possession, if his or her identity and residence is known, of any animal seized pursuant to subsection (a) of this section, shall be provided written notice of such seizure, their liability for the cost and care of the animal seized as herein provided, and the right to request a hearing before a magistrate in the county wherein the animal was seized. The magistrate court shall schedule any hearing so requested within ten working days of the receipt of the request. The failure of an owner or person in possession to request a hearing within five working days of the seizure shall be deemed prima facie evidence of the abandonment of said animal. At the hearing, if requested, the magistrate shall determine if probable cause exists to believe that such animal was abandoned, neglected or deprived of necessary sustenance, shelter or medical care, or otherwise treated or used cruelly as set
(c) Upon finding of such probable cause, or if no hearing is requested, if the magistrate finds probable cause based upon the affidavit of the humane officer, the magistrate shall enter an order authorizing any humane officer to maintain possession of the animal pending further proceedings, appeal or the disposition of any criminal charges pursuant to chapter sixty-one of this code.

(d) Any person whose animal is seized and against whom a finding of probable cause is rendered pursuant to this section is liable for the costs of the care, medical treatment and provisions for such animal during any period it remains in the possession of the humane officer.

(e) If, after the humane officer takes possession of the animal pursuant to the finding of probable cause, it is determined by a licensed veterinarian that the animal should be humanely destroyed to end its suffering, the veterinarian may order the animal to be humanely destroyed according to acceptable humane standards and neither the humane officer nor the veterinarian may be subject to any civil or criminal liability as a result of any such determination.

(f) The provisions of this section do not apply to farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl, wildlife or game farm production and management, nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.

§7-10-4a. Reporting of animals abandoned, neglected or cruelly treated; enforcement.

(a) It is the duty of any licensed veterinarian and the
right of any other person to report to a humane officer
any animal found, reasonably known or believed to be
abandoned, neglected or cruelly treated as set forth in
this article, and such veterinarian or other person may
not be subject to any civil or criminal liability as a result
of such reporting.

(b) Any person who, with force, assaults, resists, or
impedes any other person engaged in the reporting of
abandoned, neglected or cruelly treated animals as
provided for in this section is guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not less than
two hundred fifty nor more than one thousand dollars,
or confined in the county jail not more than one year,
or both so fined and confined.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND
DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

(a) If any person cruelly mistreats, abandons or
withholds proper sustenance, including food, water,
shelter or medical treatment necessary to sustain
normal health and fitness or to end suffering or
abandons any animal to die, or uses, trains or possesses
any domesticated animal for the purpose of seizing,
detaining or maltreating any other domesticated
animal, he or she is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than one
hundred nor more than one thousand dollars, or
confined in the county jail not more than six months, or
both so fined and confined.

(b) Any person, other than a licensed veterinarian or
a person acting under the direction or with the approval
of a licensed veterinarian, who knowingly and willfully
administers or causes to be administered to any animal
participating in any contest any controlled substance or
any other drug for the purpose of altering or otherwise
affecting said animal’s performance is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than one hundred nor more than one
thousand dollars.

(c) Any person convicted of a violation of this section
shall forfeit his or her interest in any such animal and
all interest in such animal shall vest in the humane
society or county pound of the county in which said
conviction was rendered, and such person shall, in
addition to any fine imposed, be liable for any costs
incurred or to be incurred by the humane society or
county pound as a result.

(d) For the purpose of this section, the term “con-
trolled substance” shall have the same meaning ascribed
to it by subsection (d), section one hundred one, article
one, chapter sixty-a of this code.

(e) The provisions of this section do not apply to farm
livestock, poultry, gaming fowl or wildlife kept in
private or licensed game farms if kept and maintained
according to usual and accepted standards of livestock,
poultry, gaming fowl or wildlife or game farm produc-
tion and management, nor to humane use of animals or
activities regulated under and in conformity with the
provisions of 7 U.S.C. §2131 et seq. and the regulations
promulgated thereunder, as both such statutes and
regulations are in effect on the effective date of this
section.


(a) It is unlawful for any person to engage in, be
employed at, or to purchase or sell an admission to any
animal fighting venture.

(b) Any person who violates the provisions of this
section is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred dollars
and not more than one thousand dollars, or confined in
the county jail not exceeding one year, or both so fined
and confined, and may be divested of ownership and
control of such animals, and be liable for all costs for
their care and maintenance.
CHAPTER 37
(H. B. 2267—By Delegates Roop and Brum)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to negligent shooting and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section fifty-seven, 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:

§20-2-57. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

1 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.

2 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.

3 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.

4 Restitution of the value of the livestock, chattel or property injured or destroyed shall be required upon conviction.
CHAPTER 38

(S. B. 323—By Senators Humphreys, Felton, Minard, Dittmar, Dalton, Bailey, Heck, Wiedebusch, Anderson and Claypole)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, defining first and second degree murder; providing that murder in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance is murder of the first degree; and prescribing the contents of an indictment for murder and manslaughter.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-1. First and second degree murder defined; allegations in indictment for homicide.

1 Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance as defined in article four, chapter sixty-a of this code, is murder of the first degree. All other murder is murder of the second degree.

In an indictment for murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately and unlawfully slay, kill and murder the deceased.
CHAPTER 39
(Com. Sub. for H. B. 2103—By Delegates Houvouras and Reid)

[Passed March 9, 1991; in effect 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 nonferrous metal by persons in the businesses of purchasing scrap metal, salvage, and recycling; requiring signed certificates from sellers; removing provisions providing for quarterly report to division of public safety; increasing time to report certain transactions; exempting certain sales from required transaction reporting; removing provisions requiring reports to sheriffs by nonresidents prior to transporting metal from state; increasing the amount of criminal fines for violations; and removing provisions permitting imposition of criminal penalties for violation of section.

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 nonferrous metals by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

(a) Any person in the business of purchasing scrap metal, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, shall make a 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 nonferrous metal to the place of purchase, the time and date of the transaction and a complete description of the kind and character of the nonferrous metal purchased. The person purchasing the nonferrous metal shall also require from the seller, and retain in the record, a signed certificate of ownership of the nonferrous metal being sold or authorization from the owner to sell. It shall be unlawful for any of the aforementioned persons to purchase any nonferrous metal without obtaining the certificate of ownership, or authorization from the owner to sell, on the part of the seller. Such record and certificate shall be available for inspection by any law-enforcement officer and must be maintained by the purchaser for not less than one year after the date of the purchase.

(b) Should the transaction involve one hundred or more pounds of copper or aluminum, in any form, the purchaser of the copper or aluminum, 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 seventy-two hours after the transaction. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process.

(c) 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 materials having a marginal value per individual unit.

(d) 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 five hundred nor more than two thousand dollars.
AN ACT to amend article five, 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 twelve-a; and to amend and reenact section one, article eight and section seven-a, article twelve, chapter sixty-two of said code, all relating to the felony offense of escaping from the custody of the commissioner of corrections; defining the offense of escaping from the custody of the commissioner of corrections and establishing the penalty therefor; and prescribing the venue for violations.

Be it enacted by the Legislature of West Virginia:

That article five, 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 twelve-a; and that section one, article eight and section seven-a, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter
61. Crimes and Their Punishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12a. Escape from custody of the commissioner of corrections.

1 Any person who escapes from the custody of the commissioner of corrections, regardless of where such person is confined or where such escape occurs, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one year nor more than five years. A term of imprisonment
imposed pursuant to the provisions of this section shall be imposed as a consecutive sentence and shall not be served concurrently with any imprisonment, confinement or detention imposed under any prior sentence being served or otherwise being discharged at the time such person commits an offense under the provisions of this section. A person charged with an offense under the provisions of this section shall not be released from the custody of the commissioner of corrections while the prosecution of the alleged offense is pending: Provided, That time served by such person after any other prior sentence has been served or otherwise discharged shall be applied to any sentence which may ultimately be imposed for an offense under this section. Venue for the prosecution of a violation of this section shall be in the county in which the escape occurs.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST CONVICTS.

§62-8-1. Offenses by convicts; conspiracy.

A person imprisoned or otherwise in the custody of the commissioner of corrections is guilty of a felony if he shall kill, wound or inflict other bodily injury upon an officer or guard of the penitentiary or medium security prison; or shall break, cut or injure any building, fixture or fastening of the penitentiary or medium security prison, or any part thereof, for the purpose of escaping or aiding any other convict to escape therefrom, or rendering the penitentiary or medium security prison less secure as a place of confinement; or shall make, procure, secrete, or have in his possession, any instrument, tool or other thing for such purpose, or with intent to kill, wound or inflict bodily injury as aforesaid; or shall resist the lawful authority of an officer or guard of the penitentiary or medium security prison for such purpose or with such intent. Any three or more convicts
CRIMES AND OFFENSES

17 so confined, or in such custody, who shall conspire
18 together to commit any offense mentioned in this section
19 shall each be deemed guilty of a felony.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

Notwithstanding any other provision of law, when any
person has been found guilty of, or pleads guilty to, a
felony, the court may, prior to pronouncing of sentence,
direct that the person be delivered into the custody of
the commissioner of corrections, for the purpose of
diagnosis and classification for a period not to exceed
sixty days: Provided, That the court shall require that
a presentence report be completed by the probation
officer assigned to that person and be made available
to the commissioner of corrections prior to delivery of
the person to a statutorily approved diagnosis and
classification unit of the division of corrections. While
at the diagnosis and classification unit the person shall
undergo examination, diagnosis and classification and
shall then be remanded and delivered to the custody of
the sheriff of the county wherein he or she was found
guilty or entered such plea. Within ten days following
the termination of the examination, diagnosis and
classification, the commissioner of corrections shall
make or cause to be made a report to the court wherein
the person was found guilty, or entered a plea of guilty,
containing the results, findings, conclusions and recom-
mandations of the commissioner with respect to such
person.

Whenever a person is remanded into the custody of the
commissioner of corrections pursuant to this section, the
person shall be given credit on any sentence subse-
quently imposed by the court equal to the time spent in
such custody.
AN ACT to amend and reenact section twelve, article eight; sections three and four, article eight-b; and section five, article eight-d, all of chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the offenses of incest, sexual assault in the first degree, sexual assault in the second degree, and sexual exploitation, sexual intercourse, sexual intrusion, or sexual contact by a parent, guardian or custodian, and the penalties therefor; and increasing the criminal penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight; sections three and four, article eight-b; and section five, article eight-d, all of chapter sixty-one 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. Crimes Against Chastity, Morality and Decency.
8B. Sexual Offenses.
8D. Child Abuse.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.

1 (a) For the purposes of this section:
2 (1) “Aunt” means the sister of a person’s mother or father;
3 (2) “Brother” means the son of a person’s mother or father;
4 (3) “Daughter” means a person’s natural daughter, adoptive daughter or the daughter of a person’s husband or wife;
(4) "Father" means a person's natural father, adoptive father or the husband of a person's mother;

(5) "Granddaughter" means the daughter of a person's son or daughter;

(6) "Grandfather" means the father of a person's father or mother;

(7) "Grandmother" means the mother of a person's father or mother;

(8) "Grandson" means the son of a person's son or daughter;

(9) "Mother" means a person's natural mother, adoptive mother or the wife of a person's father;

(10) "Niece" means the daughter of a person's brother or sister;

(11) "Nephew" means the son of a person's brother or sister;

(12) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;

(13) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;

(14) "Sister" means the daughter of a person's father or mother;

(15) "Son" means a person's natural son, adoptive son or the son of a person's husband or wife; and

(16) "Uncle" means the brother of a person's father or mother.

(b) A person is guilty of incest when such person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son,
grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle or aunt.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than fifteen years, or fined not less than five hundred dollars nor more than five thousand dollars and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this section where the victim is a minor to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

ARTICLE 8B. SEXUAL OFFENSES.


§61-8B-4. Sexual assault in the second degree.


(a) A person is guilty of sexual assault in the first degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employed a deadly weapon in the commission of the act; or

(2) Such person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is eleven years old or less.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than fifteen nor more than thirty-five years, or fined not
§61-8B-4. Sexual assault in the second degree.

(a) A person is guilty of sexual assault in the second degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or

(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary not less than ten nor more than twenty-five years.

ARTICLE 8D. CHILD ABUSE.

§61-8D-5. Sexual abuse by a parent, guardian or custodian; parent, guardian or custodian allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or 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,
then such guardian or custodian shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five nor more than fifteen years, or fined not less than five hundred nor more than five thousand dollars and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(b) If any parent, guardian or custodian shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian or custodian when such child is less than sixteen years of age, 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, such parent, guardian or custodian shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or fined not less than one thousand nor more than ten thousand dollars and imprisoned in the penitentiary not less than one year nor more than five years.

(c) If any parent, guardian or custodian shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian or custodian when such child is sixteen years of age or older, 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, then such parent, guardian or custodian shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not less than six months nor more than one year.

(d) The provisions of this section shall not apply to a custodian whose age exceeds the age of the child by less than four years.
AN ACT to amend and reenact article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the division of culture and history; qualifications of commissioner; changing administrative structure within the division; permitting three additional sections within the division; reordering three sections and changing references; authorizing fees prescribed by the commissioner by rule for use of facilities; increasing membership on the archives and history commission from nine to thirteen and adding an archivist, a librarian, and a museum specialist to the commission; and authorizing division to enter into agreements with responsible individuals in carrying out its purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.
§29-1-1a. Transfer of powers and duties; existing contracts and obligations.
§29-1-1b. Termination date.
§29-1-2. General powers of commissioner.
§29-1-3. Commission on the arts.
§29-1-4. Arts and humanities section; director.
§29-1-5. Archives and history commission.
§29-1-6. Archives and history section; director.
§29-1-7. Museums section; director.
§29-1-8. Historic preservation section; director.
§29-1-8a. Protection of human skeletal remains; grave artifacts and grave markers; permits for excavation and removal; penalties.
§29-1-8b. Protection of historic and prehistoric sites; penalties.
§29-1-9. Administrative section; director.
§29-1-10. Division employees classified by civil service; exceptions.
§29-1-11. Power to accept and receive funds; power to apply for grants; disbursement of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

§29-1-12. Publication of materials; agreements.

§29-1-13. Land; control and disposal; rules and regulations.

§29-1-14. Washington-Carver Camp; prohibition of disposition or removal of minerals without authorization by the Legislature.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

The division of culture and history and the office of commissioner of culture and history heretofore created are hereby continued. The governor shall nominate, and by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer of the division and shall be paid an annual salary and be governed by the provisions of section two-a, article seven, chapter six of this code. The commissioner so appointed shall have: (1) A bachelor's degree in one of the fine arts, social sciences, library science or a related field; or (2) four years' experience in the administration of museum management, public administration, arts, history or a related field.

The division shall consist of five sections and two citizen's commissions as follows:

(1) The arts and humanities section and a commission on the arts;

(2) The archives and history section and a commission on archives and history;

(3) The museums section;

(4) The historic preservation section; and

(5) The administrative section.

The commissioner shall exercise control and supervision of the division and shall be responsible for the projects, programs and actions of each of its sections. The purpose and duty of the division is to advance, foster and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify,
register, acquire, mark and care for historical, prehistorical, archaeological and significant architectural sites, structures and objects in the state; to encourage the promotion, preservation and development of significant sites, structures and objects through the use of economic development activities such as loans, subsidies, grants and other incentives; to coordinate all cultural, historical and artistic activities in state government and at state-owned facilities; to acquire, preserve and classify books, documents, records and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the culture of the state.

The division shall have jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia science and culture center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; “Camp Washington-Carver” in Fayette County, as provided for in section fourteen of this article; and any other sites as may be transferred to or acquired by the division.

For the purposes of this article “commissioner” means the commissioner of culture and history, and “division” means the division of culture and history.

§29-1-1a. Transfer of powers and duties; existing contracts and obligations.

Except as otherwise provided in this article, the powers and duties of the West Virginia antiquities commission, the West Virginia arts and humanities council and the department of archives and history are hereby transferred to the division of culture and history.

All existing contracts and obligations of the West Virginia antiquities commission, the West Virginia arts and humanities council and the department of archives and history, or relating to the present science and culture center, shall remain in full force and effect and shall be performed by the division of culture and history.
§29-1-1b. Termination date.

1. The division of culture and history, together with its citizen's commissions, shall continue to exist until the first day of July, one thousand nine hundred ninety-six, upon which date it shall terminate unless sooner continued and reestablished pursuant to the provisions of article ten, chapter four of this code.

§29-1-2. General powers of commissioner.

1. The commissioner shall assign and allocate space in all facilities assigned to the division and all space in the building presently known as the West Virginia science and culture center, and any other buildings or sites under the control of the commissioner, and may, in accordance with the provisions of chapter twenty-nine-a of this code, prescribe rules, regulations and fees for the use and occupancy of said facilities, including tours.

The commissioner shall coordinate the operations and affairs of the sections and commissions of the division and assign each section or commission responsibilities according to criteria the commissioner deems most efficient, productive and best calculated to carry out the purposes of this article. The commissioner shall provide to the fullest extent possible for centralization and coordination of the bookkeeping, personnel, purchasing, printing, duplicating, binding and other services which can be efficiently combined. The commissioner may establish such other sections for such purposes as he or she deems necessary, and may appoint directors thereof.

The commissioner may appoint a director of the West Virginia science and culture center. The commissioner shall serve as the state historic preservation officer and shall chair the capitol building commission.

After consultation with the section directors and the commissions, the commissioner shall prepare a proposed division budget for submission to the governor for each fiscal year.

No contract, agreement or undertaking may be entered into by any section of the division which involves
the expenditure of funds without the express written
approval of the commissioner as to fiscal responsibility.

The commissioner shall prepare and submit to the
governor an annual report in accordance with the
provisions of section twenty, article one, chapter five of
this code, which report shall include a detailed account
of the activities of each section and commission of the
division.

The commissioner shall employ all personnel for the
sections, except for persons in the professional positions
established within the sections as provided in this
article; and shall supply support services to the commis-
sions and to the governor's mansion advisory committee.

§29-1-3. Commission on the arts.

The commission on the arts heretofore created is
hereby continued and shall be composed of fifteen
appointed members.

The governor shall nominate, and by and with the
advice and consent of the Senate, appoint the members
of the commission for staggered terms of three years.
A person appointed to fill a vacancy shall be appointed
only for the remainder of that term.

No more than eight members may be of the same
political party. Members of the commission shall be
appointed so as to fairly represent both sexes, the ethnic
and cultural diversity of the state and the geographic
regions of the state.

The commission shall elect one of its members chair.
It shall meet at such time as shall be specified by the
chair. Notice of each meeting shall be given to each
member by the chair in compliance with the open
meetings laws of the state. A majority of the members
shall constitute a quorum for the transaction of business.
The director of the arts and humanities section shall be
an ex officio nonvoting member of the commission and
shall serve as secretary. The director or a majority of
the members may also call a meeting upon such notice
as provided in this section.
Each member or ex officio member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

Upon recommendation of the commissioner, the governor may also appoint such officers of the state as may be appropriate to serve on the commission as ex officio nonvoting members.

The commission shall have the following powers:

(1) To advise the commissioner and the director of the arts and humanities section concerning the accomplishment of the purposes of that section and to establish a state plan with respect thereto;

(2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts and humanities section;

(3) To request, accept or expend federal funds to accomplish the purposes of the arts and humanities section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the commission on the arts;

(4) To otherwise encourage and promote the purposes of the arts and humanities section;

(5) To approve rules and regulations concerning the professional policies and functions of the section as promulgated by the director of the arts and humanities section; and

(6) To advise and consent to the appointment of the director by the commissioner.

§29-1-4. Arts and humanities section; director.

The purposes and duties of the arts and humanities section are to stimulate, encourage, assist, promote,
foster and develop the performing and creative arts and crafts in the state; and in furtherance thereof to make awards, prizes and grants to individual performers, artists or craftsmen and to public or private corporations or associations in the field of either the performing or creative arts and crafts that would tend to encourage and foster the advancement of such arts and crafts; to support cultural, artistic or craft exhibits or performances at the division’s facilities or on tour; and to perform such other duties as may be assigned to said section by the commissioner.

With the advice and consent of the commission on the arts, the commissioner shall appoint a director of the arts and humanities section, who shall have: (1) A bachelor's degree in the fine arts or related field or equivalent training and experience; or (2) three years' experience in administration of the fine arts or a related field. Notwithstanding these qualifications, the person serving as the executive director of the arts and humanities council on the date of the enactment of this article shall be eligible for appointment as the director of the arts and humanities section.

With the approval of the commissioner, the director shall establish professional positions within the section. The director shall employ the personnel within these professional positions for the section.

The director may promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code concerning the professional policies and functions of the arts and humanities section, subject to the approval of the commission on the arts.

§29-1-5. Archives and history commission.

The archives and history commission which is hereby created shall be composed of thirteen appointed members, two ex officio voting members and five ex officio nonvoting members as provided in this section.

The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years.
A person appointed to fill a vacancy shall be appointed only for the remainder of that term. No more than seven of the appointed members may be of the same political party. Members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state. The archives and history commission shall contain the required professional representation necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended, and shall serve as the “state review board” and shall follow all rules and regulations as specified therein. This representation shall include the following professions: Historian, architectural historian, historical architect, archaeologist specializing in historic and prehistoric archaeology, archivist, librarian and museum specialist.

The commission shall elect one of its members chair. It shall meet at such time as shall be specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings law. A majority of the voting members shall constitute a quorum for the transaction of business.

In addition to the thirteen appointed members, the president of the state historical society and the president of the state historical association shall serve as ex officio voting members of the archives and history commission. The director of the state geological and economic survey, the president of the West Virginia Preservation Alliance, Inc., and the state historic preservation officer shall serve as ex officio nonvoting members of the archives and history commission.

The directors of the archives and history section, the historic preservation section and the museums section shall be ex officio nonvoting members of the commission. The director of the archives and history section shall serve as secretary of the commission. The secretary, or a majority of the members, may also call a meeting upon such notice as provided in this section.

Each member or ex officio member of the commission
shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the commission; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

The commission shall have the following powers:

(a) To advise the commissioner and the directors of the archives and history section, the historic preservation section and the museums section concerning the accomplishment of the purposes of those sections and to establish a state plan with respect thereto;

(b) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the archives and history section, the historic preservation section and the museums section;

(c) To request, accept or expend federal funds to accomplish the purposes of the archives and history section, the historic preservation section and the museums section when federal law or regulations would prohibit the same to be done by the commissioner or section director, but would permit the same to be done by the archives and history commission;

(d) To otherwise encourage and promote the purposes of the archives and history section, the historic preservation section and the museums section;

(e) To approve rules and regulations concerning the professional policies and functions of the archives and history section, the historic preservation section and the museums section as promulgated by the directors of those sections;

(f) To advise and consent to the appointment of the section directors by the commissioner; and

(g) To review and approve nominations to the state and national registers of historic places.

§29-1-6. Archives and history section; director.
(a) The purposes and duties of the archives and history section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition documents and records having historical, evidential, administrative and/or legal value 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 of such documents and records; to direct, protect, preserve, study and disseminate information on such documents and records; 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 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 edit and publish a historical journal 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 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 field of West Virginia history, history, or in records, library or archives management; and (2) three years' experience in administration in the field of West Virginia history, history, 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 appoint-
ment 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.

(c) 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. At the minimum, the following professions shall be represented within the section staff: Historian, archivist, librarian and technical and clerical positions as are required.

(d) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the archives and history section; and (2) such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.

§29-1-7. Museums section; director.

(a) The purposes and duties of the museums section are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the commissioner for acquisition historic objects worthy of preservation, 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 objects; to direct, protect, excavate, preserve, study or develop such objects; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to operate and maintain a state museum, and to coordinate activities with other muse-
18 urns in the state; and to perform such other duties as
19 may be assigned to the section by the commissioner.

20 (b) With the advice and consent of the archives and
21 history commission, in addition to the duties above set
22 forth, the section shall determine the whereabouts of
23 and require the return of furnishings and objects
24 missing from the capitol building and other state-owned
25 or controlled buildings, including, but not limited to,
26 furnishings chosen or purchased for the capitol by its
27 architect, Cass Gilbert. No furnishings from the capitol
28 may be sold or disposed of except pursuant to the
29 provisions of article three, chapter five-a of this code. If
30 furnishings originally designated as capitol building
31 furnishings have been sold or otherwise disposed of
32 without the requisite sale procedures, such furnishings
33 shall be returned to the capitol and, upon presentation
34 of proof of the amount paid, the current owner shall be
35 reimbursed for the cost of the furnishing less any
36 appropriate depreciation or wear and tear.

37 (c) With the advice and consent of the archives and
38 history commission, the commissioner shall appoint a
39 director of the museums section, who shall have: (1) A
40 graduate degree in one of the social sciences, or
41 equivalent training and experience in the field of West
42 Virginia history, history, archaeology, or in museum
43 administration; and (2) three years’ experience in
44 administration in the field of West Virginia history,
45 history, archaeology, or in museum management.

46 (d) With the approval of the commissioner, the
47 director shall establish professional positions within the
48 section and develop appropriate organizational struc-
49 tures to carry out the duties of the section. The director
50 shall employ the personnel with applicable professional
51 qualifications to fill positions within the organizational
52 structure. At the minimum, the following professions
53 shall be represented within the section staff: Curator
54 and such technical and clerical positions as are required.
55 With the approval of the commissioner, the director
56 shall establish professional positions within the section.
57 The director shall employ the personnel within these
58 professional positions for the section.
(e) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the museums section; and (2) such other rules and regulations as may be deemed necessary to effectuate the purposes of this section.

§29-1-8. Historic preservation section; director.

(a) The purposes and duties of the historic preservation section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures 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 and objects; to direct, protect, excavate, preserve, study or develop such sites and structures; 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 section; 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 section; to develop and maintain a West Virginia state register of historic places for use as a planning tool for state and local government; 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 eight-a of this article; and to perform such other duties as may be assigned to the section by the commissioner.

(b) With the advice and consent of the archives and
history commission, the commissioner shall appoint a
director of the historic preservation section, who shall
have: (1) A graduate degree in one of the social sciences,
or equivalent training and experience in the field of
historic preservation, archaeology, West Virginia
history, or history; and (2) three years' experience in
administration in the field of West Virginia history,
history, historic preservation or archaeology. Notwith-
standing these qualifications, the person serving as the
deputy state historic preservation officer on the date of
enactment of this article shall be eligible for appoint-
ment as the director of the historic preservation section.
The director of the historic preservation section shall
serve as the deputy state historic preservation officer.

(c) With the approval of the commissioner, the
director shall establish professional positions within the
section and develop appropriate organizational struc-
tures 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 histo-
rian, a structural historian who specializes in historical
preservation, an archaeologist specializing in historic
and prehistoric archaeology, and such technical and
clerical positions as are required.

(d) The director shall promulgate rules and regula-
tions with the approval of the archives and history
commission and in accordance with chapter twenty-
ine-nine-a of this code concerning: (1) The professional
policies and functions of the historic preservation
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) such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.

§29-1-8a. 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 educational 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 governments and any political subdivision of this state; and

(6) "Disturb" means the excavating, removing, exposing, 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 the historic preservation section: 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 the historic preservation section 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 archaeological 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 the historic preservation section, 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 the historic preservation section, 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 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 dollars 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 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 the historic preservation section. The director shall cause an on-site inspection 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 the historic preservation section directly.

If the director of the historic preservation section determines that the site has no archaeological signifi-
cance, 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 historic preservation 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 excavation or removal of the remains. If the director determines that the issuance of a permit for the archaeological 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 the historic preservation section 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 descendents of proven kinship, when available; and (5) such other conditions as the director may deem necessary. Expenses accrued in meeting the permit conditions shall be borne by the permit applicant, except in cases where the deceased 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 the historic preservation section 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 the historic preservation section 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 the historic preservation section 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 the historic preservation section for a determination as to whether such is the case. Upon making such a determination in the affirma-
tive, the director of the historic preservation section shall provide written certification to the land owner 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 the historic preservation section. 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 the historic preservation section to initiate criminal prosecutions or to seek civil damages, injunctive relief and any other appropriate relief. The director of the historic preservation section 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 the historic preservation section.

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 and may be expended by the commissioner of culture 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 commissioner of culture 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 historic preservation. 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.
§29-1-8b. Protection of historic and prehistoric sites; penalties.
1 Historic and prehistoric landmarks, sites and districts, identified by the historic preservation section, on
2 lands owned or leased by the state, or on private lands
3 where investigation and development rights have been
4 acquired by the state by lease or contract, shall not be
5 disturbed, or destroyed except as permitted under
6 sections eight and eight-a of this article.
7
8 Any person violating the provisions of this section
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not more than five hundred
11 dollars, or imprisoned in the county jail not more than
12 six months, or both fined and imprisoned.

§29-1-9. Administrative section; director.
1 The purposes and duties of the administrative section
2 are to provide centralized support to the division in all
3 areas of operations.
4
5 The commissioner shall appoint a director of the
6 administrative section who shall have a bachelor’s
7 degree and two years’ experience in responsible posi-
8 tions involving office management, public administra-
9 tion, budget and fiscal administration, or related fields;
10 or six years’ experience as outlined above.
11 Notwithstanding these qualifications, the person serving
12 as director of the administrative section on the date of
13 enactment of this section shall be eligible for appoint-
14 ment as director of the administrative section.
15
16 With approval of the commissioner, the director of the
17 administrative section shall establish professional
18 positions within the section.

§29-1-10. Division employees classified by civil service; exceptions.
1 Effective the first day of July, one thousand nine
2 hundred seventy-seven, any person employed in any of
3 the agencies consolidated by this article who is a
4 classified civil service employee shall, within the limits
5 provided in article six of this chapter, remain in the civil
service system as a covered employee; and all persons
employed by the division of culture and history shall be
employed under the classified service of the civil service
system within the limits provided in article six of this
chapter.

§29-1-11. Power to accept and receive funds; power to
apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds
heretofore received or appropriated.

The division may, in the name of the state of West
Virginia, through the commissioner or its commissions,
accept and receive grants, appropriations, gifts, be-
quests and funds from any public or private source for
the purpose of carrying out the duties and purposes of
this article. The division may, through the commissioner
or its commissions, apply for grants from the federal
government, private foundations and any other source
for the purposes of this article. All funds received from
any source shall be paid into the treasury of the state
and disbursed upon warrant by the state auditor
following requisition by the division. Such requisitions
shall be signed by the commissioner or by such other
person as the commissioner may authorize by written
document deposited with the auditor or, in the event of
emergency, by the governor or the governor's designee.
No funds or gifts received from any source shall be
expended or used for any purpose other than that
intended as evidenced by a positive and affirmative
declaration or by a negative restriction or limitation.

All federal or state funds received to provide grants-
in-aid or awards to further the purposes of this article
shall be approved and distributed by the appropriate
commission established by this article.

§29-1-12. Publication of materials; agreements.

The division of culture and history shall have the
power, responsibility and duty to publish or republish
material of prehistorical, historical, archaeological,
architectural or cultural interest. The division of culture
and history may sell such publications as well as
postcards and other items of such interest at the state
museum or any other site or property administered by
the state or at any special event sponsored by the state.
The division shall have the right to enter into agree-
ments with responsible individuals, private historical,
archaeological, architectural or cultural associations,
foundations or similar organizations or any agency of
the federal, state or local government for the purpose
of carrying out its purposes or for raising money to fund
the functions of the division.
§29-1-13. Land; control and disposal; rules and
regulations.
All land owned or leased by the division of culture and
history shall be titled in the name of the public land
corporation of West Virginia but shall be controlled,
administered and supervised by the division. The
division, in the discretion of its commissioner, may sell
or dispose of any real or personal property which, in his
or her opinion, does not have sufficient prehistorical,
historical, archaeological, architectural or cultural value
to justify its retention.
The commissioner shall have the power to make and
promulgate rules and regulations relating to the general
management and administration of the division.
§29-1-14. Washington-Carver Camp; prohibition of dispo-
sition or removal of minerals without au-
thorization by the Legislature.
Washington-Carver Camp in Fayette County, hereto-
fore transferred to the public land corporation under the
control, administration and supervision of the division
of culture and history shall continue under the control,
administration and supervision of the division.
The division of culture and history shall undertake to
develop such cultural and multicultural, artistic,
humanistic and educational programs at the camp as
will serve and benefit the citizens of the state and the
many cultures represented therein. In order to ensure
the maximum reasonable utilization of that portion of
the camp under its jurisdiction, the division shall,
during times the camp is not being used for the
division's purposes, make the camp available, under
such terms as the division deems proper, to any other
agency of government or nonprofit group desiring to use
the camp. The camp shall retain the name “Camp
Washington-Carver” as indicative of its heritage of
serving the black citizens of the state. The division is
authorized to provide necessary and suitable equipment
and other resources for implementing the provisions of
this section.

No minerals may be assigned, leased or otherwise
encumbered, sold, mined, or removed with respect to the
property heretofore transferred or the mineral rights
retained without specific authorization by the Legisla-
ture.

CHAPTER 43
(S. B. 351—By Senators Bailey, Minard, Dittmar,
Wiedebusch, Anderson and Felton)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and thirteen,
article fourteen, and sections one and thirteen, article
fourteen-b, chapter seven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all
relating to civil service for deputy sheriffs and correctional officers; and providing that deputy sheriffs or correctional officers who are appointed jailer shall be entitled to rights and benefits under civil service, except that they may be removed without cause, retaining their former rank.

Be it enacted by the Legislature of West Virginia:

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

Article
14B. Civil Service for Correctional Officers.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.
§7-14-1. Appointments and promotions of deputy sheriffs.

§7-14-13. Vacancies filled by promotions; eligibility for promotion; rights of chief deputy.

*§7-14-1. Appointments and promotions of deputy sheriffs.

Notwithstanding the provisions of article three, chapter six, and article seven, chapter seven of this code, all appointments and promotions of full-time deputy sheriffs, as defined in section two of this article, in the offices of sheriffs of counties of twenty-five thousand population or more, shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided. On and after the effective date of this article, no person except the chief deputy or a deputy sheriff appointed as jailer pursuant to the provisions of section two, article eight of this chapter shall be appointed, promoted, reinstated, removed, discharged, suspended or reduced in rank or pay as a full-time deputy sheriff, as defined in said section two, of any county in the state of West Virginia subject to the provisions hereof, in any manner or by any means other than those prescribed in this article.

§7-14-13. Vacancies filled by promotions; eligibility for promotion; rights of chief deputy.

Vacancies in positions of deputy sheriff shall be filled, so far as practicable, by promotion from among persons holding positions in the next lower grade. Promotions shall be based upon merit and fitness, to be ascertained by competitive examinations to be provided by the civil service commission, and upon the superior qualifications of the persons promoted, as shown by their previous service and experience: Provided, That, except for the chief deputy or jailer, no person shall be eligible for promotion from the lower grade to the next higher grade until such person shall have completed at least two years' service in the next lower grade: Provided, however, That notwithstanding the provisions of section one of this article, any person occupying the office of chief deputy or any deputy sheriff occupying the office of jailer pursuant to the provisions of section two, article eight of this chapter in any such county on the effective
date of this article, or thereafter appointed to such
office, shall, except as hereinafter provided in this
section, be and shall continue to be entitled to all of the
rights and benefits of the provisions of this article,
except that he or she may be removed from such office
of chief deputy or jailer without cause and the time
spent by such person in the office of such chief deputy
or jailer shall be added to the time, if any, served by
such person during the entire time he or she was a
deputy sheriff of such county prior to his or her
appointment as chief deputy or jailer, and shall in all
cases of removal, except for removal for just cause,
retain the regular rank within said sheriff's office which
he or she held, if any, at the time of his or her
appointment to the office of chief deputy or jailer or
which he or she has attained, if any, during his or her
term of service as chief deputy or jailer. The provisions
of this section shall be construed to apply and to inure
to the benefit of all persons who have ever been subject
to the provisions of this article. The commission shall
have the power to determine in each instance whether
an increase in salary constitutes a promotion.

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.
§7-14B-1. Appointments and promotions of correctional officers.
§7-14B-13. Vacancies filled by promotions; eligibility for promotion.

§7-14B-1. Appointments and promotions of correctional officers.

1 Notwithstanding the provisions of article three,
2 chapter six, and article seven, chapter seven of this code,
3 all appointments and promotions of full-time correc-
4 tional officers, as defined in section two of this article,
5 in the offices of sheriffs of counties of twenty-five
6 thousand population or more, shall be made only
7 according to qualifications and fitness to be ascertained
8 by examinations, which, so far as practicable, shall be
9 competitive, as hereinafter provided. On and after the
effective date of this article, no person except a
correctional officer appointed as jailer pursuant to the
provisions of section two, article eight of this chapter
shall be appointed, promoted, reinstated, removed,
discharged, suspended or reduced in rank or pay as a
full-time correctional officer, as defined in said section
two, of any county in the state of West Virginia subject to the provisions hereof, in any manner or by any means other than those prescribed in this article.

§7-14B-13. Vacancies filled by promotions; eligibility for promotion.

Vacancies in positions of correctional officer shall be filled, so far as practicable, by promotion from among persons holding positions in the next lower grade. Promotions shall be based upon merit and fitness, to be ascertained by competitive examinations to be provided by the civil service commission, and upon the superior qualifications of the persons promoted, as shown by their previous service and experience: *Provided,* That, except for a correctional officer appointed jailer pursuant to the provisions of section two, article eight of this chapter, no person shall be eligible for promotion from the lower grade to the next higher grade until such person shall have completed at least two years' service in the next lower grade: *Provided, however,* That, notwithstanding the provisions of section one of this article, any correctional officer occupying the office of jailer pursuant to the provisions of section two, article eight of this chapter in any such county on the effective date of this article, or thereafter appointed to such office, shall, except as hereinafter provided in this section, be and shall continue to be entitled to all of the rights and benefits of the provisions of this article, except that he or she may be removed from such office of jailer without cause and the time spent by such person in the office of such jailer shall be added to the time, if any, served by such person during the entire time he or she was a correctional officer of such county prior to his or her appointment as jailer, and shall in all cases of removal, except for removal for just cause, retain the regular rank within said sheriff's office which he or she held, if any, at the time of his or her appointment to the office of jailer or which he or she has attained, if any, during his or her term of service as jailer. The provisions of this section shall be construed to apply and to inure to the benefit of all persons who have ever been subject to the provisions of this article. The commission shall have the power to determine in each instance whether an increase in salary constitutes a promotion.
AN ACT to repeal section nineteen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three and twenty of said article, relating to civil service for deputy sheriffs; and providing that persons who are currently or who hereinafter serve as deputy sheriffs shall be covered by civil service.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, three and twenty of said article be amended and reenacted to read as follows:

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-1. Appointments and promotions of deputy sheriffs.

§7-14-2. Civil service commission.

§7-14-20. Inconsistent acts repealed; once established civil service remains mandatory.

*§7-14-1. Appointments and promotions of deputy sheriffs.

Notwithstanding the provisions of article three, chapter six and article seven, chapter seven of this code, all appointments and promotions of full-time deputy sheriffs shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided. On and after the effective date of this article, no person except the chief deputy shall be appointed, promoted, reinstated, removed, discharged, suspended or reduced in rank or pay as a full-time deputy sheriff, as defined in said section two, of any county in the state of West Virginia subject to the provisions hereof, in any manner or by any means other than those prescribed in this article.

*Clerk's Note: This section was also amended by S.B. 351 (Chapter 43), which passed prior to this act.
§7-14-3. Civil service commission.

There shall be a civil service commission in each county and the state. Each such civil service commission shall consist of three commissioners, one of whom shall be appointed by the bar association of such county, one of whom shall be appointed by the deputy sheriff's association of such county, and one of whom shall be appointed by the county commission of such county. In the event the bar association or deputy sheriff's association fails to make an appointment within the time prescribed in this section therefor, then such appointment shall be made by the county commission. The persons appointed commissioners shall be qualified voters of the county for which they are appointed, and at least two of the commissioners shall be persons in full sympathy with the purposes of this article. Not more than two of the commissioners, at any one time, shall be members of the same political party. The commissioners in each county shall be appointed as follows:

Within sixty days from the effective date of this article, the authorities having the power to appoint members to the civil service commission shall appoint the three commissioners, the first to be appointed by the bar association of the county shall serve for six years from the date of appointment, the second to be appointed by the deputy sheriff's association of the county shall serve for four years from the date of appointment, and the third to be appointed by the county commission of the county shall serve for a term of two years from the date of appointment. All subsequent appointments shall be made for terms of four years. In the event that any commissioner of the civil service commission ceases to be a member thereof by virtue of death, final removal or other cause, a new commissioner shall be appointed to fill the unexpired term of that commissioner within ten days after said ex-commissioner ceased to be a member of the commission. Such appointment shall be made by the authority who appointed the commissioner who is no longer a member of the commission. Each year the three members of the commission shall, together, elect one of their number to act as president of the commission for a term of one year. The county
commission may at any time remove a commissioner for
good cause, which shall be stated in writing and made
a part of the records of the commission. Once the county
commission has removed any commissioner, such county
commission shall within ten days thereafter file in the
office of the clerk of the circuit court of the county a
petition setting forth in full the reason for the removal
and praying for the confirmation of the circuit court of
the action of the county commission in removing the said
commissioner. A copy of the petition shall be served
upon the commissioner so removed simultaneously with
its filing in the office of the clerk of the circuit court
and has precedence on the docket of the circuit court
and shall be heard by the court as soon as practicable
upon the request of the removed commissioner. All
rights hereby vested in the circuit court may be
exercised by the judge thereof in vacation. In the event
that no term of the circuit court is being held at the time
of the filing of the petition, and the judge thereof cannot
be reached in the county wherein the petition was filed,
the petition shall be heard at the next succeeding term
of the circuit court, whether regular or special, and the
commissioner so removed shall remain removed until a
hearing is had upon the petition of the county commis-
sion. The circuit court, or the judge thereof in vacation,
shall hear and decide the issues presented by the
petition. The county commission or commissioner, as the
case may be, against whom the decisions of the circuit
court or judge thereof in vacation is rendered has the
right to petition the supreme court of appeals for a
review of the decision of the circuit court or the judge
thereof in vacation as in other civil cases. In the event
that the county commission fails to file its petition in the
office of the clerk of the circuit court, as hereinbefore
provided, within ten days after the removal of the
commissioner, such commissioner immediately resumes
his position as a member of the civil service commission.

Any resident of the county has the right at any time
to file charges against and seek the removal of any
member of the civil service commission. The charges
shall be filed in the form of a petition in the office of
the clerk of the circuit court of the county. A copy of
the petition shall be served upon the commissioner sought to be removed. The petition shall be matured for hearing and heard as a civil action by the circuit court of the county for which the commissioner serves as a member of the civil service commission or by the judge thereof in vacation. The party against whom the decision of the circuit court or judge thereof in vacation is rendered has the right to petition the supreme court of appeals for a review of the decision of the circuit court or judge thereof in vacation as in other civil cases.

No commissioner may hold any other office (other than the office of notary public) under the United States, this state or any municipality, county or other political subdivision thereof; nor may any commissioner serve on any political party committee or take any active part in the management of any political campaign.

§7-14-20. Inconsistent acts repealed; once established civil service remains mandatory.

All acts and parts of acts of the Legislature, whether general, special or local, in relation to deputy sheriffs inconsistent with the provisions of this article are hereby repealed to the extent of such inconsistency.

CHAPTER 45
(S. B. 631—By Senators Holliday and Macnaughtan)

[Passed March 9, 1991; 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 sixteen; to amend article sixteen of said chapter by adding thereto a new section, designated section eleven; to amend and reenact sections fifteen-a, fifteen-b and thirty-three, article two, chapter forty-eight of said code; to further amend said article by adding thereto a new section, designated section fifteen-c; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact
sections twelve and fifteen, article two of said chapter; to further amend said article by adding thereto a new section, designated section twenty-three; to amend and reenact section three-a, article three of said chapter; to amend and reenact section one, article four of said chapter; to amend and reenact sections two and three, article five of said chapter; to amend and reenact section five, article six of said chapter; and to amend and reenact sections twelve and thirty-six, article seven of said chapter, all relating to the enforcement of family obligations generally; requiring insurers to provide coverage for children of insureds; requiring courts when establishing or modifying support orders to ascertain the ability of parties to provide medical care for children; providing for the establishment and enforcement of medical support orders; providing for withholding from income of amounts payable as support; directing the supreme court of appeals to provide forms for petitions for modification of an order for support; requiring the disclosure of assets in an action for divorce or annulment; clarifying the meaning of the term "source of income"; changing the definition of "support" to include interest on unpaid support; providing for the distribution of amounts collected as support by the child advocate office; removing the specific requirements as to the contents of legislative rules relating to obtaining support from federal tax refunds; prescribing procedures for obtaining access to records in the possession of the children's advocate; providing that the children's advocate represents the state of West Virginia; increasing the statutory salary for secretary-clerks of the family law master; restating that for hearings before a master, advance payment of additional fees beyond the initial fee charged shall be required; providing for interest on judgments for mature, unpaid installments of child support; directing an obligor who contests an affidavit for child support arrearages to obtain a date for hearing before the family law master; establishing the priority of writs of execution, suggestions or suggestee executions as to other legal process; providing for the amount to be withheld from the disposable income of an obligor
pursuant to a suggestee execution; establishing when a notice of wage withholding is sent to an obligor; prescribing the contents of such notice; providing for certain limitations on the amount which may be withheld from income; defining the misdemeanor offense of concealing the payment of income to an obligor with the intent to avoid income withholding and establishing penalties therefor; requiring a source of income to provide income information to the children’s advocate; and providing that the children’s advocate represents the state of West Virginia.

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

Chapter

33. Insurance.
48. Domestic Relations.
48A. Enforcement of Family Obligations.

CHAPTER 33. INSURANCE.

Articke

15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

An insurer issuing accident and sickness policies in this state shall provide coverage for the child or children of the insured without regard to the amount of child support ordered to be paid or actually paid by the insured, if any, and without regard to the fact that the insured may not have legal custody of the child or children or that the child or children may not be residing in the home of the insured.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-11. Group policies not to exclude insured's children from coverage.

An insurer issuing group accident and sickness policies in this state shall provide coverage for the child or children of each employee or member of the insured group without regard to the amount of child support ordered to be paid or actually paid by such employee or member, if any, and without regard to the fact that the employee or member may not have legal custody of the child or children or that the child or children may not be residing in the home of the employee or member.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.

(a) For the purposes of this section:

(1) "Custodian for the children" means a parent, legal guardian, committee or other third party appointed by court order as custodian of child or children for whom child support is ordered.

(2) "Obligated parent" means a natural or adoptive parent who is required by agreement or order to pay for insurance coverage and medical care, or some portion thereof, for his or her child.
(3) "Insurance coverage" means coverage for medical, dental, including orthodontic, optical, psychological, psychiatric or other health care service.

(4) "Child" means a child to whom a duty of child support is owed.

(5) "Medical care" means medical, dental, optical, psychological, psychiatric or other health care service for children in need of child support.

(6) "Insurer" means any company, trust or other entity which provides insurance coverage.

(b) In every action to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide medical care for the children of the parties. The court shall order one or more of the following:

(1) The court may order either parent or both parents to provide insurance coverage for a child, if such insurance coverage is available to that parent on a group basis through an employer or through an employee's union. If similar insurance coverage is available to both parents, the court shall order the child to be insured under the insurance coverage which provides more comprehensive benefits. If such insurance coverage is not available at the time of the entry of the order, the order shall require that if such coverage thereafter becomes available to either party, that party shall promptly notify the other party of the availability of insurance coverage for the child.

(2) If the court finds that insurance coverage is not available to either parent on a group basis through an employer, multi-employer trust or employees' union, or that the group insurer is not accessible to the parties, the court may order either parent or both parents to obtain insurance coverage which is otherwise available at a reasonable cost.

(3) Based upon the respective ability of the parents to pay, the court may order either parent or both parents to be liable for reasonable and necessary medical care
for a child. The court shall specify the proportion of the
medical care for which each party shall be responsible.

(4) If insurance coverage is available, the court shall
also determine the amount of the annual deductible on
insurance coverage which is attributable to the children
and designate the proportion of the deductible which
each party shall pay.

(c) The cost of insurance coverage shall be considered
by the court in applying the child support guidelines
provided for in section eight, article two, chapter forty-
eight-a of this code.

(d) Within thirty days after the entry of an order
requiring the obligated parent to provide insurance
coverage for the children, that parent shall submit to the
custodian for the child written proof that the insurance
has been obtained or that an application for insurance
has been made. Such proof of insurance coverage shall
consist of, at a minimum:

(1) The name of the insurer;

(2) The policy number;

(3) An insurance card;

(4) The address to which all claims should be mailed;

(5) A description of any restrictions on usage, such as
prior approval for hospital admission, and the manner
in which to obtain such approval;

(6) A description of all deductibles; and

(7) Five copies of claim forms.

(e) The custodian for the child shall send the insurer
or the obligated parent’s employer the children’s address
and notice that the custodian will be submitting claims
on behalf of the children. Upon receipt of such notice,
or an order for insurance coverage under this section,
the obligated parent’s employer, multi-employer trust or
union shall, upon the request of the custodian for the
child, release information on the coverage for the
children, including the name of the insurer.
(f) A copy of the court order for insurance coverage shall not be provided to the obligated parent's employer or union or the insurer unless ordered by the court, or unless:

(1) The obligated parent, within thirty days of receiving effective notice of the court order, fails to provide to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made;

(2) The custodian for the child serves written notice by mail at the obligated parent's last known address of intention to enforce the order requiring insurance coverage for the child; and

(3) The obligated parent fails within fifteen days after the mailing of the notice to provide written proof to the custodian for the child that the child has insurance coverage.

(g) (1) Upon service of the order requiring insurance coverage for the children, the employer, multi-employer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent's income or wages.

(2) If more than one plan is offered by the employer, multi-employer trust or union, the child shall be enrolled in the most comprehensive plan otherwise available to the obligated parent at a reasonable cost.

(3) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in subsection (i) of this section.

(h) (1) The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

(2) No insurer, employer or multi-employer trust in this state may refuse to honor a claim for a covered service when the custodian for the child or the obligated parent submits proof of payment for medical bills for the child.
(3) The insurer shall reimburse the custodian for the child or the obligated parent who submits copies of medical bills for the child with proof of payment.

(4) All insurers in this state shall provide insurance coverage for the child of a covered employee notwithstanding the amount of support otherwise ordered by the court and regardless of the fact that the child may not be living in the home of the covered employee.

(i) When an order for insurance coverage for a child pursuant to this section is in effect and the obligated parent's employment is terminated, or the insurance coverage for the child is denied, modified or terminated, the insurer shall, within ten days after the notice of change in coverage is sent to the covered employee, notify the custodian for the child and provide an explanation of any conversion privileges available from the insurer.

(j) A child of an obligated parent shall remain eligible for insurance coverage until the child is emancipated or until the insurer under the terms of the applicable insurance policy terminates said child from coverage, whichever is later in time, or until further order of the court.

(k) If the obligated parent fails to comply with the order to provide insurance coverage for the child, the court shall:

(1) Hold the obligated parent in contempt for failing or refusing to provide the insurance coverage, or for failing or refusing to provide the information required in subsection (d) of this section;

(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child, and any insurance premiums paid or provided for the child during any period in which the obligated parent failed to provide the required coverage; and

(3) In the alternative, other enforcement remedies available under sections two and three, article five, chapter forty-eight-a of this code, or otherwise available
under law, may be used to recover from the obligated
parent the cost of medical care or insurance coverage
for the child.

(l) Proof of failure to maintain court ordered insur-
ance coverage for the child constitutes a showing of
substantial change in circumstances or increased need
pursuant to section fifteen of this article, and provides
a basis for modification of the child support order.

§48-2-15b. Withholding from income on and after No-
vember 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
(2) The order shall also provide that income withholding will begin immediately upon the occurrence of any of the following:

(A) When the payments which the obligor has failed to make under the order are at least equal to the support payable for one month, if the order requires support to be paid in monthly installments;

(B) When the payments which the obligor has failed to make under the order are at least equal to the support payable for four weeks, if the order requires support to be paid in weekly or biweekly 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.

§48-2-15c. Modification forms.
The supreme court of appeals shall make available to the circuit courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income, or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit court shall make such forms available to persons desiring to petition the court pro se for a modification of the support award.

§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, health insurance coverage, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested, 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 disclosure 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 forty 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 article one-a, 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.
4. Proceedings Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.

ARTICLE 1. GENERAL PROVISIONS.


As used in this chapter:

(1) "Automatic data processing and retrieval system" means a computerized data processing system designed to do the following:

(A) To control, account for and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient
compatibility among the systems of different jurisdictions to permit periodic screenings to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;

(ii) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;

(iii) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(iv) Delinquency and enforcement activities;

(B) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate), the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;

(C) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;

(D) To provide access to the records of the department of health and human resources or aid to families with dependent children in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

(E) To provide for security against unauthorized access to, or use of, the data in such system;

(F) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur; and

(G) To provide management information on all cases from initial referral or application through collection
and enforcement.

(2) "Chief judge" means the following:

(A) The circuit judge in a judicial circuit having only one circuit judge, except for the twenty-third and thirty-first judicial circuits;

(B) In the twenty-third and thirty-first judicial circuits, a chief judge designated by the judges thereof from among themselves by general order, to act as chief judge for both circuits for the purposes of this chapter: Provided, That if the judges cannot agree as to who shall act as chief judge, then a chief judge shall be designated for the purposes of this chapter by the supreme court of appeals; or

(C) The chief judge of the circuit court in a judicial circuit having two or more circuit judges.

(3) "Child advocate office" means the office within the department of health and human resources created under the provisions of article two of this chapter, intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the staffing and organizational requirements of the secretary of the federal department of health and human services.

(4) "Children's advocate" or "advocate" means a person appointed to such position under the provisions of section two, article three of this chapter.

(5) "Court" means a circuit court of this state, unless the context in which such term is used clearly indicates that reference to some other court is intended. For the purposes of this chapter, the circuit courts of the twenty-third and thirty-first judicial circuits shall be considered as being in a single judicial circuit.

(6) "Court of competent jurisdiction" means a circuit court within this state, or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations.
Whenever in this chapter reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency.

(7) "Custodial parent" or "custodial parent of a child" means a parent who has been granted custody of a child by a court of competent jurisdiction. "Noncustodial parent" means a parent of a child with respect to whom custody has been adjudicated with the result that such parent has not been granted custody of the child.

(8) "Domestic relations matter" means any circuit court proceeding involving child custody, child visitation, child support or alimony.

(9) "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.

(10) "Employer" 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, any other state or a political subdivision of another state, and any other legal entity which hires and pays an individual for his services.

(11) "Guardian of the property of a child" means a person lawfully invested with the power, and charged with the duty, of managing and controlling the estate of a child.

(12) "Income" means any of the following:

(A) Commissions, earnings, salaries, wages and other income due or to be due in the future to an obligor from his employer and successor employers;

(B) Any payment due or to be due in the future to an obligor from a profit-sharing plan, a pension plan, an
insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits and workers' compensation;

(C) Any amount of money which is owing to the obligor as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the obligor.

(13) "Individual entitled to support enforcement services under the provisions of this chapter" means:

(A) An individual who has applied for or is receiving services from the child advocate office and who is the custodial parent of a child, or the primary caretaker of a child, or the guardian of the property of a child when:

(i) Such child has a parent and child relationship with an obligor who is not such custodial parent, primary caretaker or guardian; and

(ii) The obligor with whom the child has a parent and child relationship is not meeting an obligation to support the child, or has not met such obligation in the past; or

(B) An individual who has applied for or is receiving services from the child advocate office and who is an adult or an emancipated minor whose spouse or former spouse has been ordered by a court of competent jurisdiction to pay spousal support to the individual, whether such support is denominated alimony or separate maintenance, or is identified by some other terminology, thus establishing a support obligation with respect to such spouse, when the obligor required to pay such spousal support is not meeting the obligation, or has not met such obligation in the past.

(14) "Master" or "family law master" means a person appointed to such position under the provisions of section one, article four of this chapter.

(15) "Obligee" means an individual to whom a duty of support is owed, or the state of West Virginia or the
department of health and human resources, if support has been assigned to the state or department.

(16) “Obligor” means a person who owes a legal duty to support another person.

(17) “Office of the children’s advocate” means the office created in section two, article three of this chapter.

(18) “Primary caretaker of a child” means a parent or other person having actual physical custody of a child without a court order granting such custody, and who has been primarily responsible for exercising parental rights and responsibilities with regard to such child.

(19) “Source of income” means an employer or successor employer or any other person who owes or will owe income to an obligor.

(20) “Support” means the payment of money:

(A) For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, decree or judgment of such court, and the amount of unpaid support shall bear interest from the date it accrued, at a rate of ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;

(B) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile, or payments for day care; and/or

(C) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

(21) “Support order” means any order of a court of competent jurisdiction for the payment of support, whether or not for a sum certain.
ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-12. Disbursements of amounts collected as support.

§48A-2-15. Obtaining support from federal tax refunds.


§48A-2-12. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the office shall be distributed within ten days of receipt, except as otherwise specifically provided in this chapter. Such amounts shall, except as otherwise provided under the provisions of subsection (c) of this section, be distributed as follows:

(1) The first fifty dollars of such amounts as are collected periodically which represent monthly support payments shall be paid to the obligee without affecting the eligibility of such person's family for assistance from the department of health and human resources or decreasing any amount otherwise payable as assistance to such family during such month;

(2) Such amounts as are collected periodically which are in excess of any amount paid to the family under subdivision (1) of this subsection and which represent monthly support payments shall be paid by the office to the appropriate administrative unit of the department of health and human resources to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the federal government to the extent of its participation in the financing);

(3) Such amounts as are in excess of amounts required to reimburse the department of health and human resources under subdivision (2) of this subsection and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the obligee; and

(4) Such amounts as are in excess of amounts required to be distributed under subdivisions (1), (2) and (3) of this subsection shall be: (A) Paid by the office to the appropriate administrative unit of the department of health and human resources (with appropriate reim-
bursement of the federal government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the department has not been reimbursed; or (B) if no assistance payments have been made by the department which have not been repaid, such amounts shall be paid to the obligee.

(b) (1) Whenever a family for whom support payments have been collected and distributed under the provisions of this chapter ceases to receive assistance from the department of health and human resources, the office shall provide notice to the family of their rights with regard to a continuation of services. Unless notified by the family that services are no longer desired, the office shall continue to collect amounts of support payments which represent monthly support payments from the obligor and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other obligees who are not receiving assistance from the department of health and human resources.

(2) So much of any amounts of support so collected as are in excess of the payments required to be made in subdivision (1) of this subsection shall be paid, first, to the obligee until all past due support owed to the family by the obligor has been paid. After all arrearages owing to the family have been paid, any amounts of support collected which are in excess of the required support payments shall be distributed in the manner provided by paragraphs (A) and (B), subdivision (4), subsection (a) of this section with respect to excess amounts described in subsection (a) of this section.

(c) (1) Notwithstanding the preceding provisions of this section, amounts collected by the office as child support for months in any period on behalf of a child for whom the department of health and human resources is making foster care maintenance payments shall:

(A) Be paid by the office to the appropriate adminis-
trative unit of the department of health and human resources to the extent necessary to reimburse the department for foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the federal government to the extent of its participation in financing);

(B) Be paid to the appropriate administrative unit of the department of health and human resources to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but do not exceed the amounts required by a court order to be paid as support on behalf of the child during such period; and the department of health and human resources may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(C) Be paid to the appropriate administrative unit of the department of health and human resources if any portion of the amounts collected remains after making the payments required under paragraphs (A) and (B) of this subdivision, to the extent that such portion is necessary to reimburse the department of health and human resources (with appropriate reimbursement to the federal government to the extent of its participation in the financing), for any past foster care maintenance payments, or payments of aid to families with dependent children which were made with respect to the child (and with respect to which past collections have not previously been retained);

(2) Any balance of the amounts required to be paid under the provisions of subdivision (1) shall be paid to the appropriate administrative unit of the department of health and human resources, for use by the department in accordance with paragraph (B) of this subdivision.

(d) Any payment required to be made under the
provisions of this section to a family shall be made to the resident parent, legal guardian or caretaker relative having custody of or responsibility for the child or children.

(e) The director shall establish bonding requirements for employees of the office who receive, disburse, handle, or have access to cash.

(f) The director shall maintain methods of administration which are designed to assure that employees of the office responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts: Provided, That the director may provide for exceptions to this requirement in the case of sparsely populated areas in this state where the hiring of unreasonable additional staff in the local office would otherwise be necessary.

§48A-2-15. Obtaining support from federal tax refunds.

The director shall, by legislative rule, place in effect procedures necessary for the office to obtain payment of past due support from federal tax refunds from overpayments made to the secretary of the treasury of the United States, and shall take all steps necessary to implement and utilize such procedures.


(a) All records in the possession of the child advocate office, including records in the possession of the children's advocate concerning an individual case of child or spousal support, shall be kept confidential and shall not be released except as provided below:

(1) Records shall be disclosed or withheld as required by federal law or regulations promulgated thereunder notwithstanding other provisions of this section.

(2) The phone number, address, employer and other information regarding the location of the obligor, the obligee and the child shall only be disclosed: (A) Upon his or her written consent, to the person whom the consent designates; or (B) notwithstanding subdivision
(3), to the obligee, the obligor, the child or the caretaker or representative of the child, upon order of a court if the court finds that the disclosure is for a bona fide purpose, is not contrary to the best interest of a child and does not compromise the safety of any party: Provided, That the identity and location of the employer may be disclosed on the letters, notices and pleadings of the child advocate office as necessary and convenient for the determination of support amounts and the establishment, investigation, modification, enforcement, collection and distribution of support.

(3) Information and records other than the phone number, address, employer and information regarding the location of the obligor, the obligee and the child shall be disclosed to the obligor, the obligee, the child or the caretaker of the child or his or her duly authorized representative, upon his or her written request: Provided, That when the obligor requests records other than collection and distribution records, financial records relevant to the determination of the amount of support pursuant to the guidelines, or records the obligor has supplied, the child advocate office shall mail a notice by first class mail to the last known address of the obligee notifying him or her of the request. The notice shall advise the obligee of his or her right to object to the release of records on the grounds that the records are not relevant to the determination of the amount of support, or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the obligee of his or her right to disclosure of records provided in this section in order to determine what records the child advocate office may have. In the event of any objection, the children's advocate shall determine whether or not the information shall be released.

(4) Information in specific cases may be released as is necessary or to determine the identity, location, employment, income and assets of an obligor.

(5) Information and records may be disclosed to the department of vital statistics, department of employment security, the department of workers' compensa-
tion, state tax department and the internal revenue
service, or other state or federal agencies or depart-
ments as may be necessary or desirable in obtaining any
address, employment, wage or benefit information for
the purpose of determining the amount of support or
establishing, enforcing, collecting and distributing
support.

(b) Any person who willfully violates this section shall
be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred nor
more than one thousand dollars, or confined in jail not
more than six months, or both fined and imprisoned.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3a. Representation by the children's advocate.

1 The Legislature recognizes a paramount interest of
the state in the establishment and enforcement of family
obligations as a function of the state in protecting the
health and welfare of the citizens of the state.
Accordingly, the state of West Virginia is, by operation
of law, a party in actions and proceedings arising from
the rights and obligations of persons involved in family
law issues. The Legislature recognizes that the children's advocates, with the duties assigned to them under
the provisions of this chapter, represent the interests of
the state in carrying out such duties. The Legislature
further recognizes that, at times, the interests of the
state, while being advanced by a children's advocate,
may coincide with the interests of the child, the obligee,
the obligor, or other persons, as the case may be, and
the children's advocate may therefore actively advance
the interests of one or more such persons while fur-
thering the interests of the state. It is the intent of the
Legislature that under such circumstances, the fact that
the children's advocate has actively advanced the
interests of a party other than the state shall not
preclude the children's advocate from advancing
interests adverse to such party.

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.

(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,
(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 sixteen
thousand five hundred 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;
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 and Summers;
12. The counties of Fayette and Nicholas;
13. The counties of Greenbrier, Pocahontas and Monroe;
14. The counties of Braxton, Clay, Gilmer and Webster;
15. The counties of Doddridge, Harrison, Lewis and Upshur;
109  (16) The counties of Marion and Taylor;
110  (17) The counties of Monongalia and Preston;
111  (18) The counties of Barbour, Randolph and Tucker;
112  (19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton;
113  (20) The counties of Berkeley, Jefferson and Morgan;
114  and
115  (21) The counties of Boone, Lincoln and Wayne.
116
117  The governor shall appoint two masters to the office
118  of the family law master for the region of Kanawha
119  County. In each of the other regions defined by this
120  subsection, the governor shall appoint one person as
121  family law master from such region. Nothing contained
122  herein shall prohibit the chief justice of the supreme
123  court of appeals from temporarily assigning, from time
124  to time as caseload may dictate, a family law master
125  from one geographical region to another geographical
126  region.
127
128  (i) A circuit court or the chief judge thereof shall refer
129  to the master the following matters for hearing to be
130  conducted pursuant to section two of this article:
131  Provided, That on its own motion or upon motion of a
132  party, the circuit judge may revoke the referral of a
133  particular matter to a master if the master is recused,
134  if the matter is uncontested, or for other good cause, or
135  if the matter will be more expeditiously and inexpens­
136  ively heard by the circuit judge without substantially
137  affecting the rights of parties in actions which must be
138  heard by the circuit court:
139
140  (1) Actions to obtain orders of support brought under
141  the provisions of section one, article five of this chapter;
142  (2) All actions to establish paternity under the
143  provisions of article six of this chapter: Provided, That
144  all actions wherein either or both of the parties have
145  demanded a trial by jury of the law and the facts shall
146  be heard by the circuit court;
147  (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 of support through the withholding from income of amounts payable as support or is contesting an affidavit of accrued support, filed with a circuit clerk, which seeks to collect 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; and

(8) Proceedings for the enforcement of support, custody or visitation orders: Provided, That contempt actions shall be heard by a circuit judge.

(j) The payment of initial fees for a hearing before a master shall be paid before the commencement of the hearing. Any additional hourly fees beyond the initial fee 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, and no advance payment shall be required for additional fees beyond the initial fees required by this section. Any payment of fees for a hearing shall be refunded by the clerk of the circuit court if the master verifies that such hearing was not held, upon the request of the person paying such fees.

(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; and
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.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-3. Withholding from income of amounts payable as support.
§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

(a) The total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state under the prior enactments of this code, shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The amount of unpaid support shall bear interest from the date it accrued, at a rate of ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time. A child support order shall not be retroactively modified so as to cancel or alter accrued installments of support. When an obligor is in arrears in the payment of support which is required to be paid by the terms of such order, an obligee may file an "Affidavit of Accrued Support" with the clerk of the circuit court, setting forth the particulars of such arrearage, and requesting a writ of execution, suggestion or suggestee execution. If the duty of support is based upon a foreign support order, the obligee shall first register the foreign support order with the clerk in the same manner and with the same effect as such orders are registered in actions under the revised uniform reciprocal enforcement of support act, sections thirty-four, thirty-five, thirty-seven and thirty-eight, article seven of this chapter: Provided, That a copy of the reciprocal enforcement of support law of the state in which the order was made need not be filed with the clerk.

(b) The affidavit may be filed in the county wherein the obligee or the obligor resides, or where the obligor's source of income is located.

(c) The affidavit may be filed when a payment required by such order has been delinquent, in whole or in part, for a period of fourteen days.

(d) The affidavit shall:

(1) Identify the obligee and obligor by name and
address, and shall list the obligor's social security
number or numbers, if known;

(2) Name the court which entered the support order
and set forth the date of such entry;

(3) State the total amount of accrued support which
has not been paid by the obligor;

(4) List the date or dates when support payments
should have been paid but were not; and the amount of
each such delinquent payment; and

(5) If known, the name and address of the obligor's
source of income.

(e) Upon receipt of the affidavit, the clerk shall issue
a writ of execution, suggestion or suggestee execution,
and shall mail a copy of the affidavit and a notice of the
filing of the affidavit to the obligor, at his last known
address. If the children's advocate is not acting on behalf
of the obligee in filing the affidavit, the clerk shall
forward a copy of the affidavit and the notice of the
filing to the children's advocate.

(f) The notice provided for in subsection (e) of this
section shall inform the obligor that if he or she desires
to contest the affidavit on the grounds that the amount
claimed to be in arrears is incorrect or that a writ of
execution, suggestion or suggestee execution is not
proper because of mistakes of fact, he or she must,
within fourteen days of the date of the notice: (1) Inform
the children's advocate in writing of the reasons why the
affidavit is contested and request a meeting with the
children's advocate; or (2) obtain a date for a hearing
before the family law master and mail written notice of
such hearing to the obligee and to the children's
advocate on a form prescribed by the administrative
office of the supreme court of appeals and made
available through the office of the clerk of the circuit
court.

(g) Upon being informed by an obligor that he or she
desires to contest the affidavit, the children's advocate
shall inform the court of such fact, and the court shall
require the obligor to give security, post a bond, or give
some other guarantee to secure payment of overdue support.

(h) The clerk of the circuit court shall make available form affidavits for use under the provisions of this section. Such form affidavits shall be provided to the clerk by the child advocate office. The notice of the filing of an affidavit shall be in a form prescribed by the child advocate office.

(i) Writs of execution, suggestions or suggestee executions issued pursuant to the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, except for withholding from income of amounts payable as support in accordance with the provisions of section three of this article, and shall be effective despite any exemption that might otherwise be applicable to the same income.

(j) Notwithstanding any other provision of this code to the contrary, the amount to be withheld from the disposable earnings of an obligor pursuant to a suggestee execution in accordance with the provisions of this section shall be the same amount which could properly be withheld in the case of a withholding order under the provisions of subsection (e), section three of this article.

§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) 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 in an amount equal to:

(1) One month's support, if the order requires support to be paid in monthly installments;

(2) Four weeks' support, if the order requires support to be paid in weekly or biweekly installments; or

(3) Two biweekly installments, if biweekly payments are provided.

(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) The definition of "income" as defined in section three, article one of this chapter;

(4) That the withholding will apply to the obligor's
(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 fails to appear at the meeting, withholding will automatically occur as described in the notice;

(8) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice, or there is a mistake as to the identity of the obligor;

(9) 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;

(10) 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, and that a hearing before the family law master cannot be held until after the meeting with the children’s advocate occurs;

(11) 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;

(12) That a master’s recommended order as to withholding 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
(13) 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, and the withholding is contested, 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 determine 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 when current payments plus
arrearages are being withheld from salaries or wages
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, biweekly, 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
disposable earnings, 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 permit-
ted 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 along with such
identifying information as may be required by the child
advocate office 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 one dollar,
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
discharging an obligor from employment, refusing to
employ, or taking disciplinary action against any obligor
because of the withholding;
(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 one dollar, 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) A source of income who knowingly and willfully conceals the fact that the source of income is paying income to an obligor, with the intent to avoid withholding from the obligor's income of amounts payable as support, is guilty of a misdemeanor, and, upon convic-
tion thereof, shall be fined not more than one hundred

dollars.

(p) If the children’s advocate makes a written request
to a source of income to provide information as to
whether the source of income has paid income to a
specific obligor, within the preceding sixty-day period,
the source of income shall, within fourteen days
thereafter, respond to such request, itemizing all such
income, if any, paid to the obligor during such sixty-day
period. A source of income shall not be liable, civilly or
criminally, for providing such information in good faith.

(q) 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.

(r) 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.

(s) 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.

1 (a) The children's advocate of the county where the action under this section is brought shall represent the state of West Virginia and 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.

2 (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.

3 (c) The children's advocate shall litigate the action only to the extent of establishing paternity and establishing and enforcing a child support order.

ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

§48A-7-12. Children's advocate to represent the state and advance the interests of the child.

§48A-7-36. Children's advocate to represent state.

§48A-7-12. Children's advocate to represent the state and advance the interests of the child.

1 If this state is acting as an initiating state, the children's advocate shall represent the state of West Virginia and shall advance the best interests of the child in any proceedings under this article.
§48A-7-36. Children's advocate to represent state.

1 If this state is acting either as a rendering or a registering state, the children's advocate shall represent the state of West Virginia and shall advance the best interests of the child in proceedings under sections thirty-three through thirty-eight of this article.

CHAPTER 46
(Com. Sub. for S. B. 354—By Senator Pritt)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to granting circuit courts the authority to revise or alter an order of annulment or divorce or a decree of separate maintenance, to enjoin either party from molesting or interfering with the other, or imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other; and requiring orders revising or altering prior orders to be issued forthwith.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article two, 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 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

1 (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 circumstan-
ces. In addition, the court may, in its discretion, make
such further order as it shall deem expedient, concern-
ing 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
described there 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

Ch. 46 DOMESTIC RELATIONS 553
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 subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(6) Where the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property as defined in section one of this article, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein.

(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
Ch. 46] DOMESTIC RELATIONS 555

129 make such further order as is necessary to prevent
130 either party from interfering with the separate estate
131 of the other.

(8) The court may enjoin either party from the
132 molesting or interfering with the other, or otherwise
133 imposing any restraint on the personal liberty of the
134 other, or interfering with the custodial or visitation
135 rights of the other.

136 (9) The court may order either party to take necessary
137 steps to transfer utility accounts and other accounts for
138 recurring expenses from the name of one party into the
139 name of the other party or from the joint names of the
140 parties into the name of one party. Nothing contained
141 in this subdivision shall affect the liability of the parties
142 for indebtedness on any such account incurred before
143 the transfer of such account.

144 (c) In any case where an annulment or divorce is
145 denied, the court shall retain jurisdiction of the case and
146 may order all or any portion of the relief provided for
147 in subsections (a) and (b) of this section which has been
148 demanded or prayed for in the pleadings.

149 (d) In any case where a divorce or annulment is
150 granted in this state upon constructive service of
151 process, and personal jurisdiction is thereafter obtained
152 of the defendant in such case, the court may order all
153 or any portion of the relief provided for in subsections
154 (a) and (b) of this section which has been demanded or
155 prayed for in the pleadings.

156 (e) At any time after the entry of an order pursuant
157 to the provisions of this section, the court may, upon the
158 verified petition of either of the parties, revise or alter
159 such order concerning the maintenance of the parties,
160 or either of them, and make a new order concerning the
161 same, issuing it forthwith, as the altered circumstances
162 or needs of the parties may render necessary to meet the
163 ends of justice. The court may also from time to time
164 afterward, on the verified petition of either of the
165 parties, revise or alter such order to grant relief
166 pursuant to subdivision (8), subsection (b) of this section,
167 and make a new order concerning the same, issuing it
forthwith, as the circumstances of the parties and the
benefit of children may require. 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, issuing it forthwith, as the
circumstances of the parents or other proper person or
persons and the benefit of the children may require:

Provided, That 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 ascer­
tain 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 ascertain 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 deterioration 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.

CHAPTER 47

(Com. Sub. for S. B. 569—By Senators Pritt, Wehrle, Wiedebusch, Spears, Macnaughtan, Holliday, Boley, Dalton, Jones and Blatnik)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections three-a and eleven; and to amend article one-c, chapter sixty-two of said code by adding thereto a new section, designated section seventeen-c, all relating to the prevention of domestic violence; purposes and intent; definitions; concurrent jurisdiction; circumstances under which right to relief not affected; priority of petitions; effect of action for divorce, separate maintenance or annulment upon entitlement to relief;
responding officer’s duty to inform parties and to transport or facilitate transportation of victims; filing of petition for relief; forms for petition; counterclaim; exclusion of other persons; venue; magistrate court assistance to persons desiring to file petition in other county; ex parte proceedings; burden of proof; notice of ex parte hearing; service of temporary orders, notice of full hearing and statement of rights upon respondent; permitting service of process on Sundays and legal holidays; statewide effect of temporary order; time for full hearing; burden of proof; evidence; exclusion of other persons; continuances; protective orders; burden of proof before issuance; relief which is mandatory; other relief permitted; effective dates of orders; amendments of orders; statewide effect of protective order; title to real property; issuance of certified orders to law-enforcement agencies; records to be kept by law-enforcement agencies; monthly reports; confidential information; statistical compilation and publication thereof; further definitions; the legislative rules for law-enforcement agencies and officers relating to duties of such officers with respect to domestic violence promulgated by governor’s committee on crime, delinquency and correction; advisory committee; extent of disclosure of information; delivery of orders to law-enforcement officers; confidential files; expungement and destruction of orders; affidavits of consent to enter household delivered with order; actual notice of contents of order not preventing stay of order; duties of law-enforcement agency upon receiving call from person observing violation of order; arrests of persons violating orders; obtaining arrest warrants; contempt proceedings; jury trial; violation of order constituting misdemeanor; criminal penalties; and conditions of bail.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, 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; that said article be further amended by adding thereto two new sections, designated sections three-a and eleven; and that article one-c, chapter sixty-two of said
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 abuse, as defined in this article, 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 and of the availability of counseling services for victims and their children. 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.


1 As used in this article, unless the context clearly
2 requires otherwise:
3
4 (a) “Abuse” means the occurrence of one or more of
5 the following acts between family or household members
6 who reside together or who formerly resided together:
7
8 (1) Attempting to cause or intentionally, knowingly or
9 recklessly causing bodily injury with or without
10 dangerous or deadly weapons;
11
12 (2) Placing by physical menace another in fear of
13 imminent serious bodily injury;
14
15 (3) Creating fear of bodily injury by harassment,
16 psychological abuse or threatening acts;
17
18 (4) Sexual abuse.
19
20 (b) “Family or household member” means spouses,
21 persons living as spouses, persons who formerly resided
22 as spouses, parents, children and stepchildren, current
23 or former sexual or intimate partners, or other persons
24 related by consanguinity or affinity.
25
26 (c) “Sexual abuse” has the same meaning as the
27 definitions of “sexual assault” and “sexual abuse” in this
28 code.

§ 48-2A-3. Jurisdiction; effect of complaining party
leaving residence; priority of petitions filed
under this article.

1 Circuit courts and magistrate courts, as constituted
2 under chapter fifty of this code, shall have concurrent
3 jurisdiction over proceedings under this article. The
4 complaining party’s right to relief under this article
5 shall not be affected by his or her leaving the residence
6 or household to avoid further abuse. Any petition filed
7 under the provisions of this article shall be given
8 priority over any other civil action before the court
except actions in which trial is in progress, and shall be docketed immediately upon filing. Where a person is a party to an action for divorce, separate maintenance or annulment in which no order has been entered pursuant to section thirteen, article two of this chapter, such person shall, pending such action, remain entitled to file for and obtain any relief provided by this article until such an order is entered in such action. Where a person has filed for relief provided by this article and subsequently becomes a party to an action for divorce, separate maintenance or annulment, such person shall, pending such action, remain entitled to obtain any relief provided by this article, and to again file for and obtain any such relief, until an order is entered in such action pursuant to section thirteen, article two of this chapter. No person who is a party to a pending action for divorce, separate maintenance or annulment in which an order has been entered pursuant to section thirteen, article two of this chapter, shall be entitled to file for or obtain any relief provided by this article subsequent to the entry of such an order until after the entry of an order in such action which dismisses such action or which grants or denies a divorce, separate maintenance or annulment to such person.

§48-2A-3a. Responding officer's duty to advise parties; duty to transport or facilitate transportation.

(a) Any law-enforcement officer responding to an alleged incident of abuse shall inform the parties thereto of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state.

(b) Any law-enforcement officer responding to an alleged incident of abuse shall, in addition to providing the information required in subsection (a) of this section, provide transportation for, or facilitate transportation of, the victim or victims, upon the request of such victim or victims, to a shelter or the appropriate court where there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.

(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 and magistrate 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.

(e) The action may be heard in the county in which the abuse occurred or in the county in which the defendant is living. If the parties are married, the action may also be brought in the county in which an action for divorce, annulment or separate maintenance between the parties may be brought as provided by section eight, article two of this chapter.

(f) In the event a person who resides, temporarily or permanently, in a county not described in subsection (e) of this section desires to file a petition described in subsection (a) of this section, such person may obtain assistance in filing such a petition at a magistrate court within the county of such place of temporary or permanent residence. In such event, and upon request of such person, a magistrate or the clerk of such magistrate court shall:
(1) Provide to such person such forms and such assistance as may be necessary for the filing of a petition described in subsection (a) of this section;

(2) To the extent possible, contact and obtain from any magistrate court described in subsection (e) of this section chosen by the person seeking to file the petition a hearing date for such petition; and

(3) Forward such petition to the magistrate court described in subdivision (2) of this subsection for filing together with any such other papers and documents necessary to file the same.

§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 petitioner or minor children from abuse, and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for purposes of this section. If the respondent is not present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent 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 respondent, 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 respondent to be present and to be represented by counsel. Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. Such initial protective order shall remain effective until such time as a hearing is held. The order shall be in full force and effect in every county in this
(b) Within five days following the issuance of the court's temporary order, a full hearing shall be held at which the petitioner 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) At the conclusion of the hearing and if the petitioner has proven the allegations of abuse by a preponderance of the evidence, then the court shall issue a protective order which shall direct the respondent to refrain from abusing the petitioner and/or the minor children, and may also include:

(1) Granting possession to the petitioner of the residence or household to the exclusion of the defendant when the residence or household is jointly owned or leased by the parties;

(2) When the respondent has a duty to support the petitioner or minor children living in the residence or household and the respondent is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the respondent or by consent agreement allowing the respondent to provide suitable alternate housing;
(3) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children;

(4) Ordering the respondent to pay to the petitioner 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 respondent 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 thirteen, article two of this chapter, or has initiated an action for separate maintenance under section twenty-eight, article two of this chapter. When there is a subsequent ruling on a petition for support under section thirteen, article two of this chapter, that portion of the order requiring the respondent to pay support becomes void;

(5) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order;

(6) Directing the parties or a party to participate in counseling;

(7) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner 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. If the court enters an initial order for a period of less than sixty days, it shall, after notice and hearing, extend its initial order for the full sixty day period if it finds the petitioner continues to need protection from abuse. The order shall be in full force and effect in every county in this state. The order shall state that it is in full force and effect in every county in this state.
(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 petitioner, the respondent 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.


1. 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. (1) The age and sex of the abused and abusing parties;
2. (2) The relationship between the parties;
3. (3) The type and extent of abuse;
4. (4) The number and type of weapons involved;
5. (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. (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. (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 of this article; 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 governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies regarding the duties of law-enforcement officers and law-enforcement agencies with respect to domestic violence. The notice of the public hearing on the rules shall be published before the first day of July, one thousand nine hundred ninety-one.
Prior to the publication of the proposed rules, the governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic violence, to represent shelters receiving funding pursuant to article two-c of this chapter, and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code.

(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 respondent, or under relief granted in a protective order as provided in subsections (a) and (b), section six of this article of which the respondent has notice, a copy of such order shall, no later than the close of the next business day, be delivered by the court or the clerk 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), section six of this article, and delivered to such law-enforcement agency simultaneously with any such order, giving his or her consent for a law-enforcement officer to enter such residence or household, without a warrant, to enforce such protective order or temporary order. Orders shall be promptly served upon the respondent. Failure to serve shall not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the 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 or she may immediately arrest the subject of the order. In cases of violation of such orders occurring outside the presence of the investigating officer, the petitioner may apply to a court in session in the county in which the violation occurred or the county in which the order was issued 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 or she may be found.

(d) Where there is an arrest, the officer shall take the arrested person before a court or a magistrate 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.

§48-2A-11. Violation of temporary or protective orders; criminal penalties.

Any person who shall knowingly and willfully violate the terms of a protective order which provides the relief authorized by subdivisions (1), (5) or (7), subsection (a), section six of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for not more than thirty days, or fined not more than five hundred dollars, or both fined and imprisoned: Provided, That any person who shall abuse another person in knowing and willful violation of the terms of a temporary order or protective order issued under the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a period of not less than one day nor more than thirty days, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-17c. Bail in cases of crimes between family or household members.

When the offense charged is a crime against a family or household member, it may be a condition of bond that the defendant shall not have any contact whatsoever, direct or indirect, verbal or physical, with the victim or complainant.
CHAPTER 48

(S. B. 522—By Senators Chernenko, Humphreys, Burdette, Mr. President, Wiedebusch, Heck, Chafin, Bailey, Holliday, Wehrle, Pritt, Tomblin, M. Manchin, Craigo, Claypole, Anderson, Felton, Brackenrich, Whitlow, Helmick, Withers, Dittmar, Wagner, Blatnik, Boley and Minard)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four-a, all relating to providing for the transmission of nonidentifying information on the health and history and the genetic and social history of adoptees; and establishing a mutual consent voluntary adoption registry.

Be it enacted by the Legislature of West Virginia:

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

Article
4. Adoption.
4A. Voluntary Adoption Registry.

ARTICLE 4. ADOPTION.

§48-4-10. Recordation of order; fees; disposition of records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.

1 (a) The order of adoption shall be recorded in a book kept for that purpose, and the clerk shall receive the same fees as in other cases. All records of proceedings in adoption cases and all papers and records relating to such proceedings shall be kept in the office of the clerk
of the circuit court in a sealed file, which file shall be
kept in a locked or sealed cabinet, vault or other
container and shall not be open to inspection or copy by
anyone, except as otherwise provided in this article, or
upon court order for good cause shown. No person in
charge of adoption records shall disclose the names of
the adopting parent or parents, the names of persons
previously entitled to parental rights, or the name of the
adopted child, except as otherwise provided in this
article, or upon court order for good cause shown. The
clerk of the court keeping and maintaining the records
in adoption cases shall keep and maintain an index of
such cases separate and distinct from all other indices
kept or maintained by him, and the index of adoption
cases shall be kept in a locked or sealed cabinet, vault
or other container and shall not be open to inspection
or copy by anyone, except as otherwise provided in this
article, or upon court order for good cause shown.
Nonidentifying information, the collection of which is
provided for in article four-a of this chapter, shall be
provided to the adoptive parents as guardians of the
adopted child, or to the adult adoptee, by their submit-
ing a duly acknowledged request to the clerk of the
court. The clerk may charge the requesting party for
copies of any documents, as provided in section eleven,
article one, chapter fifty-nine of this code. Either birth
parent may from time to time submit additional social,
medical or genetic history for the adoptee, which
information shall be placed in the court file by the clerk,
who shall bring the existence of this medical informa-
tion to the attention of the court. The court shall
immediately transmit all such nonidentifying medical,
social or genetic information to the adoptive parents or
the adult adoptee.

(b) If an adoptee, or parent of a minor adoptee, is
unsuccessful in obtaining identifying information by use
of the mutual consent voluntary adoption registry
provided for in article four-a of this chapter, identifying
information may be sought through the following
process:

(1) Upon verified petition of an adoptee at least
eighteen years of age, or, if less than eighteen, his adoptive parent or legal guardian, the court may also attempt, either itself, or through its designated agent, to contact the birth parents, if known, to obtain their consent to release identifying information to the adoptee. The petition shall state the reasons why the adoptee desires to contact his birth parents, which reasons shall be disclosed to the birth parents if contacted. The court and its agent shall take any and all care possible to assure that none but the birth parents themselves are informed of the adoptee's existence in relationship to them. The court may appoint the department of human services, or a private agency which provides adoption services in accordance with standards established by law, to contact birth parents as its designated agent, the said agent shall report to the court the results of said contact.

(2) Upon the filing of a verified petition as provided in subdivision (1) of this subsection, should the court be unable to obtain consent from either of the birth parents to release identifying information, the court may release such identifying information to the adoptee, or if a minor, the adoptee's parents or guardian, after notice to the birth parents and a hearing thereon, at which hearing the court must specifically find that there exists evidence of compelling medical or other good cause for release of such identifying information.

(c) Identifying information may only be obtained with the duly acknowledged consent of the mother or the legal or determined father who consented to the adoption or whose rights were otherwise relinquished or terminated, together with the duly acknowledged consent of the adopted child upon reaching majority, or upon court order for good cause shown. Any person previously entitled to parental rights may from time to time submit additional social or medical information which, notwithstanding other provisions of this article, shall be inserted into the record by the clerk of the court.

(d) Immediately upon the entry of such order of adoption, the court shall direct the clerk thereof
forthwith to make and deliver to the state registrar of
vital statistics a certificate under the seal of said court,
showing:

(1) The date and place of birth of the child, if known;
(2) The name of the mother of the child, if known, and
the name of the legal or determined father of the child,
if known;
(3) The name by which said child has previously been
known;
(4) The names and addresses of the adopting parents;
(5) The name by which the child is to be thereafter
known; and
(6) Such other information from the record of the
adoption proceedings as may be required by the law
governing vital statistics and as may enable the state
registrar of vital statistics to carry out the duties
imposed upon him by this section.

(e) Upon receipt of the certificate, the registrar of
vital statistics shall forthwith issue and deliver by mail
to the adopting parents at their last-known address and
to the clerk of the county commission of the county
wherein such order of adoption was entered a birth
certificate in the form prescribed by law, except that the
name of the child shown in said certificate shall be the
name given him by the order of adoption. The clerk shall
record such birth certificate in the manner set forth in
section twelve, article five, chapter sixteen of this code.

ARTICLE 4A. VOLUNTARY ADOPTION REGISTRY.

§48-4A-1. Policy and purposes.
§48-4A-3. Prohibited conduct.
§48-4A-5. Rule making.
§48-4A-6. The compilation of nonidentifying information on health history
and social and genetic history.
§48-4A-7. Use of the mutual consent voluntary adoption registry.

§48-4A-1. Policy and purposes.
Adoption is based upon the legal termination of parental rights and responsibilities of birth parents and the creation of the legal relationship of parent and child between an adoptee and his adoptive parents. These legal and social premises underlying adoption must be maintained. The Legislature recognizes that some adults who were adopted as children have a strong desire to obtain identifying information about their birth parents while other such adult adoptees have no such desire. The Legislature further recognizes that some birth parents have a strong desire to obtain identifying information about their biological children who were surrendered for adoption, while other birth parents have no such desire. The Legislature fully recognizes the right to privacy and confidentiality of: (1) Birth parents whose children were adopted; (2) the adoptees; and (3) the adoptive parents. The purpose of this article is to: (1) Set up a mutual consent voluntary adoption registry where birth parents and adult adoptees may register their willingness to the release of identifying information to each other; (2) to provide for the disclosure of such identifying information to birth parents or adoptees, or both, through a social worker employed by a licensed adoption agency, provided each birth parent and the adult adoptee voluntarily registers on his own; (3) to provide for the transmission of nonidentifying health and social and genetic history to the adult adoptees, birth parents and other specified persons; and (4) to provide for disclosure of identifying information for cause shown.


(a) As used in this article:

(1) “Adoptee” means a person who has been legally adopted in the state of West Virginia.

(2) “Adoption” means the judicial act of creating the relationship of parent and child where it did not exist previously.

(3) “Adult” means a person eighteen or more years of age.
(4) "Agency" means any public or voluntary organization licensed or approved pursuant to the laws of any jurisdiction within the United States to place children for adoption.

(5) "Genetic and social history" means a comprehensive report, when obtainable, on the birth parents, siblings to the birth parents, if any, other children of either birth parent, if any, and parents of the birth parents, which shall contain the following information:

(i) Medical history;
(ii) Health status;
(iii) Cause of and age at death;
(iv) Height, weight, eye and hair color;
(v) Ethnic origins;
(vi) Where appropriate, levels of educational and professional achievement; and
(vii) Religion, if any.

(6) "Health history" means a comprehensive report of the child's health status at the time of placement for adoption and medical history, including neonatal, psychological, physiological and medical care history.

(7) "Mutual consent voluntary adoption registry" or "registry" means a place provided for herein where eligible persons as described in section three of this article may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in this article.

(8) "Putative father" means any man not deemed or adjudicated under the laws of a jurisdiction of the United States to be the father of genetic origin of a child and who claims or is alleged to be the father of genetic origin of such child.

(b) As used in this article, pronouns of the masculine gender include the feminine.
§48-4A-3. Prohibited conduct.

(a) No person, agency, entity or organization of any kind, including, but not limited to, any officer or employee of this state and any employee, officer or judge of any court of this state, may disclose any confidential information relating to an adoption except as provided in this article or pursuant to a court order. Any employer who knowingly or negligently allows any employee to disclose information in violation of this article is subject to the penalties provided in subsection (b) of this section, together with the employee who made any disclosure prohibited by this law.

(b) Any person, agency, entity or organization of any kind who discloses information in violation of this law is liable to the parties so injured in an action to recover damages in respect thereto.


(a) Notwithstanding any other provision of law, the information acquired by any registry may not be disclosed under any sunshine or freedom of information legislation, rules or practice.

(b) Notwithstanding any other provision of law, no person, group of persons, or entity, including an agency, may file a class action to force the registry to disclose identifying information.

§48-4A-5. Rule making.

The division of human services shall establish and maintain the mutual consent voluntary adoption registry, except that the division of human services may contract out the function of establishing and maintaining the registry to a licensed voluntary agency with expertise in providing post-legal adoption services in which case the agency shall establish and maintain the registry that would otherwise be operated by the division.

The commissioner of the department of health and human resources shall promulgate and adopt such rules as are necessary for implementing this article.
§48-4A-6. The compilation of nonidentifying information on health history and social and genetic history.

(a) Prior to placement for adoption, the court shall require that the licensed adoption agency or, where an agency is not involved, the person, entity or organization handling the adoption, shall compile and provide to the prospective adoptive parents a detailed written health history and genetic and social history of the child which excludes information which would identify birth parents or members of a birth parent’s family and is set forth in a document that is separate from any document containing such identifying information. The court, or an agency designated by the court, or judge thereof, shall provide agency, person, or any other organization handling the adoption with forms which shall be utilized in the acquisition of the above-described detailed nonidentifying written health history and genetic and social history of the child. If the records cannot be obtained, the court shall make specific findings as to why the records are unobtainable.

(b) Records containing such nonidentifying information and which are set forth on a document described in subsection (a) above, separate from any document containing identifying data:

(1) Shall be retained by the clerk of the court for ninety-nine years; and

(2) Shall be available upon request, throughout the time specified in subsection (b) (1) of this section together with any additional nonidentifying information which may have been added on health or on genetic and social history, but which excludes information identifying any birth parent or member of a birth parent’s family, or the adoptee or any adoptive parent of the adoptee, to the following persons only:

(i) The adoptive parents of the child or, in the event or death of the adoptive parents, the child’s guardian;

(ii) The adoptee upon reaching the age of eighteen;

(iii) In the event of the death of the adoptee, the
adoptee's spouse if he is the legal parent of the adoptee's child or the guardian of any child of the adoptee;

(iv) In the event of the death of the adoptee, any progeny of the adoptee who is age eighteen or older; and

(v) The birth parent of the adoptee.

The actual and reasonable cost of providing nonidentifying health history and genetic and social history shall be paid by the person requesting such information. This provision is subject to sections of this article which provide for the adoptee obtaining information by petition to the court. If any provision of this article is held invalid, the remaining provisions of the article shall continue in effect.

§48-4A-7. Use of the mutual consent voluntary adoption registry.

(a) Use of a mutual consent voluntary adoption registry for obtaining identifying information about birth parents and adult adoptees shall be available only to birth parents and adult adoptees, except that no adult adoptee who has a sibling in this adoptive family who is under the age of eighteen years may use the registry.

(b) No birth parent may be eligible to use the registry until after his genetic offspring who was adopted has reached his eighteenth birthday.

(c) A birth father whose name has appeared in the original sealed birth certificate or who has legitimated or formally acknowledged the child as provided by law or who has signed a voluntary abandonment and release for the child's adoption as provided by state law may register.

(d) Any birth parent who in terminating his parental rights used an alias name, and this alias is listed in the original sealed birth record, may register if the agency or, in cases where no agency was involved, the organization, entity or person who was involved, certifies to the court that the individual seeking to register used, as an alias, the name set forth in the original sealed birth certificate.

(a) Prerequisites to disclosure of identifying information. — The adult adoptee and each birth parent may voluntarily, without having been contacted by any employee or agent of the entity operating the registry, place his name in the appropriate registry before any disclosure or identifying information can be made. A qualified person may register by submitting a notarized affidavit to the appropriate registry stating his name, address and telephone number and his willingness to be identified solely to the other relevant persons who register. No registration may be accepted until the prospective registrant submits satisfactory proof of his identity in accord with the provisions specified in section six of this article. The failure of any of the three above described persons to file a notarized affidavit with the registry for any reason, including death or disability, precludes the disclosure of identifying information to those relevant persons who do register.

(b) Counseling. — Upon registering, the registrant shall participate in not less than one hour of counseling with a social worker employed by the entity that operates the registry, except if a birth parent or adult adoptee is domiciled outside the state, he shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry. When an eligible person registers concerning an adoption that was arranged through an agency which has not merged or otherwise ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify by certified mail the agency which handled the adoption within ten business days after the date of registration.

(c) Cases where disclosure of identifying information cannot occur. — In any case where the identity of the birth father was unknown to the birth mother, or where the administrator learns that one or both of the birth parents are deceased, this information shall be shared with the adult adoptee. In these kinds of cases, the adoptee will not be able to obtain identifying informa-
tion through the registry, and he would be told of his	right to pursue whatever right otherwise exists by law
to petition a court to release the identifying information.

(d) Matching and disclosure procedures. —

(1) Each mutual consent voluntary adoption registry
shall be operated under the direction of an
administrator.

(2) A person eligible to register may request the
administrator to disclose identifying information by
filing an affidavit which sets forth the following:

(i) The current name and address of the affiant;

(ii) Any previous name by which the affiant was
known;

(iii) The original and adopted names, if known, of the
adopted child;

(iv) The place and date of birth of the adopted child;
or

(v) The name and address of the adoption agency or
other entity, organization or person placing the adopted
child, if known.

The affiant shall notify the registry of any change in
name or location which occurs subsequent to his filing
the affidavit. The registry shall have no duty to search
for the affiant who fails to register his most recent
address.

(e) The administrator of the mutual consent voluntary
adoption registry shall process each affidavit in an
attempt to match the adult adoptee and the birth
parents. Such processing shall include research from
agency records, when available, and when agency
records are not available, research from court records
to determine conclusively whether the affiants match.

(f) The administrator shall determine that there is a
match when the adult adoptee and the birth mother or
the adult adoptee and the birth father have each filed
affidavits with the mutual consent voluntary adoption
registry and have each received the counseling required
in subsection (a) of this section.
(g) When a match has taken place, the department shall directly notify all parties through a direct and confidential contact. The contact shall be made by an employee or agent of the agency receiving the assignment and shall be made face to face, rather than by mail, telephone or other indirect means. The employee or agent shall be a trained social worker who has expertise in post-legal adoption services.

(h) *Retention of data by the registry.* — Any affidavits filed and other information collected shall be retained for ten years following the date of registration by any qualified person to which the information pertains. Any qualified person who registers may renew his registration for ten additional years within one hundred eighty days prior to the last day of ten years from the date of initial registration.

(i) *Scope of information obtained by the mutual consent voluntary adoption registry.* — A mutual consent voluntary adoption registry shall obtain only information necessary for identifying a birth parent or adult adoptee and in no event shall obtain information of any kind pertaining to the adoptive parents, any siblings to the adult adoptee who are children of the adoptive parents, the income of anyone and reasons for adoptive placement.

(j) *Fees for operations of the mutual consent voluntary adoption registry.* — All costs for establishing and maintaining a mutual consent voluntary adoption registry shall be obtained through user’s fees charged to all persons who register.

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**CHAPTER 49**

(S. B. 413—By Senator Lucht)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated
section seven-a, relating to requiring the state board to prescribe a program incorporating the elements pro- pounded by the president's council on physical fitness and sports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7a. Program in physical fitness.

The state board of education shall prescribe a program within the existing health and physical education program which incorporates the testing, awards recognition, fitness events and incentive programs designed under the auspices of the president's council on physical fitness and sports and which requires the participation through grade nine of each student and of each school in the state in both the challenge program and the state champion program of the council. The program shall include the modified test for exceptional students. Each school in the state shall participate in national physical fitness and sports month in May of each year and shall make every effort to involve the community it serves in the related events.

CHAPTER 50

(Com. Sub. for H. B. 2467—By Delegate Ashcraft, By Request)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing instances when a school may be declared seriously impaired; adding another accreditation level; defining conditional approval; redefining probationary approval; and requiring the state board to establish
methods to identify school districts which may be nonapproved.

_Be it enacted by the Legislature of West Virginia:_

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

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

.§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

(a) The purpose of this section is to provide assurances that a thorough and efficient system of education is being provided for all West Virginia public school students on an equal educational opportunity basis and that the high quality standards are being met. A system for the review of school district educational plans, performance-based accreditation and periodic, random, unannounced on-site effectiveness reviews of district educational systems, including individual schools within the districts, shall provide assurances that the high quality standards, established pursuant to subsection (b) of this section, are being met. A performance-based accreditation system shall provide assurances that the high quality standards, established pursuant to subsection (c) of this section, are being met.

(b) On or before the first day of January, one thousand nine hundred ninety-one, the state board of education shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, establish and adopt high quality educational standards in the areas of curriculum, finance, transportation, special education, facilities, administrative practices, training of school district board members and administrators, personnel qualifications, professional development and evaluation, student and school performance, a code of conduct for students and employees and other such areas as determined by the state board of education. The standards established in the area of curriculum shall assure that all graduates are prepared for the world of
work or for continuing postsecondary education and training. Each school district shall submit an annual improvement plan designed around locally identified needs showing how the educational program of each school in the district will meet or exceed the high quality standards.

A performance-based accreditation system shall be the only statewide system used for accrediting or classifying the public schools in West Virginia. The state board shall establish a schedule and shall review each school within a district and each school district board of education for accreditation based on information submitted to the board under the performance-based accreditation system as set forth in subsection (c) of this section.

(c) On or before the first day of July, one thousand nine hundred ninety-one, the state board of education shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, establish by rule a system which measures the performance of each school based on the following measures of student and school performance: The acquisition of student proficiencies as indicated by student performance by grade level in the various subjects tested under the statewide testing of educational progress program and other appropriate measures; school attendance rates; the student dropout rate; the percent of students promoted to next grade and the number of waivers of the promotion standard granted; the graduation rate; the average class size; the pupil-teacher ratio; the number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms; the percentage of graduating students entering postsecondary education or training; the pupil-administrator ratio; parent involvement; parent, teacher and student satisfaction; and operating expenditures per pupil.

The state board annually shall review the information submitted for each school and shall issue to every school: (1) Full accreditation status; or (2) probationary accreditation status.
Full accreditation status shall be given to a school when the school’s performance on the above indicators is at a level which would be expected when all of the high quality educational standards are being met. Probationary accreditation status shall be given to a school when the measure of the school’s performance is below such level.

Whenever a school is given probationary accreditation status, the district board shall implement an improvement plan which is designed to increase the performance of the school to a full accreditation status level within one year.

(d) The state board of education shall establish and adopt standards of performance to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board. Whenever the state board of education determines that the quality of education in a school is seriously impaired, the state superintendent, with approval of the state board, shall appoint a team of three improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. Upon approval of the recommendations by the state board, the recommendations shall be made to the district board of education. If progress in correcting the impairment is not made within six months of receipt of the recommendations, the state superintendent shall provide consultation and assistance to the district board to (1) improve personnel management, (2) establish more efficient financial management practices, (3) improve instructional programs and policies or (4) make such other improvements as may be necessary to correct the impairment. If the impairment is not corrected within one year of receipt of the recommendations, the district shall be given probationary approval status or nonapproval status.

(e) Whenever a school is given probationary status or is determined to be seriously impaired and fails to improve its status within one year, any student attending such school may transfer once to the nearest fully
accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(f) The state board of education shall issue one of the following accreditation levels to each school district board of education: (1) Full approval, (2) conditional approval, (3) probationary approval or (4) nonapproval.

Full approval shall be given to a district board whose educational system meets or exceeds all of the high quality standards adopted by the state board and whose schools have all been given full accreditation status. Full approval shall be for a period not to exceed four years.

Conditional approval shall be given to a district board whose educational system meets at least ninety-five percent of the high quality standards adopted by the state board and in which at least ninety percent of the schools have been given full accreditation status provided no school is seriously impaired. Conditional approval shall be for a period not to exceed one year: Provided, That for counties that have fewer than ten schools, the state board of education may grant conditional approval without regard to the ninety percent based on the total quality of the county educational program.

Probationary approval shall be given to a district board of education whose educational system has met less than ninety-five percent of the high quality standards, or which has eleven percent or more schools in the district given probationary status or serious impairment. Probationary approval is a warning that the district board must make specified improvements. If the number of schools in the district given probationary status is not reduced to a number that would allow full accreditation to be granted in the following year, the district board shall be automatically given nonapproval.

In addition, nonapproval shall be given to a district board of education which fails to submit an annual program plan or fails to demonstrate a reasonable effort to meet the high quality standards. The state board of education shall establish and adopt standards to identify
school districts in which the program may be nonap-
proved or the state board may issue nonapproval status
whenever extraordinary circumstances exist as defined
by the state board of education.

(g) Whenever nonapproval status is given to a district,
the state board of education shall declare a state of
emergency in the district and may intervene in the
operation of the district to (1) limit the authority of the
district superintendent and district board of education
as to the expenditure of funds, the employment and
dismissal of personnel, the establishment and operation
of the school calendar, the establishment of instructional
programs and policies, and such other areas as may be
designated by the state board by rule, (2) take such
direct action as may be necessary to correct the
impairment and (3) declare that the office of the district
superintendent is vacant.

(h) To assist the state board in determinations of the
accreditation status of schools and the approval status
of school districts under this section, the state board
shall from time to time appoint an educational stand-
ards compliance review team to make unannounced on-
site reviews of the educational programs in any school
or school district in the state to assess compliance of the
school or district with the high quality standards
adopted by the state board, including, but not limited
to, facilities, administrative procedures, transportation,
food services and the audit of all matters relating to
school finance, budgeting and administration.

The teams shall be composed of not more than ten
persons, not more than half of whom may be members
of or currently employed by the state board, who possess
the necessary knowledge, skills and experience to make
an accurate assessment of such educational programs.
The educational standards compliance team shall report
the findings of its on-site reviews to the state board of
education for inclusion in the determination of a school's
or district's accreditation or approval status as applica-
ble. The state board of education shall encourage the
sharing of information to improve school effectiveness
among the districts. --
The state board shall make accreditation information available to the Legislature, the governor, the general public and to any individuals who request such information.

(i) The state board shall fully implement the accreditation system established under this article for all schools on the first day of July, one thousand nine hundred ninety-one, and may pilot test the system prior to that date. The state board shall adopt rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code necessary to implement the provisions of this article.

CHAPTER 51

(Com. Sub. for H. B. 2512—By Delegates Ashcraft and Mezzatesta)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, relating to creating the West Virginia share in your future act; setting forth legislative findings; creating a share in your future commission and providing for the membership thereof; meetings and report of the commission; establishment of a nonprofit fund; commission to contract to provide scholarship grants; powers of the commission; registration requirements; promulgation of rules; eligibility for shares; conversion of shares; creation of share certificate; duties of county boards; and termination of commission.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-f, to read as follows:
ARTICLE 2F. INCENTIVES AND RESULTS BASED SCHOLARSHIP PROGRAM.

§18-2F-1. Title.

§18-2F-2. Legislative findings.

§18-2F-3. Share in your future commission established; composition of commission; duties and responsibilities.


§18-2F-5. Registration requirements.

§18-2F-6. Incentives-based shares program.


§18-2F-1. Title.

1 This article shall be known and may be cited as the “West Virginia Share in Your Future Act”.

§18-2F-2. Legislative findings.

1 The Legislature hereby finds and declares that an educated and informed citizenry is essential to a democratic society. Opportunities for higher education and post-secondary vocational education should be expanded, made affordable and made available to all residents.

7 In order to ensure that continued access to higher education and post-secondary vocational education is available to the state’s citizens, an incentive to secondary education students must be developed and funded through private and public entities as well as any other available sources.

§18-2F-3. Share in your future commission established; composition of commission; duties and responsibilities.

1 There is hereby created in state government, under the supervision of the state board, a commission on educational incentives to secondary education students to be known as the share in your future commission.

5 The share in your future commission shall be composed of nine members who shall serve without salary or expenses, as follows:

8 (a) The state superintendent, the chancellor of the
state college system and the chancellor of the university
of West Virginia system, ex officio, or their designees;

(b) A member of the joint commission on vocational
education, ex officio, or his or her designee; and

(c) Five members to be appointed by the governor as
follows:

(1) A representative of the business community with
a demonstrated interest in education;

(2) A representative of labor with a demonstrated
interest in education; and

(3) Three representatives of the general public.

Of the five members appointed by the governor, no
more than three may be members of the same political
party and all shall serve at the will and pleasure of the
governor.

The share in your future commission shall meet no
later than the first day of July, one thousand nine
hundred ninety-one. The commission shall conduct a
study and report to the Legislature on the first day of
the regular session in the year one thousand nine
hundred ninety-two. The commission's report shall
include any further legislative recommendations neces-
sary to carry out the provisions of this article, whereby
students in grade seven through grade eleven may earn
shares, through appropriate conduct and accomplish-
ment, in a scholarship fund to be used to pay student
costs at accredited state institutions of higher education,
post-secondary vocational education programs and
higher educational institutions, all as defined in section
two, article one, chapter eighteen-b of this code, and
other approved and accredited participating post-
secondary educational programs located in West
Virginia.

The share in your future commission shall encourage
contributions to the program and encourage private,
proprietary educational institutions, accredited by a
national or regional accrediting agency or association
recognized by the United States department of educa-

The share in your future commission shall identify a nonprofit corporation or other charitable organization which is suitable to collect, invest, hold, manage, and disburse scholarship funds under the provisions of this article. At an appropriate time, the commission may contract with said corporation or organization to provide scholarship grants under this article. The commission is empowered to publicize the program and to solicit donations, grants, bequests and gifts from any source. The state board may seek appropriations from the Legislature for the cost of operating this program and to match private scholarship funds.

The nonprofit corporation shall, under the terms of any contract entered into hereunder, make available to the commission on a yearly basis, the amount of money available to meet the requirements of the incentives-based share program and, upon request, shall transfer funds necessary for implementing the provisions of this article.

§18-2F-5. Registration requirements.

Any student choosing to enter the program must complete and sign a registration form. The student's parent or guardian shall also sign the registration form in order for the student to be eligible for the program. The registration form shall be made available through the commission to the local boards of education. A copy of the completed form shall be kept on file at the board office in the county in which the student is enrolled. The original registration form shall be kept on file with the share in your future commission.

The registration form shall clearly state the eligibility requirements for the program as well as all applicable rules and regulations regarding continued eligibility in the program.

§18-2F-6. Incentives-based shares program.
On or before the first day of July, one thousand nine hundred ninety-two, the share in your future commission shall promulgate legislative rules pursuant to section nine, article three-b, chapter twenty-nine-a of this code regarding the criteria to be used in awarding shares. When the commission determines that adequate funding is available, these rules shall be forwarded to each county board to be used in awarding shares to participants. Shares in the fund may be awarded for performance by students in grades seven through eleven in the following areas:

(a) Attendance or improved attendance over the previous school year;
(b) Successful completion of an advance placement course and passage of the national advanced placement exam;
(c) An improvement in quality point average over the previous school year;
(d) Completion of all courses with a specified quality point average;
(e) Signing a drug free, alcohol free pledge;
(f) Completion of an advanced course in specified subject areas;
(g) Demonstrated participation in extracurricular activities; and
(h) Such other areas and criteria as the share in your future commission may establish.


Shares are cumulative from one school year to the next school year and may be converted to a pro rata share of the total fund available upon graduation from an accredited West Virginia high school. The share in your future commission shall promulgate rules in accordance with article three-b, chapter twenty-nine-a of this code, to determine the pro rata share of the total fund that each share represents.

Upon graduation from an accredited West Virginia
high school, each student has the right to cash in his or her respective shares for a voucher that may be spent at any accredited state institutions of higher education, post-secondary vocational education programs or higher educational institutions, all as defined in section two, article one, chapter eighteen-b of this code, and other approved and accredited post-secondary educational programs located in West Virginia participating in the program: Provided, That the share in your future commission may implement the conversion of shares to vouchers at the close of the school year ending in the year one thousand nine hundred ninety-five.

The share in your future commission may have a share certificate designed, which is similar in design to stock certificates, which shall include the student's name, the number of shares and certification by the governor of West Virginia and the superintendent of schools that the shares were earned. Upon receipt by the share in your future commission of the report provided for in section eight of this article, the commission may complete share certificates based upon the report and forward the certificates to the appropriate county board. The county board shall notify the student and at an appropriate time shall deliver the certificate to the student.


Each county board which has a student participating in the incentive program shall, at the end of each school year, report in writing to the share in your future commission the number of shares earned by each participant. A copy of such report shall be retained by the county board. Accumulated shares earned shall be reported to each student at the end of each school year: Provided, That the appropriate information shall be collected by the school counselor who will then forward the same to the local county board.


The share in your future commission shall be terminated on the first day of July, one thousand nine hundred ninety-four, unless review of its functions shall
be undertaken pursuant to the provisions of sections
nine, ten and eleven, article ten, chapter four of this
code. If such commission is terminated pursuant to this
section, all contractual obligations of the commission,
including any shares earned, shall be assumed by the
state board.

CHAPTER 52
(Com. Sub. for H. B. 2131—By Delegates S. Cook and Brum)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article two-g; and to amend and reenact sections ten and
thirteen, article nine-a of said chapter, all relating to
maintaining step seven funds for one thousand nine
hundred ninety-one; permitting up to fifteen percent of
this allocation be used for personnel costs in certain
instances; increasing the amount of funds to be paid into
the school building capital improvements fund;
increasing the appropriations for certain state board
staff and operating costs in certain instances; authoriz­
ing a one-time appropriation to certain rural district
boards; and creating the school library media improve­
ment grant program.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article two-g; and
that sections ten and thirteen, article nine-a of said chapter
be amended and reenacted, all to read as follows:

Article
2G. School Library Media Improvement Grant Program.
9A. Public School Support.

ARTICLE 2G. SCHOOL LIBRARY MEDIA IMPROVEMENT
GRANT PROGRAM.
§18-2G-1. Legislative intent and purpose.

The Legislature acknowledges that society is presently generating more and more information at ever faster rates. Further, the Legislature acknowledges that it is more difficult for educational facilities and students to digest this growing pool of educational information. Finally, the Legislature acknowledges the need for an incentive grant program which will encourage growth and development of school library media programs which will assist in implementing innovative educational technology.


The state board shall administer the school library media improvement grant program pursuant to the following criteria:

(a) Library media improvement grants shall be utilized to initiate a centralized library media program or to improve an existing program. Funds awarded in such grant may be used for the purchase of books, audiovisual materials, audiovisual equipment, computer software or other innovative uses of technology in the library media center. Funds may not be used for construction, remodeling, furniture, salaries or supplies or to replace funds previously allocated or expended by the county board of education receiving the grant.

(b) Funds in the amount of not less than fifty thousand dollars shall be appropriated to be awarded as grants and shall be equitably allocated between elementary and secondary schools with at least fifty percent of the funds being allocated to small schools with a disproportionate number of students from low income families.

(c) Grants shall be for one year.

§18-2G-3. Grant applications.

Each school district applying for a grant shall submit a proposal detailing plans for the creation of a school
library media program or for the improvement of a
program already in use. Each district receiving a grant
shall furnish information to the state board document-
ing the application of funds allocated and the benefits
to the children served as a result of the grant.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.


§18-9A-10. Foundation allowance to improve instructional programs.

(a) For the school year beginning on the first day of
July, one thousand nine hundred ninety-one only,
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-one, 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 for the school
year beginning on the first day of July, one thousand
nine hundred ninety-one, up to fifteen percent of this
allocation may be used to employ professional educators
and/or service personnel in counties after all applicable
provisions of sections four and five of this article have
been fully utilized.

Prior to the use of any funds from this section for
personnel costs, the county board must receive author-
ization from the state superintendent of schools. The
state superintendent shall require the district board to
demonstrate: (1) The need for the allocation, (2)
efficiency and fiscal responsibility in staffing, and (3)
sharing of services with adjoining counties and the
regional educational service agency for that county in
the use of the total local district board budget. District
boards shall make application for available funds by the
first day of May, one thousand nine hundred ninety-one.
On or before the first day of June, the state superintend-
ent shall review all applications and notify applying
district boards of the distribution of the allocation. Such
funds shall be distributed during the fiscal year as
appropriate. The state superintendent shall require the
county board to demonstrate the need for an allocation
for personnel based upon the county's inability to meet
the requirements of state law or state board policy:
Provided, That the funds available for personnel under
this section may not be used to increase the total number
of professional noninstructional personnel in the central
office beyond four. 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-one, twenty-one 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 if funds are available and appropriated in each such subsequent fiscal year, not less than seven million seven hundred thousand dollars 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, eighty-
113 five thousand two hundred two dollars to be used by the
114 state department of education which may be expended
115 for the purposes of paying staff and operating costs of
116 both administrative/program personnel and instruc-
117 tional personnel delivering education to handicapped
118 children in facilities operated by the state division of
119 health; paying state department of education staff,
120 current expenses and equipment; supporting a gifted
121 summer camp; and supporting special state projects,
122 including, but not limited to, (1) an instructional
123 materials center for visually handicapped children at
124 the West Virginia Schools for the Deaf and the Blind,
125 (2) the state special olympics program, (3) the West
126 Virginia advisory council for the education of except-
127 tional children at the West Virginia College of Graduate
128 Studies, (4) statewide training activities or other
129 programs benefiting exceptional children and (5) the
130 state very special arts program.

§18-9A-13. Transitional allocation for certain rural
district boards.

1 For the school year one thousand nine hundred ninety-
2 one—ninety-two only, there shall be a one-time addi-
3 tional appropriation of one million dollars to be
4 distributed to those very few district boards on a needs
5 basis: Provided, That if funds available under this
6 section are used for personnel, such funds may not be
7 used to increase the total number of professional
8 noninstructional personnel in the central office beyond
9 four. The factors used to determine eligibility for funds
10 shall be staffing ratio to students, administrative ratio
11 to staff supervised, funding stability, and sparsity of
12 student population.

13 The state superintendent shall require the district
14 board to demonstrate: (1) The need for the allocation, (2)
15 efficiency and fiscal responsibility in staffing, and (3)
16 sharing of services with adjoining counties and the
17 regional educational service agency for that county in
18 the use of the total local district board budget. District
19 boards shall make application for available funds by the
20 first day of May, one thousand nine hundred ninety-one.
21 On or before the first day of June, the state superintend-
ent shall review all applications and notify applying
district boards of the distribution of the allocation. Such
funds shall be distributed during the fiscal year as
appropriate.

CHAPTER 53
(Com. Sub. for H. B. 2677—By Delegate Ashcraft, By Request)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article
four, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to
amend and reenact section thirty-nine, article five of
said chapter; to amend and reenact section four, article
two, chapter eighteen-a; and to amend and reenact
sections eight and ten, article four of said chapter,
relating to clarifying qualifications of superintendents;
the employment of school personnel during the summer;
providing for seniority in summer service positions;
licensing of school electricians; providing priority status
to certain disabled service personnel in certain instan-
ces; and enlarging conditions of personal leave for
service employees.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel

CHAPTER 18. EDUCATION.
ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.
§18-4-4. Compensation.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1. Superintendents employed prior to the twenty-eighth day of June, one thousand nine hundred eighty-eight shall hold a certificate valid in West Virginia and an approved master's degree including at least twelve semester hours in school administration and supervision, and at least five years experience in public school teaching and/or supervision.

2. Any superintendent appointed as superintendent after the twenty-seventh day of June, one thousand nine hundred eighty-eight, shall meet requirements for the professional administrative certificate endorsed for superintendent by the first day of July, one thousand nine hundred ninety-three. Any new superintendent appointed as of the thirtieth day of August, one thousand nine hundred ninety, shall hold a professional administrative certificate endorsed for superintendent. Any person employed as assistant superintendent or educational administrator prior to the twenty-seventh day of June, one thousand nine hundred eighty-eight, and who was previously employed as superintendent shall not be required to hold the professional administrative certificate endorsed for superintendent.

3. Before entering upon the discharge of his duties the superintendent shall file with the president of the board a health certificate from a reputable physician, on a form prescribed by the state department of schools, certifying that he is physically fit for the duties of his office and that he has no infectious or contagious disease; and if the superintendent, due to accident or illness, should become incapacitated to an extent that could lead to a prolonged absence, the board, upon unanimous vote, shall have authority to enter an order declaring such
incapacity and it shall appoint an acting superintendent until such time as a majority of the members of the board shall determine that the incapacity no longer exists. However, an acting superintendent shall not serve as such for more than one year, or later than the expiration date of the superintendent's term, whichever is less, without being reappointed by the board of education.

§18-4-4. Compensation.

On or before the first day of May of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of appointment for the term beginning on the first day of July following. The board shall pay the salary from the general current expense fund of the district.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-39. Establishment of summer school programs; tuition.

Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction and others who desire accelerated instruction, it is the purpose of this section to provide for the establishment of a summer school program, which program is to be separate and apart from the full school term as established by each county.

The board of education of any county shall have authority to establish a summer school program utilizing the public school facilities and to charge tuition for students who attend such summer school, such tuition not to exceed in any case the actual cost of operation of such summer school program: Provided, That any deserving pupil whose parents, in the judgment of the board, are unable to pay such tuition, may attend at a reduced charge or without charge. The county board of education shall have the authority to determine the term and curriculum of such summer schools based upon the particular needs of the individual county. The curricu-
lum may include, but is not limited to, remedial
instruction, accelerated instruction, and the teaching of
manual arts. The term of such summer school program
may not be established in such a manner as to interfere
with the regular school term.

The county boards may employ as teachers for this
summer school program any certified teacher. Certified
teachers employed by the county board to teach in the
summer school program shall be paid an amount to be
determined by the county board and shall enter into a
contract of employment in such form as is prescribed
by the county board: Provided, That teachers who teach
summer courses of instruction which are offered for
credit and which are taught during the regular school
year shall be paid at the same daily rate such teacher
would receive if paid in accordance with the then
current minimum monthly salary in effect for teachers
in that county.

Any funds accruing from such tuitions shall be
credited to and expended within the existing framework
of the general current expense fund of the county board.

Notwithstanding any other provision of this code to
the contrary, the board shall fill professional positions
established pursuant to the provisions of this section on
the basis of certification and length of time the
professional has been employed in the county's summer
school program. In the event that no employee who has
been previously employed in the summer school pro-
gram holds a valid certification or licensure, a board
shall fill the position as a classroom teaching position in
accordance with section eight-b, article four, chapter
eighteen-a of this code.

Notwithstanding any other provision of the code to the
contrary, the county board of education is authorized to
employ school service personnel to perform any related
duties outside the regular school term as defined in
section eight, article four, chapter eighteen-a of this
code. An employee who was employed in any service
personnel job or position during the immediate previous
summer shall have the option of retaining such job or
position if such exists during any succeeding summer. If such employee is unavailable or if the position is newly created, the position shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code. When any summer employee who is employed in a summer position is granted a leave of absence for the summer months, the board shall give regular employment status to such employee for that summer position which shall be filled under the procedure set forth in section eight-b, article four, chapter eighteen-a of this code. The summer employee on leave of absence shall have the option of returning to that summer position if such exists the succeeding summer or whenever such position is reestablished if it were abolished. The salary of a summer employee shall be in accordance with the salary schedule of persons regularly employed in the same position in the county where employed.

If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in such position in previous summers, such reductions in force and priority in reemployment to such summer positions shall be based upon the length of service time in the particular summer program or classification.

For the purpose of this section, summer employment for service personnel shall be defined, but not limited to, filling jobs and positions as defined in section eight, article four, chapter eighteen-a of this code and especially established for and which are to be predominantly performed during the summer months to meet the needs of a county board of education.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
4. Salaries, Wages and Other Benefits.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-4. Commercial driver's license for school personnel; reimbursement of electrician's and commercial driver's license when required.
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.

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.

The division of motor vehicles shall accept the West Virginia department of education physical and psychomotor test result forms in lieu of the division of motor vehicles vision report form.

If a county board of education requires of any employee who is employed as an electrician any license renewal when the employee is exempt from renewing the license pursuant to section three, article three-b, chapter twenty-nine of this code, the cost of such license renewal shall be paid in full by the county board of education.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

§18A-4-8. Employment term and class titles of service personnel; definitions.

The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of these personnel for a longer term. The beginning and closing dates of the ten-month employment term shall not exceed forty-three weeks. Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job
assignment during the school year, the minimum pay
scale and any county supplement shall be applicable.

Service personnel employed in the same classification
for more than the two hundred day minimum employ-
ment term shall be paid for additional employment at
a daily rate of not less than the daily rate paid for the
two hundred day minimum employment term.

No service employee, without his agreement, shall be
required to report for work more than five days per
week and no part of any working day may be accum-
ulated by the employer for future work assignments,
unless the employee agrees thereto.

Should an employee whose regular work week is
scheduled from Monday through Friday agree to
perform any work assignments on a Saturday or
Sunday, the employee shall be paid for at least one-half
day of work for each such day he reports for work, and
if the employee works more than three and one-half
hours on any Saturday or Sunday, he shall be paid for
at least a full day of work for each such day.

Custodians required to work a daily work schedule
that is interrupted, that is, who do not work a continuous
period in one day, shall be paid additional compensation
which shall be equal to at least one eighth of their total
salary as provided by their state minimum salary and
any county pay supplement, and payable entirely from
county funds.

Upon the change in classification or upon meeting the
requirements of an advanced classification of or by any
employee, his salary shall be made to comply with the
requirements of this article, and to any county salary
schedule in excess of the minimum requirements of this
article, based upon his advanced classification and
allowable years of employment.

An employee's contract as provided in section five,
article two of this chapter shall state the appropriate
monthly salary the employee is to be paid, based on the
class title as provided in this article and any county
salary schedule in excess of the minimum requirements
The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel.

"Years of employment" means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

"Class title" means the name of the position or job held by service personnel.

"Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

"Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

"Accountant III" means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

"Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

"Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title shall be
employed as an aide in any special education program.

“Aide III” means those personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year’s experience as an aide in special education.

“Aide IV” means personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.

“Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

“Auditor” means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

“Braille or sign language specialist” means personnel employed to provide braille and/or sign language assistance to students.

“Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

“Buyer” means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

“Cabinetmaker” means personnel employed to con-
struct cabinets, tables, bookcases and other furniture.

"Cafeteria manager" means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

"Carpenter I" means personnel classified as a carpenter's helper.

"Carpenter II" means personnel classified as a journeyman carpenter.

"Chief mechanic" means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

"Clerk I" means personnel employed to perform clerical tasks.

"Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

"Computer operator" means qualified personnel employed to operate computers.

"Cook I" means personnel employed as a cook's helper.

"Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if such personnel have not been elevated to this classification within that period of time.

"Cook III" means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

"Crew leader" means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects.
“Custodian I” means personnel employed to keep buildings clean and free of refuse.

“Custodian II” means personnel employed as a watchman or groundsman.

“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Director or coordinator of services” means personnel not defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

“Draftsman” means personnel employed to plan, design and produce detailed architectural/engineering drawings.

“Electrician I” means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.

“Executive secretary” means personnel employed as the county school superintendent’s secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter,
employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

"Foremen" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

"General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

"Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

"Graphic artist" means personnel employed to prepare graphic illustrations.

"Groundsmen" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

"Handyman" means personnel employed to perform routine manual tasks in any operation of the county school system.

"Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heavy equipment operator" means personnel employed to operate heavy equipment.
“Inventory supervisor” means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

“Key punch operator” means qualified personnel employed to operate key punch machines or verifying machines.

“Locksmith” means personnel employed to repair and maintain locks and safes.

“Lubrication man” means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

“Machinist” means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

“Mail clerk” means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail.

“Maintenance clerk” means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

“Mason” means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

“Mechanic” means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

“Mechanic assistant” means personnel employed as a mechanic apprentice and helper.

“Multi-classification” means personnel employed to perform tasks that involve the combination of two or more class titles in this section or as created by the West
Ch. 53]  

EDUCATION  

Virginia board of education. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved.

"Office equipment repairman I" means personnel employed as an office equipment repairman apprentice or helper.

"Office equipment repairman II" means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

"Painter" means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

"Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator:

Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.

"Plumber I" means personnel employed as an apprentice plumber and helper.

"Plumber II" means personnel employed as a journeyman plumber.

"Printing operator" means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

"Printing supervisor" means personnel employed to supervise the operation of a print shop.

"Programmer" means personnel employed to design and prepare programs for computer operation.
"Roofing/sheet metal mechanic" means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

"Sanitation plant operator" means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection.

"School bus supervisor" means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

"Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

"Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

"Secretary III" means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "Secretary II" or "Secretary III" herein for twelve years.
"Supervisor of maintenance" means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board of education.

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods.

"Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

"Welder" means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.
Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

The state board of education is authorized to establish other class titles of service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale in section eight-a of this article.

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as
determined and established by the court.

Notwithstanding any provisions in this code to the contrary, service personnel who hold a continuing contract in a specific job classification and are physically unable to perform the job's duties as confirmed by a physician chosen by the employee shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if qualified as provided in section eight-e of this article.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

1 At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferable within the state. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.

10 A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his regular budgeted salary appropriation during the period which such employee is absent, but not to exceed the total amount of leave to which such employee is entitled: Provided, That each such employee shall be permitted three days of such leave annually, which may be taken without regard to the cause for the absence, except that personal leave without cause may not be taken on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as the case may be: Provided, however, That notice of such leave day shall be given to the employee's principal or immediate supervisor, as the case may be, at least twenty-four hours in advance, except that in the case of sudden and unexpected circumstances, such
notice shall be given as soon as reasonably practicable; however, the use of such day may be denied if, at the time notice is given, either fifteen percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, as the case may be, have previously notified the principal or immediate supervisor of their intention to use that day for such leave: 

Provided further, That such leave shall not be used in connection with a concerted work stoppage or strike. Where the cause for leave had its origin prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee should use personal leave which the employee has not yet accumulated on a monthly basis and subsequently leave the employment, the employee shall be required to reimburse the board for the salary or wages paid to him for such unaccumulated leave.

Prior to the first day of January, one thousand nine hundred eighty-nine, the state board shall establish rules, effective on said date, to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the employee's board. If an employee is awarded such benefit, such employee shall receive personal leave compensation only to the extent such compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid such employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, such amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

The board may establish reasonable rules for reporting and verification of absences for cause; and if any
error in reporting absences should occur, it shall have
authority to make necessary salary adjustments in the
next pay after the employee has returned to duty or in
the final pay if the absence should occur during the last
month of the employment term.

A county board of education may establish a personal
leave bank or banks to which employees may contribute
no more than two days of personal leave per school year:
Provided, That such bank or banks be established either
jointly or separately for both professional personnel and
school service personnel and that a bank be available to
all school personnel. Such personal leave bank shall be
established and operated pursuant to rules adopted by
the county board: Provided, however, That such rules
may limit the maximum number of days used by an
employee, shall require that leave bank days be used
only by an active employee with less than five days
accumulated personal leave who is absent from work
due to accident or illness of such employee, and shall
prohibit the use of such days with the extension of
insurance coverage pursuant to section twelve, article
sixteen, chapter five of this code. Such rules shall
require that contributions shall reduce, to the extent of
such contribution, the number of personal leave days to
which an employee is entitled by this section: Provided
further, That such contribution shall not reduce personal
leave days without cause to which an employee is
entitled. No employee may be compelled to contribute
to such personal leave bank.

When an allowable absence does not directly affect the
instruction of the pupils or when a substitute employee
may not be required because of the nature of the work
and the duration of the cause for the allowable absence
of the regular employee, the administration, subject to
board approval, may use its discretion as to the need for
a substitute where limited absence may prevail.

If funds in any fiscal year, including transfers, are
insufficient to pay the full cost of substitutes for meeting
the provisions of this section, the remainder shall be
paid on or before the thirty-first day of August from the
budget of the next fiscal year.
Any board of education shall have authority to supplement such leave provisions in any manner it may deem advisable in accordance with applicable rules of the state board and the provisions of this chapter and chapter eighteen of this code.

CHAPTER 54
(S. B. 468—By Senators Wagner and Withers)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying and limiting the emergency powers of the county superintendent of schools.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-10. Duties.

The county superintendent shall:

1 (1) Act as the chief executive officer of the board, and execute under the direction of the state board all its educational policies;

2 (2) Nominate all personnel to be employed; in case the board of education refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board of education at such time as the board may direct, but no such person or persons shall be employed except on the nomination of the county superintendent;

3 (3) Assign, transfer, suspend or promote teachers and all other school employees of the district, subject only to the approval of the board, and to recommend to the
board their dismissal pursuant to the provisions of this chapter;

(4) Organize and attend district institutes; organize and direct reading circles and boys’ and girls’ clubs;

(5) Close temporarily a school when conditions are detrimental to the health, safety or welfare of the pupils;

(6) Certify all expenditures and monthly payrolls of teachers and employees;

(7) Be the secretary of the board and attend all meetings of the board or its committees, except when his tenure, salary or administration is under consideration;

(8) Administer oaths and examine under oath witnesses in any proceedings pertaining to the schools of the district, and have the testimony reduced to writing;

(9) Exercise all other authority granted by this chapter or required by the board or state board; and

(10) Act in case of emergency as the best interests of the school demand: Provided, That an emergency as contemplated in this section shall be limited to an unforeseeable, catastrophic event including natural disaster or act of war: Provided, however, That nothing in this section shall be construed as granting the county superintendent authority to override any statutory or constitutional provision in the exercise of said emergency power except where such authority is specifically granted in the particular code section.

CHAPTER 55
(H. B. 2472—By Delegates Pethel and D. Miller)

[Passed February 13, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to allow school employees to serve on a county board of education in the county where they reside but are not employed.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members.

No person shall be eligible for membership on any county board of education who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

No member or member-elect of any board of education shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member-elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointment to, such public office or committee.

Any person who is elected or appointed to a county board of education on or after the fifth day of May, one thousand nine hundred ninety-two, shall possess at least a high school diploma or a general educational development (GED) diploma: Provided, That this provision shall not apply to members or members-elect who have taken office prior to the fifth day of May, one thousand nine hundred ninety-two, and who serve continuously therefrom.

No person elected to a county board of education after the first day of July, one thousand nine hundred ninety, shall assume the duties of board member unless he or she has first attended and completed a course of orientation relating to boardmanship and governance effectiveness which shall be given between the date of election and the beginning of the member’s term of
 Members appointed to the board shall attend and complete the next such course offered following their appointment. Commencing on the effective date of this section, members shall annually receive seven clock hours of training in areas relating to boardmanship and governance effectiveness. Such orientation and training shall be approved by the state board of education and conducted by the West Virginia school board association or other organization or organizations approved by the state board. Failure to attend and complete such an approved course of orientation and training relating to boardmanship and governance effectiveness without good cause shall constitute neglect of duty.

CHAPTER 56

(Com. Sub. for S. B. 578—By Senators Bailey and Anderson)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter eighteen 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 seven-b, relating to authorizing county boards of education to donate unneeded real estate to certain nonprofit organizations; and limiting the liability of county boards for hazardous conditions associated with certain conveyed property.

Be it enacted by the Legislature of West Virginia:

That section seven, article five, chapter eighteen 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 seven-b, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds.
§18-5-7b. Charitable or community use of unneeded buildings.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds.

If at any time the board shall ascertain that any building or any land no longer shall be needed for school purposes, the board may sell, dismantle, remove or relocate any such buildings and sell the land on which they are located, at public auction, after proper notice, and on such terms as it orders, to the highest responsible bidder. But in rural communities, the grantor of the lands, his heirs or assigns, shall have the right to purchase at the sale, the land, exclusive of the buildings thereon, and the mineral rights, at the same price for which it was originally sold: Provided, That the sale to the board was not a voluntary arms length transaction for valuable consideration approximating the fair market value of the property at the time of such sale to the board: Provided, however, That this section shall not operate to invalidate any provision of the deed to the contrary. The board by the same method prescribed for the sale of school buildings and lands, may also lease for oil or gas or other minerals any lands or school sites owned in fee by it. The proceeds of such sales and rentals shall be placed to the credit of such fund or funds of the district as the board may direct: Provided further, That the provisions of this section concerning sale at public auction shall not apply to boards of education selling or disposing of its property for a public use to the state of West Virginia, or its political subdivisions, including county commissions or divisions thereof, for an adequate consideration without considering alone the present commercial or market value of the property: And provided further, That the board may make any sale of property subject to the provisions that all liability for hazards associated with the premises are to be assumed by the purchaser, and any sale of improved property in which the actual consideration is less than ten thousand dollars or in any sale of unimproved property in which the actual consideration is less than one thousand dollars the board shall make any sale
of property subject to the provisions that all liability for hazards associated with the premises are to be assumed by the purchaser. The board shall inform any prospective purchaser of known or suspected hazards associated with the property.

§18-5-7b. Charitable or community use of unneeded buildings.

1 If, in the sound judgment of the board, the needs of the community require the use of property not needed for school purposes, for charitable, economic development or other community use, notwithstanding the provisions of section seven of this article, the board may convey by deed or by lease, for nominal consideration, to a private, nonprofit, tax-exempt organization, such tax-exempt status having been granted by the Internal Revenue Service under the provisions of 26 United States code section 501 (c) (3) through (8) inclusive, (19) or (23), upon such terms and conditions as will permit title to revert to the board if the organization is dissolved or ceases to use the property for the intended purpose within the first five years of such conveyance: Provided, That such reversion provision shall be subordinated to such extent as may be required solely in order to obtain a loan for the purpose of improving the property. In any absolute conveyance under this section, the transfer shall be subject to the provisions that all liability for hazards associated with the premises are to be assumed by the recipient. The board shall inform any prospective donee of known or suspected hazards associated with the property.

CHAPTER 57

(Com. Sub. for S. B. 408—By Senator Burdette, Mr. President, By Request)

[Passed March 8, 1991; in effect from passage. Approved by the Governor.]
to exempting county boards of education from public hearings on school closings or consolidations in certain instances; and specifying additional data to be included in the county board's written statement of reasons for school closing or consolidation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13a. School closing or consolidation.

1. In addition to the provisions of section thirteen of this article, prior to any final decision of a county board of education on any proposal to close or consolidate any school, except in cases in which a construction bond issue was passed by the voters and which bond issue included the schools to be closed or consolidated, the county board of education shall:

2. (1) Prepare and reduce to writing its reasons and supporting data regarding such school closing or consolidation. The written reasons required under this section shall be available for public inspection in the office of the county school superintendent during the four successive weeks before the date of the public hearing required by this section; and

3. (2) Provide for a public hearing, notice of which shall be advertised by publication in a newspaper of general circulation in the locality of the affected school at least once a week for four successive weeks prior to the date of the hearing. The notice shall contain the time and place of the hearing and the proposed action of the school board. A copy of such notice shall be posted at the affected school in conspicuous working places for all professional and service personnel to observe, and such notice shall remain posted for four successive weeks prior to the date of the required public hearing. At least a quorum of the school board members and the county superintendent from the county wherein the affected school is located shall attend and be present at the
public hearing. Members of the public shall have the
right to be present, to submit statements and testimony,
and to question county school officials at the public
hearing.

Any such proposal to close or consolidate any school
by any county board of education shall be further
subject to any current rules and regulations of the state
board of education relating to school closing or consol-
idation: *Provided*, That after the effective date of this
section the state board shall promulgate rules and
regulations which shall prescribe in detail the type of
supporting data a county board of education shall
include as part of its written statement of reasons
required by this section for school closing or consolida-
tion, including the transportation time of the affected
students and which shall include any data required by
the state board of education to amend a county's
comprehensive educational facilities plan.

This section shall take effect on the date of passage
and shall affect any school not physically closed or
consolidated as of that date: *Provided*, That the written
reasons shall include all supporting data required by the
state board of education to amend a county's comprehen-
sive education facilities plan.

CHAPTER 58
(Com. Sub. for H. B. 2362—By Delegates Ashcraft and Prezioso)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-a,
chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to permitting vocational-technical schools to include
additional representatives of business and industry on
their school improvement councils.

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

That section two, article five-a, chapter eighteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election.

A local school improvement council shall be established at every school consisting of the principal, who shall serve as the ex officio chairman of the council and be entitled to vote, three teachers elected by the faculty senate of the school, two school service personnel elected by the school service personnel employed at the school, three parents or legal guardians of students enrolled at the school elected by the school's parent teacher organization, and two at-large members appointed by the principal, one of whom resides in the school's attendance area and one of whom represents business or industry, both of whom are not eligible for membership under any of the other elected classes of members and in the case of vocational-technical schools, the vocational director, or if there is no vocational director then the principal, may appoint no more than two additional representatives, one of whom represents business and one of whom represents industry: Provided, That if the school houses students in grade seven or higher, then the student body president or other student, elected by the student body in grade seven or higher, shall also be a member of the council.

The principal shall arrange for such elections to be held prior to the tenth day of May of each school year to elect a council to serve for the next ensuing school year and shall give notice of the elections at least one week prior to the elections being held. To the extent practical, all elections shall be held within the same week. Persons elected to the council shall serve until the next election and may only be replaced upon death, resignation, failure to appear at three consecutive meetings of the council for which notice was given, or a change in personal circumstances so that the person is no longer representative of the class of members from which appointed. In the case of replacement, an election shall be held to elect another qualified person to serve the unexpired term of the person being replaced.

Each member of the school improvement council must
be given written notice two employment days in advance of any council meeting.

School improvement councils shall meet at least once every nine weeks or equivalent grading period at the call of the chair or by three fourths of its members. At the first meeting of the council, the chair shall provide each member with a copy of the current applicable section of this code and any state board rule or regulation promulgated pursuant to the operation of these councils, and the council shall elect from its membership two members to assist the chair in setting the agenda for each council meeting.

School improvement councils shall be considered for the receipt of school of excellence awards under section three of this article and competitive grant awards under section twenty-nine, article two of this chapter, and may receive and expend such grants for the purposes provided in such section.

In any and all matters which may fall within the scope of both the school improvement councils and the school curriculum teams authorized in section five of this article, the school curriculum teams shall be deemed to have jurisdiction.

A school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

1. Encourage the involvement of parents in their child's educational process and in the school;
2. Encourage businesses to provide time for their employees who are parents to meet with teachers concerning their child's education;
3. Encourage advice and suggestions from the business community;
4. Encourage school volunteer programs and mentorship programs; and
5. Foster utilization of the school facilities and grounds for public community activities.
CHAPTER 59
(S. B. 180—By Senators Heck, Withers, Felton, Wagner, Lucht and Humphreys)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight, article nine-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school employees employment term; and prohibiting county boards of education from reducing employee salaries by reducing days in the employment term.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-7. Determination by the board of finance before final approval of budget; length of term.

The board of finance, before giving its final approval to a proposed budget, shall require that:

1. Estimates of revenue and receipts are reasonable and accurate;
2. Amounts are budgeted so as to cover actual requirements of school operation; and
3. Amounts are budgeted so as to maintain the schools of the county for the employment term and the instructional term as defined in section fifteen, article five of this chapter.

§18-9B-8. Projected expenditures order of revision in budget.

If the board of finance finds that the proposed budget for a county will not maintain the proposed educational
program as well as other financial obligations of their
county board of education, it may require that the
budget be revised, but in no case shall permit the
reduction of the instructional term pursuant to the
provisions contained in section fifteen, article five of this
chapter nor the employment term below two hundred
days. Any required revision in the budget for this
purpose may be made in the following order:

(1) Postpone expenditures for permanent improve­
ments and capital outlays except from the permanent
improvement fund;

(2) Reduce the amount budgeted for maintenance
exclusive of service personnel so as to guarantee the
payment of salaries for the employment term; or

(3) Adjust amounts budgeted in any other way so as
to assure the required employment term of two hundred
days and the required instructional term of one hundred
eighty days under the applicable provisions of law.

CHAPTER 60

(H. B. 2124—By Delegates Williams and Susman)

[Passed January 31, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten,
chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to West Virginia State College; and designating said
college a land grant institution.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEDERAL AID AND GIFTS FOR EDUCATIONAL
PURPOSES.

§18-10-3. Federal aid for West Virginia University and
West Virginia State College.
The state of West Virginia hereby renews its assent to the provisions and purposes of the act of Congress of August thirtieth, eighteen hundred and ninety, entitled "An act to apply a portion of the proceeds of the public land to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of the act of Congress approved July second, eighteen hundred and sixty-two," and of all subsequent acts of Congress amending or supplementing said act, and accepts the appropriations of money authorized thereby.

The state of West Virginia hereby designates West Virginia University as the beneficiary of appropriations under the eighteen hundred and sixty-two act of Congress referred to in section one of this article and West Virginia State College as the beneficiary of appropriations under the eighteen hundred and ninety act of Congress referred to in this section.

CHAPTER 61

(Com. Sub. for S. B. 178—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect July 1, 1991. 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 specifying the date after which certain graduate work will qualify for advanced salary classification; eliminating the petition requirement for receiving advanced salary classification; providing for an additional exception to continue receiving in-field pay; defining in-field classification; requiring certain individuals who complete a master's degree prior to a certain date to take additional hours in certain instances; specifying when certain individuals who complete a master's degree subsequent to a certain date must take additional course work; requiring no additional course work in certain instances; specifying exceptions to the total course work requirements; defining certain master's programs for
qualifying for in-field classification; redefining in-field master's; and defining M.A. + 45, in-field M.A. + 45 and in-field doctorate.

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.

1 For the purpose of this article, 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 (16), 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) "A.B." means a bachelor's degree, from an
accredited 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) "A.B. 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.

For purposes of advanced salary classification, graduate work completed after the first day of July, one thousand nine hundred ninety-four, shall be related to the public school program, as prescribed by the state board of education.

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 classification compensation is contingent upon recognition of the in-field classification and the educator's assignment. The West Virginia board of education
shall establish regulations for the administration and implementation of the in-field classification salary schedule.

Only those professional educators whose assignments, for a minimum of fifty (50) percent of the instructional day, are consistent with the endorsement(s) recognized as meeting the in-field classification shall be eligible for compensation based on the in-field classification schedule. If scheduling constraints prevent the educator from being assigned to endorsements recognized for the in-field classification for a minimum of fifty (50) percent of the instructional day, the educator shall receive such compensation.

If a professional educator, who was previously employed in an area recognized for in-field classification, is reassigned to work full time in an area not recognized on said educator's certificate for in-field classification as a result of (1) voluntary reassignment to assist the county in meeting a critical staffing need, or (2) a reduction in force, or (3) placement on the transfer list in accordance with and pursuant to section seven, article two, chapter eighteen-a, any of which continues to prevent the educator from being assigned to an in-field area designated on the educator's certificate, then the educator shall continue to receive payment under the in-field classification salary schedule.

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 classification 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 field of assignment.

Effective the first day of July, one thousand nine hundred ninety-two, the following definitions shall be applicable and the preceding definitions numbered (8) and (9) shall be renumbered (9) and (11), respectively, and the preceding definition (10) shall be reconstituted in definition (15).

"In-field classification" means the above-defined master's degree and one of the following:

(a) For individuals who complete a master's degree after the first day of July, one thousand nine hundred ninety-two, 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) For individuals who complete a master's degree before the first day of July, one thousand nine hundred ninety-two, eighteen (18) 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

(c) A master's degree earned prior to the first day of July, one thousand nine hundred ninety-two, in (i) a program specialization completed at the undergraduate level, or (ii) a state approved sub-area of the specialization which is consistent with a specialization, completed at the undergraduate level, on the educator's professional certificate or its equivalent; or
(d) For the individuals who complete a master's degree after the first day of July, one thousand nine hundred ninety-two, twelve (12) semester hours of graduate credit above and beyond the course work completed for the endorsement recognized for in-field classification only if the course work for the endorsement was also completed at the graduate level; or

(e) For individuals who complete a master's degree before the first day of July, one thousand nine hundred ninety-two, nine (9) semester hours of graduate credit above and beyond the course work completed for the endorsement recognized for in-field classification only if the course work for the endorsement was also completed at the graduate level: Provided, That in certification areas identified in (d) and (e) of this section 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; or

(f) For classroom teachers who complete a master's degree program leading to initial certification and who are assigned to that certification area for a minimum of fifty percent of the instructional day, no additional course work shall be required; or

(g) A master's degree earned in education administration, guidance counseling, special education or speech communications even if the classroom teacher's assignment is not consistent with the endorsement: Provided, That special education classroom teachers must have at least five years teaching experience in special education to qualify under this subsection.

(8) In-field master's means the above-defined master's degree including recognition of an above-defined in-field classification, 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.

(10) "In-field M.A. plus 15" means the above-defined M.A. plus 15 including recognition of an above-defined in-field classification, 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.

(12) "In-field M.A. plus 30" means the above-defined M.A. plus 30 including recognition of an above-defined in-field classification, 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.

Effective the first day of July, one thousand nine hundred ninety-four, the following definition shall be applicable and the preceding definition of "doctorate" shall be reconstituted in definition (15).

(13) "M.A. plus 45" means the above-defined master's degree plus forty-five 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.

(14) "In-field M.A. plus 45" means the above-defined M.A. plus 45 including recognition of an above-defined in-field classification, 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.

(16) "In-field doctorate" means the above-defined doctor's degree, including recognition of an above-defined in-field classification, 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.

CHAPTER 62

(S. B. 412—By Senators Lucht, Wagner, Blatnik, Felton, Jones and Withers)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated...
section eight-a; to amend article two of said chapter by adding thereto a new section, designated section six; and to amend and reenact section eleven, article three-a, chapter twenty-nine-a of said code, relating to state institutions of higher education; requiring institutional and statewide report cards to ensure accountability in accordance with rules approved by legislative oversight commission on education accountability; requiring reporting of comparative data as enumerated for undergraduate, professional, graduate and health sciences schools; providing generally for said report cards; declaring legislative findings regarding health sciences education and funding for medical education; stating legislative intent regarding vice chancellor for health sciences; and increasing legislative members of legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

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

Chapter 18B. Higher Education.
29A. State Administrative Procedures.

CHAPTER 18B. HIGHER EDUCATION.


ARTICLE 1. GOVERNANCE.

§18B-1-8a. Higher education accountability; institutional and statewide report cards.

(a) The governing boards are directed to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. This
information shall be consistent and comparable between and among the state institutions of higher education and, if applicable, comparable with information from peer institutions in the region and nation. The governing boards shall prepare forms for institutional and statewide report cards and shall by the thirtieth day of September, one thousand nine hundred ninety-one, promulgate reasonable and proper legislative rules subject to approval of the Legislature pursuant to the provisions of article three-a, chapter twenty-nine-a of this code. Such legislative rules shall provide the legislative oversight commission on education accountability with full and accurate information while minimizing the institutional burden of recordkeeping and reporting. Such legislative rules shall include uniform definitions for the various indicators of student and institutional performance and guidelines for the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The report card forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material which an institution or governing board wishes to include shall be contained in a separate appendix available to the general public upon request.

(b) The president or chief executive officer of each public college, university or community college shall prepare and submit annually all requested data to the appropriate governing board at such time as the governing board may establish. The governing boards shall prepare institutional report cards for institutions under their jurisdiction and systemwide report cards which shall include the information required in the following subdivisions:

(1) For all undergraduate students and for all institutions having undergraduate programs, the institution shall report the following as available and applicable: Average scores of incoming freshmen and transfer students on the American college test (ACT) or scholastic aptitude test (SAT); percentage of incoming freshmen enrolled in developmental classes; student
performance as measured by grade point average and/or appropriate testing measures; the graduation or completion rate as may be defined by federal law or regulation for the student body as a whole and separately for students at the institution who received athletically-related student aid categorized by sex and athletic program; the rate at which individuals who complete or graduate from the program of an institution pass applicable licensure or certification examinations required for employment in a particular vocation, trade or professional field; student mobility (transfers in, transfers out and withdrawals); number and percentage of student body receiving tuition fee waivers; and number, percentage and dollar value of tuition fee waivers categorized by whether such waiver is for athletic participation or is an academic waiver and by whether the recipient is a resident or nonresident of this state.

(2) For professional schools, defined for the purposes of this section as academic programs leading to professions in which licensing is normally required and for which an undergraduate degree is a general prerequisite, the institution shall report the following as available and applicable: Average scores of beginning students and transfer students on standardized entrance examinations; number and percentage of student body receiving tuition fee waivers; number, percentage and dollar value of tuition fee waivers categorized by whether the recipient is a resident or nonresident of this state; the number of degrees granted; the graduation or completion rate as may be defined by federal law or regulation for the student body as a whole; the rate at which individuals who complete or graduate from the program of an institution pass applicable licensure or certification examinations required for employment in the particular professional field; the total number of students in each program, including the percentage of those students who are state residents, the percentage of students who are nonresidents of the state, the percentage of students who are women, and the percentage of students who are minorities as the term is defined by federal law; and the ratio of expenditures per
pupil directly attributable to students enrolled in the professional school as compared to expenditures per pupil calculated as to students enrolled in the institution as a whole.

(3) For graduate schools, defined for the purposes of this section as academic programs leading to advanced degrees (masters or doctorates of philosophy in fields for which bachelor's degree programs are available) and for which an undergraduate degree is a general prerequisite, the institution shall report the following as available and applicable: Average scores of beginning students and transfer students on standardized entrance examinations; number and percentage of student body receiving tuition fee waivers; number, percentage and dollar value of tuition fee waivers categorized by whether the recipient is a resident or nonresident of this state; the number of degrees granted; the graduation or completion rate as may be defined by federal law or regulation for the student body as a whole; the rate at which individuals who complete or graduate from the program of an institution pass applicable licensure or certification examinations required for employment; and the total number of students in each program, including the percentage of those students who are state residents, the percentage of students who are nonresidents of the state, the percentage of students who are women, and the percentage of students who are minorities as the term is defined by federal law.

(4) In addition to any and all information required by subdivision (2) of this subsection, each health sciences school shall assist the vice chancellor for health sciences in providing information for the institutional and statewide report cards, which shall include reports on the following:

(A) Information on graduates, including, but not limited to, placement of interns and residents, retention rates in the state, retention rates in underserved areas as determined by the division of health, the percentage practicing in primary care in this state to be defined as family medicine, internal medicine, pediatrics and obstetrics/gynecology, and other information pertinent
to health sciences education as it relates to health care
delivery in this state such as recruitment programs to
attract health care providers to West Virginia; reasons
obtained from graduate surveys as to why health care
graduates are leaving West Virginia; programs devel-
oped to direct graduates into primary care practices and
specialty shortage areas in this state; and ways in which
the health sciences schools intend to assist in meeting
the projected health care needs of this state, including
specialty and sub-specialty health care professional
needs and where such needs are expected to arise, as
those needs are defined by the division of health or such
other state agency as the division of health may deem
appropriate;

(B) Contractual and financial arrangements between
the health sciences schools and such nonprofit and for-
profit entities receiving moneys from the health sciences
schools that the board of trustees determines have a
significant impact on the provision of health sciences
education in this state, such report to state the entity,
the amount of funds paid to such entity and what the
payment is for;

(C) The roles and missions of the health sciences
schools and evaluation of each school's performance in
accordance with outcome measures developed to evalu-
ate the attainment of the roles, missions and programs
developed for each school;

(D) The annual audit of the expenditures of each
health sciences school and any audit received by the
board from such nonprofit and for-profit entities
determined by the board of trustees to have a significant
affiliation to any health sciences school;

(E) Findings regarding management and operation of
the health sciences schools, such findings to be based on
the annual audits and to include proposals for and
barriers to improving efficiency and generating cost
savings in health sciences education;

(F) The quality of health sciences education, includ-
ing, but not limited to, a review of any accrediting
agency's report on health sciences education at any
state-funded health sciences school;

(G) The clinical health care services and programs offered or delivered by the health sciences schools, including, but not limited to, programs which use existing state facilities for the purposes of clinical rotations;

(H) Matters relating to the funding and budgeting of health sciences education in this state, including, but not limited to, ways in which such budget effectuates the roles and missions of the health sciences schools;

(I) The financing of health sciences education subsequent to an annual, comprehensive review thereof, which report shall include anticipated capital costs, projected operating expenses, and future growth and recommendations on the allocation of any state or other tax dedicated to the funding of health sciences education; and

(J) Such other administrative, budgetary, financial, educational and other concerns as the board of trustees may deem necessary or helpful in providing information about the health sciences schools pursuant to this subsection.

(5) For all public institutions of higher education in the state, the following indicators of institutional performance in comparison with the aggregate of all other institutions in the state, region and nation as applicable and to the extent comparison data are available: Student-faculty ratio by school; student-administrator ratio; faculty turnover by school; educational and general expenditure per full-time equivalent (FTE) student; expenditure by fund in graphic display; the academic rank and years of experience of the faculty and administrators at the institution; percentage minorities comprise of faculty and major administrative staff; percentage women comprise of faculty and major administrative staff; percentage of classes taught by adjunct or part-time faculty; statistics concerning the occurrence on campus during the most recent school year and during the preceding school years for which data are available of criminal offenses reported to
campus security authorities or local police; and statistics concerning the number of arrests for crimes occurring on campus during the most recent school year and during the preceding school years for which data are available.

(c) The statewide report card shall include the data for each institution for each separately listed applicable indicator and the aggregate of the data for all institutions under the jurisdiction of the board of trustees of the university of West Virginia and for all institutions under the jurisdiction of the board of directors of the state college system for each indicator.

(d) The statewide report cards shall be prepared using actual institutional, state, regional and national data as applicable and available indicating the present performance of the individual institutions and the state systems of higher education and shall also include goals and trends for the institutions and the higher education systems. Each governing board as part of its assessment of the individual institutions under its jurisdiction shall include the number and gross dollar amount of grants received for academic research for each institution and a succinct review of research projects including a brief description of each project and the numbers of faculty, graduate and undergraduate students involved in each project. In assessing progress toward meeting goals and in developing trend information, the governing boards shall review report card data in relation to previously adopted board goals, five-year plans, regional and national higher education trends and the resource allocation model.

The higher education central office staff under the direction of the senior administrator shall provide technical assistance to each institution and governing board in data collection and reporting and shall be responsible for assembling the statewide report card from information submitted by each governing board.

Each governing board shall prepare report card information in accordance with the guidelines set forth in this section. The statewide report card shall be
249 presented at a regular board meeting of the appropriate
governing board subject to applicable notice
requirements.

252 The statewide report cards shall be completed and
disseminated with copies to the legislative oversight
commission on education accountability prior to the first
day of December, one thousand nine hundred ninety-
two, and each year thereafter. Statewide report cards
shall be based upon information for the current school
year or for the most recent school year for which such
information is available, in which case such year shall
be clearly footnoted.

261 The governing boards shall make copies of both the
institutional and statewide report cards available to any
individual requesting them.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF
TRUSTEES.

§18B-2-6. Health sciences education; legislative findings
and intent.

1 (a) The Legislature hereby finds and declares that the
higher education accountability report card for health
sciences education as provided for in section eight-a,
article one of this chapter shall serve as a basis for the
accountability and coordination of health sciences
education in this state. The Legislature further finds
that the preparation of such report card would best be
supervised by a vice chancellor for health sciences who
is not the director of health and who has the assistance
of the staff of each state institution of higher education
with health sciences programs.

12 (b) The Legislature further finds and declares that
adequate funding will be pursued to maintain the
accreditation, integrity and quality of medical education
and other health sciences programs in West Virginia.

CHAPTER 29A.
STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 3A. HIGHER EDUCATION RULEMAKING.
§29A-3A-11. Creation of a legislative oversight commission on education accountability; termination.

(a) There is hereby created a joint commission of the Legislature known as the legislative oversight commission on education accountability to review all legislative rules of the board and such other rules as the commission deems appropriate. The commission shall be composed of six members of the Senate appointed by the president of the Senate and six members of the House of Delegates appointed by the speaker of the House of Delegates. No more than five of the six members appointed by the president of the Senate and the speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the president of the Senate and the speaker of the House of Delegates shall be ex officio nonvoting members of the commission and shall designate the cochairs. At least one of the Senate members and one of the House members shall be members of the committee on education of the Senate and House, respectively, and at least one of the Senate members and at least one of the House members shall be a member of the committee on finance of the Senate and House, respectively. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative oversight commission on education accountability, but if no such appropriation be made, such expenses shall be paid from the appropriation under “Account No. 103 for Joint Expenses”, but no expense of any kind whatever payable under said account no. 103 for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The commission shall meet at any time both during sessions of the Legislature and in the interim.
(b) The commission may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

(c) The legislative oversight commission on education accountability shall be terminated on the first day of July, one thousand nine hundred ninety-two, unless review of its functions shall be undertaken pursuant to the provisions of sections nine, ten and eleven, article ten, chapter four of this code. If such commission is terminated pursuant to this subsection, any report required to be submitted to them shall instead be submitted to the joint committee on education of the Legislature.

CHAPTER 63
(Com. Sub. for S. B. 312—By Senator Blatnik)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article nine, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of higher education classified employees; and authorizing change in how experience increment is paid to such employees.

Be it enacted by the Legislature of West Virginia:

That section five, article nine, 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 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-5. Classified employee salary.

(a) Each classified employee who is employed by a governing board on the first day of July, one thousand nine hundred ninety-one, shall receive for the same employment at the same pay grade during the fiscal year commencing on such date and thereafter a
monthly salary which is at least equal to the final base
monthly salary paid such classified employee for the
fiscal year commencing on the first day of July, one
thousand nine hundred ninety, to be paid in equal
installments within the regular pay periods.

(b) Commencing with the fiscal year beginning on the
first day of July, one thousand nine hundred ninety-one,
and each fiscal year thereafter, each classified employee
with three or more years of experience shall receive an
annual salary increase equal to thirty-six dollars times
the employee’s years of experience: Provided, That such
annual salary increase shall not exceed the amount
granted for the maximum of twenty years of experience.
These incremental increases shall be in lieu of any
salary increase received pursuant to section two, article
five, chapter five of this code; shall be in addition to any
across-the-board, cost-of-living or percentage salary
increases which may be granted in any fiscal year by
the Legislature; and shall be paid in like manner as the
annual payment to eligible state employees of the
incremental salary increases based on years of service
under the provisions of section two, article five, chapter
cfive of this code.

(c) Each classified employee whose monthly salary
under subsections (a) and (b) of this section is less than
the minimum monthly salary for zero years of expe-
rience for the appropriate pay grade as set forth in
section three of this article shall receive additional
compensation such that the monthly salary is at least the
minimum amount prescribed for the appropriate pay
grade at zero years of experience: Provided, That such
amounts may be reduced proportionately based upon the
amount of funds available for such purpose.

(d) Any funds remaining after increasing the monthly
salary of each classified employee to at least the
minimum amount prescribed for the appropriate pay
grade at zero years of experience shall be used to place
classified employees on the salary schedule at their
appropriate years of experience: Provided, That such
amount may be reduced proportionately based upon the
amount of funds available for such purpose.
(e) Any classified employee may receive merit increases and/or salary adjustments in accordance with policies established by the board: Provided, That funds for such increases and/or adjustments shall be distributed in accordance with rules of the appropriate governing board and shall be available to all state institutions of higher education on an equitable basis.

(f) The current monthly salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article shall be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if such promotion is in accordance with the provisions of this article and the personnel classification system established by the appropriate governing board.

CHAPTER 64
(Com. Sub. for S. B. 446—By Senator Blatnik)

[Passed March 7, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend article nine, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to higher education classified employees; authorizing transfer of leave to employee with no sick leave who is unable to work due to catastrophic illness or injury; defining terms; and providing generally for such transfer and limitations thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.
§18B-9-10. Classified employees' catastrophic leave transfer.

(a) For the purpose of this section, a catastrophic illness or injury means an illness or injury which is expected to incapacitate the employee and which creates a financial hardship because the employee has exhausted all sick leave and other paid time off. Catastrophic illness or injury shall also include an incapacitated immediate family member if this results in the employee being required to take time off from work for an extended period of time to care for the family member and the employee has exhausted all sick leave and other paid time off.

For the purpose of this section, employee means a classified employee employed by a higher education governing board or by the central office.

(b) Sick leave may be donated to any employee experiencing a catastrophic illness or injury as those terms are defined in subsection (a) of this section. Such leave shall be donated at the request of the employee upon appropriate verification that the employee is unable to work due to the catastrophic illness or injury as determined by the president of the institution or senior administrator.

Upon approval of the transfer of sick leave by the president of the institution or senior administrator, any employee may, upon written notice to the personnel office, donate sick leave in one-day increments. Donations will be reflected as a day-for-day deduction from the sick leave balance of the donating employee. No employee shall be compelled to transfer sick leave.

(c) An employee receiving the transfer of sick leave shall have any time which is donated credited to such employee's account in one-day increments and reflected as a day-for-day addition to the leave balance of the receiving employee.

Use of donated credits may not exceed a maximum of twelve continuous calendar months for any one catastrophic illness or injury. The total amount of sick
leave donated may not exceed an amount sufficient to
insure the continuance of regular compensation and
shall not be used to extend insurance coverage pursuant
to section twelve, article sixteen, chapter five of this
code. An employee receiving donations of sick leave
pursuant to this section shall use any leave personally
accrued on a monthly basis prior to receiving additional
donated sick leave.

(d) Transfer of sick leave may be inter-institutional in
accordance with the policies of the appropriate governing
board. Each institution and the central office shall
be responsible for the administration of the sick leave
transfers of its classified employees.

CHAPTER 65

(S. B. 420—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to repeal article twenty-one, chapter eighteen of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended; to amend and reenact section
one, article one, chapter eighteen-c of said code; and to
further amend said chapter by adding thereto a new
article, designated article four, all relating to the
Underwood-Smith teacher scholarship program; provid­
ing general eligibility in the program for outstanding
resident college students; increasing the minimum
grade point eligibility standard for public school aides;
and updating provisions in accordance with the higher

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be repealed; that section one, article one, chapter eighteen-c
of said code be amended and reenacted; and that said chapter
be further amended by adding thereto a new article, design­
nated article four, all to read as follows:
Article
4. Underwood-Smith Teacher Scholarship Program.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Administration generally.

1. The senior administrator jointly employed by the chancellors of the board of trustees and the board of directors shall, as provided in section two, article four, chapter eighteen-b of this code, have a ministerial duty to administer, oversee or monitor all state and federal student loan, scholarship and state aid programs which are administered at the state level in accordance with established guidelines, in consultation with and under the direction of the governing boards.

Such programs include, but are not limited to: The guaranteed student loan program under this article, which may be administered by a private nonprofit agency; the medical student loan program under article three of this chapter; the Underwood-Smith teacher scholarship program under article four of this chapter; the state scholarship program, commonly known as the West Virginia higher education grant program, under article twenty-two-b, chapter eighteen of this code; the higher education student assistance loan program under article twenty-two-d, chapter eighteen of this code; the West Virginia higher education tuition trust act under article thirty, chapter eighteen of this code, which shall be administered by the state treasurer as provided in said article; the state aid programs for students of optometry, under article three of this chapter; the state aid programs for students of veterinary medicine under section six-a, article eleven, chapter eighteen of this code; any reciprocal program and contract program for student aid under sections three and four, article four, chapter eighteen-b of this code; any other state level student aid program under this code; and any federal grant or contract student assistance or support programs administered at the state level.

ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.
§18C-4-1. Scholarship fund created; purposes; funding.
§18C-4-2. Selection criteria and procedures.
§18C-4-3. Scholarship agreement.
§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.
§18C-4-5. Amount and duration of scholarship; relation to other assistance.

§18C-4-1. Scholarship fund created; purposes; funding.

(a) It is the purpose of this article to encourage and enable individuals who have demonstrated outstanding academic abilities to pursue teaching careers at the preschool, elementary or secondary levels in the public schools of this state. The higher education governing boards may promulgate reasonable rules under this article for the administration of the Underwood-Smith teacher scholarship program by the senior administrator in furtherance of this purpose, including, but not limited to, scholarship selection, renewal, compliance, noncompliance and repayment, deferral and excusal. In accordance with such rules, the senior administrator may establish appropriate guidelines for program operation. All rules so promulgated shall be filed with the secretary of state.

(b) There is hereby created in the state treasury a special revolving fund to be known as the “Underwood-Smith Teacher Scholarship Fund” to be administered by the senior administrator solely for granting scholarships to prospective teachers in accordance with this article. Any moneys which may be appropriated by the Legislature, or received by the senior administrator from other sources, for the purposes of this article shall be deposited in the fund. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the senior administrator by reason of default of a scholarship agreement under this article shall also be deposited in the fund. Fund balances shall be invested with the state’s consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.

(c) The senior administrator may accept and expend any gift, grant, contribution, bequest, endowment or
other money for the purposes of this article and shall make a reasonable effort to encourage external support for the scholarship program.

(d) For the purpose of encouraging support for the scholarship program from private sources, the senior administrator may set aside no more than half of the funds appropriated by the Legislature for Underwood-Smith teacher scholarships to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

§18C-4-2. Selection criteria and procedures.

(a) The senior administrator shall designate an existing scholarship selection agency or panel to select the recipients of Underwood-Smith teacher scholarships who meet the eligibility criteria set forth in subsection (b) of this section. If no such agency or panel exists, the governor shall appoint a scholarship selection panel for this purpose which shall consist of seven persons representative of public school administrators, teachers, including preschool teachers, and parents.

(b) Eligibility for an Underwood-Smith teacher scholarship award shall be limited to West Virginia resident students who:

(1) Have graduated or are graduating from high school, and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the American college test;

(2) Have a cumulative grade point average of at least three and twenty-five one hundredths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education;

(3) Are public school aides as defined in section eight, article four of chapter eighteen-a of this code, and who have a cumulative grade point average of at least three and twenty-five one hundredths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education; or
(4) Are graduate students at the master's degree level who have graduated or are graduating in the top ten percent of their college graduating class.

The senior administrator shall develop criteria and procedures for the selection of recipients which may include, but not be limited to, the applicant's grade point average, involvement in extracurricular activities, financial need, current academic standing, and an expression of interest in teaching as expressed in an essay written by the applicant. Such criteria and procedures may require the applicant to furnish letters of recommendation from teachers and others. The selection criteria and procedures shall also reflect the present and projected teacher needs of the state, including the demand for and supply of early childhood, elementary and secondary teachers and teachers with training in specific academic disciplines.

(c) In developing the selection criteria and procedures to be used by the panel, the senior administrator shall solicit the views of public and private education agencies and institutions and other interested parties. These views: (1) Shall be solicited by means of written and published selection criteria and procedures in final form for implementation; and (2) may be solicited by means of public hearings on the present and projected teacher needs of the state or such other methods as the senior administrator may determine to be appropriate to gather such information.

(d) The senior administrator shall make application forms for Underwood-Smith teacher scholarships available to public and private high schools in the state and in other locations convenient to applicants, parents and others.

§18C-4-3. Scholarship agreement.

(a) Each recipient of an Underwood-Smith teacher scholarship shall enter into an agreement with the senior administrator under which the recipient shall:

(1) Provide the board with evidence of compliance with subsection (a), section four of this article; and
(2) Within a ten-year period after completing the teacher education for which the scholarship was awarded, teach full time under contract with a county board of education: (A) In a public education program in the state for a period of not less than two years for each year for which a scholarship was received; or (B) in this state in a teacher shortage area as determined by the state board of education, in an exceptional children program in this state, or in a school in an economically disadvantaged area of this state for not less than one year for each year for which a scholarship was received; or

(3) Repay all or part of an Underwood-Smith teacher scholarship received under this article plus interest and, if applicable, reasonable collection fees, in accordance with subsection (b), section four of this article, except as provided in subsections (c) and (d) of said section four.

(b) Scholarship agreements shall fully disclose the terms and conditions under which assistance under this article is provided and under which repayment may be required, including:

(1) A description of the conditions and procedures to be established under section four of this article; and

(2) A description of the appeals procedure required to be established under section four of this article.

§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.

(a) The recipient of an Underwood-Smith teacher scholarship is eligible for scholarship renewal only during such periods that the recipient is:

(1) Enrolled as a full-time student in an accredited institution of higher education in this state;

(2) Pursuing a course of study leading to teacher certification at the preschool, elementary or secondary level in this state;

(3) Maintaining satisfactory progress as determined by the institution of higher education the recipient is attending; and
(4) Complying with such other standards as the boards may establish by rule.

(b) Recipients found to be in noncompliance with the agreement entered into under section three of this article shall be required to repay the amount of the scholarship awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the program guidelines. Such guidelines shall also provide for proration of the amount to be repaid by a recipient who teaches for part of the period required under subsection (a), section three of this article and for appeal procedures under which a recipient may appeal any determination of noncompliance.

(c) A recipient shall not be considered in violation of the agreement entered into under section three of this article during any period in which the recipient is:

(1) Pursuing a full-time course of study at an accredited institution of higher education;

(2) Serving, not in excess of three years, as a member of the armed services of the United States;

(3) Seeking and being unable to find full-time employment as a teacher in a public education or exceptional children program in the state; or

(4) Satisfying the provisions of additional repayment exemptions that may be prescribed by the boards by rule.

(d) A recipient shall be excused from repayment of a teacher scholarship received under this article if the recipient dies or becomes permanently and totally disabled as established by sworn affidavit of a qualified physician.

§18C-4-5. Amount and duration of scholarship; relation to other assistance.

(a) Subject to subsection (b) of this section, each recipient of an Underwood-Smith teacher scholarship is eligible to receive assistance of up to five thousand dollars for each academic year of higher education in
preparation for becoming a preschool, elementary or secondary teacher in the public schools of this state. No individual may receive scholarship assistance for more than four academic years for the completion of a bachelor's degree and two academic years for completion of a master's degree.

(b) No individual shall receive a scholarship award under this article which exceeds the cost of attendance at the institution the individual is attending. The cost of attendance shall be based upon the actual cost of tuition and fees, and reasonable allowances for books, educational supplies, room and board and other expenses necessitated by individual circumstances, in accordance with the program guidelines. For the purposes of establishing an award amount, the senior administrator shall take into account the amount of financial aid assistance the recipient has or will receive from all other sources. If the amount of the Underwood-Smith teacher scholarship assistance award and the amount of assistance awards which the recipient has received from all other sources exceed the cost of attendance, the Underwood-Smith teacher scholarship shall be reduced by the amount by which such combined assistance exceeds the cost of attendance, except that when other assistance to be received by the recipient includes assistance from the West Virginia higher education grant program, the amount to be received from the higher education grant program shall first be reduced.

CHAPTER 66
(Com. Sub. for S. B. 523—By Senators Lucht, Brackenrich and Felton)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]
casting; providing definitions; and establishing a distance learning coordinating council.

Be it enacted by the Legislature of West Virginia:

That section one, article five, chapter ten 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 two-a, to read as follows:

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-1. Legislative findings; definitions.

(a) The Legislature hereby finds and declares that it is the duty of this state to provide the best educational training possible for all its citizens and that the encouragement and use of noncommercial educational radio, television and related media operating and originating from educational broadcasting, closed circuit or related facilities located at a site or sites within this state serving all the citizens of this state on a regional basis or as part of a coordinated statewide plan is a proper, necessary and beneficial means of providing and extending enriched educational instruction to all the citizens of this state at the preschool, elementary, secondary and higher education and adult levels.

(b) The following words used in this article and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(1) "Distance learning" means educational courses, seminars, programs and teleconferences transmitted electronically and designed to instruct students who are remote from the instructor or other participants; such courses, seminars, programs and teleconferences may constitute all or a significant portion of a class offered for college or public school credit, or they may be provided for faculty development, continuing profes-
sional education, for training employees of government-
tal agencies, nonprofit organizations, business or
industry;

(2) "EdNet" means those individuals identified as an
enterprise of the university of West Virginia college of
graduate studies and West Virginia state college on
behalf of the state college and university systems who
are delegated the responsibility for developing, operat-
ing and maintaining facilities for the production and
transmission of distance learning; and

(3) "SatNet" means those individuals identified as an
enterprise of the state college and university systems
who are delegated the responsibility for developing and
providing distance learning.

§10-5-2a. West Virginia distance learning coordinating
council; creation; duties.

(a) The Legislature finds that the educational benefits
of making a broader range of courses available to West
Virginia students, and the economic benefits from
continuing education and staff development for busi-
nesses, industry and the professions, are immeasurable
and that distance learning technology offers an efficient
means of delivering such education and personnel
development courses. The Legislature further finds that
distance learning technology requires a substantial
financial investment and the acquisition and utilization
of such technology should, therefore, be coordinated
among the various affected agencies.

(b) To facilitate such coordination, there is hereby
created a West Virginia distance learning coordinating
council which shall be composed of one representative
of each of the following: SatNet, EdNet, the educational
broadcasting authority, the West Virginia library
commission, the state department of education, the
higher education central office and the department of
administration's division of information systems and
communications. The representative of the department
of administration's division of information systems and
communications shall call the first meeting of the
council and shall chair the meeting until a chair is
elected by the council. The chair elected by the council shall serve a term of one year, at which time the council shall elect a new chair. A member of the council may not serve for more than two consecutive terms as chair.

The council shall meet at least quarterly and shall develop long-range plans to integrate the instructional telecommunications system, to coordinate distance learning in West Virginia and to clarify the roles of the agencies involved in the state's distance learning enterprise. The council shall submit an annual report to the governor and the Legislature, which includes its recommendations for achieving the best use of limited resources in the development and operation of a distance learning technology system.

(c) There is hereby created in the state treasury, a special fund designated the "Distance Learning Fund" which shall be under the jurisdiction of the secretary of administration for use solely for the purposes of the distance learning grant program as provided in this section.

Appropriate guidelines for participation by school districts, state institutions of higher education, public libraries and public television stations, in the grant program, shall be established by the distance learning coordinating council subject to approval by the legislative oversight commission on education accountability. Such guidelines shall include application procedures and shall establish policies for awarding grants in the event that more grant applications are received than funds available to honor the applications in any fiscal year. In allocating funds to applicants, the council may give due consideration to revenues available from all other sources. The state board of education shall accredit courses offered through this program at the elementary and secondary education level. The higher education governing boards shall approve courses taught at the post-secondary level.

In any fiscal year moneys in the fund shall be used first to ensure that any and all school districts, state institutions of higher education, public libraries and
public television stations seeking aid under this program shall receive telecommunications equipment necessary to participate in the satellite learning process; second, to provide the school districts and state institutions of higher education with access to subjects at the advanced level or the remedial level or which are not taught in the schools of the district or the service area or campus; and third, to provide enrichment classes, continuing education and professional development. However, the council may set aside a portion of the funds to be used to contract with state institutions of higher education, state institutions of public education and public television stations to develop instructional programs for grades kindergarten through twelve. Funds may also be used for undergraduate and graduate course work suitable for broadcast to the school districts, state institutions of higher education, as appropriate, for continuing education and professional development for business and industry seminars, and to develop the capability to transmit programs cited in this section.

Participation by a local school district, a state institution of higher education, a public library or a public television station in the program established by this section shall be voluntary. No school district, state institution of higher education, public library or public television station receiving funds under this program shall use those funds for any purpose other than that for which they were intended. Any school district, state institution of higher education, public library or public television station shall be eligible to receive funds under this program regardless of its curriculum, local wealth or previous contractual arrangements to receive satellite broadcast instruction.

The secretary of administration on behalf of the state of West Virginia may contract with institutions of higher education and the state board of education for the development or operation, or both, of state employee training programs transmitted by telecommunications technology.

Instructional programs developed under this section
which are transmitted one-way through the airwaves or by cable television shall be available to all residents of this state without charge or fee to the extent permitted by the West Virginia constitution. "Without charge or fee" shall not require the providing of equipment to transmit or receive telecommunications instruction or the providing of commercial cable television service. If the instructional program involves two-way, interactive communication between the instructor and the participant, the district or institution operating the program may prescribe academic prerequisites and limit the number of persons who may enroll in the specific program and give preference to residents of the district or institutional attendance area who are age twenty-one or younger but shall not discriminate against any resident on any other basis. A fee may be charged which will be paid directly by the individual participant, but the fee shall be equal for all participants. If a subscription fee is charged by the originator of the program, the district or institution may pay the subscription fee for all participants from a grant under this section or from any other public or private fund legally authorized to be used for this purpose. Printed materials designed to facilitate or complement telecommunications programs or electronic reproduction thereof may be made available for loan by the school district, institution of higher education through the public library system or the curriculum technology resource center, subject to the normal rules and regulations of the lending system and in such quantities as may be approved by the governing body of the district or institution.

CHAPTER 67
(H. B. 2628—By Delegates Ashley and Brum)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]
section twenty-one-a, relating to vendors authorized to print ballots; eligibility, application and certificate of authorization; and denial, suspension and revocation of authorization.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.

1. (a) The printing of ballots for any election to be held pursuant to the provisions of this chapter shall be contracted for with a vendor authorized in accordance with the provisions of this section.

(b) Any vendor authorized to do business in West Virginia and in good standing may apply for a certificate of authorization to print ballots for elections in this state: Provided, That any individual, partnership, association or corporation who does not qualify as a resident vendor pursuant to the provisions of section thirty-seven-a, article three, chapter five-a of this code or who prints the ballots in a state which prohibits that state or any of its political subdivisions from contracting with West Virginia resident vendors for the printing of ballots or which prohibits the printing of ballots outside of such state, is not eligible to obtain a certificate of authorization.

(c) (1) Every vendor desiring to print ballots for elections held pursuant to the provisions of this chapter shall, prior to the execution of any contract for the printing of ballots with any state, county, or municipal government, obtain a certificate of authorization to print ballots.
(2) A certificate of authorization may be obtained by application to the secretary of state, upon a form prescribed by the secretary of state, which form shall include a statement that all printing, packaging and delivery specifications for ballots set forth in this chapter will be substantially met, and that the vendor applying for certification is eligible in accordance with the provisions of this section.

(3) Upon receipt of the completed application, the secretary of state shall issue a certificate of authorization to print ballots, which certificate shall remain in effect for two years from the date of issuance and may be renewed upon application therefor: Provided, That the secretary of state may deny the application to issue or renew the certificate of authorization, or may suspend or revoke the certificate of authorization upon a determination that the vendor has not substantially complied with the printing, packaging and delivery specifications in the printing of ballots for any state, county or municipal election, or that the vendor is not eligible or is no longer eligible to print ballots pursuant to the provisions of this section. The secretary of state shall give written notice of any such determination by certified mail, return receipt requested, to the vendor setting forth the reason for the suspension, revocation or the denial of the application or the denial of the renewal thereof. The applicant may, within sixty days of the receipt of such denial, file a written appeal with the state election commission. The state election commission shall promulgate rules establishing a hearing process for such appeals.

(d) On or before the second Monday of January of each year, the secretary of state shall provide a list of all vendors authorized to print ballots for state, county and municipal elections to the clerk of each circuit court of this state.
CHAPTER 68
(S. B. 629—By Senators Humphreys, Wiedebusch, Bailey, Holliday and Dalton)

(Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.)

AN ACT to repeal section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, twenty-one and forty-four, article one; section two-b, article three; sections ten and eleven, article four; sections eleven and twelve, article four-a; sections two, three, four, seven, eleven, thirteen and nineteen, article five; section two, article six; and sections one, six, seven and eight, article ten, all of said chapter; to further amend article five of said chapter by adding thereto a new section, designated section thirteen-a; and to amend and reenact section two, article eighteen of said code, all relating to the conduct of elections; providing for the composition of political party committees; providing for the terms of office for the transition in the realignment of the districts; authorizing committee to conduct organizational meeting following certification of election; requiring that meeting of political party executive committees be held only after notice is given; setting forth requirements of official meetings; designating persons responsible for the printing of ballots; reducing number of ballots which must be printed; prescribing the method for the printing of ballots; providing for the packaging of ballots; updating certain terminology; extending the date for the delivery of certain ballots; requiring clerk of circuit court to examine ballot and ballot labels used in voting machines and in electronic voting systems for accuracy; prescribing method by which ballot error may be corrected; increasing fees and expenses paid to election officials; changing occasions when disabled voter’s name is removed from special absentee voting list; removing ability to change ballots by labels; rearranging certain code provisions; revising provisions establishing drawing by vote to determine
position on ballot; setting forth ballot label arrangement requirements in voting machines; revising the ballot label requirements for electronic voting systems; requiring that nonpartisan offices and any questions to be voted upon in electronic voting systems be placed on separate pages; permitting political parties to adopt a plan for the election of delegates and alternative delegates to national conventions consistent with their national party rules; setting forth requirements of plan; requiring candidates for the presidency to pay a filing fee or to petition for waiver thereof; eliminating the requirement that political party executive committees determine the votes in primary elections by lot; setting forth requirements of certificate of announcement; prohibiting the filing of candidacy of certain persons affiliated with another political party within sixty days prior to filing; prescribing method by which certification of candidacy may be refused; prescribing and clarifying certain candidacy filing procedures; when person may be guilty of false swearing and subject to criminal penalties; when commitment for delegates to national convention must be received; determining when candidate is or may be deemed "uncommitted"; clarifying prohibition against running for two offices; exceptions; prohibiting the certification of a candidate who fails to withdraw from one of two offices filed for; changing the deadline for candidates to withdraw and have name removed from ballot; removing discretion of ballot commissioners to certify candidates; establishing procedure for notice to voter of candidate's death; reestablishing deadlines for the filling of vacancies; setting forth ballot preparation procedures for primary elections; prescribing ballot titles and headings; setting forth ballot printing requirements; specifying order in which offices are to be placed on the ballot; eliminating notation of names on paper ballots; establishing names of candidates are to be alphabetized; establishing uniform date for drawing by lot; providing for the placement of names of candidates for delegate to national convention; clarifying and setting deadlines for the filling of vacancies by executive committees or the chair thereof; setting forth when vacancy may be filled;
authorizing election commission to determine personal extenuating circumstances for withdrawal; establishing special filing period for board of education races when certain vacancies occur; setting forth ballot preparation procedures for all voting systems; clarifying instructions on straight ticket voting and requiring that such instructions be placed immediately before the listing of candidates in multi-candidate elections; establishing uniform date for drawing by lot by certain candidates in the general election; limiting issues which may be placed on the ballot; eliminating short unexpired terms occurring between general election and commencement of new term; requiring that vacancies in county offices be filled with persons who are of the same political party as the person who vacated the office; establishing procedure for the filling of vacancies on the board of education; and setting new deadlines for the filling of a vacancy prior to an election.

Be it enacted by the Legislature of West Virginia:

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

Chapter

3. Elections.
18. Education.

CHAPTER 3. ELECTIONS.

Article
3. Voting By Absentees.
4. Voting Machines.
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
§3-1-9. Political party committees; how composed; organization.

At the primary election in the year one thousand nine hundred ninety-four, and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be residents of the same county. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large. When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms, and appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

At such primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the senatorial district and of the delegate district in which such county is situated, if such county be situated in a multi-county senatorial or delegate district. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county to a congressional or multi-county senatorial or delegate district executive committee shall continue
to represent that county in the appropriate newly constituted multi-county district until the expiration of their terms: Provided, That the county executive committee of the political party shall determine which previously elected members shall represent the county if the number of multi-county senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of such districts is increased.

At the same time such voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of the party's county executive committee, except that in counties having three executive committee districts there shall be elected two male and two female members of the party's executive committee from each magisterial or executive committee district.

For the purpose of complying with the provisions of this section, the county commission shall create such executive committee districts as they shall determine, which such districts shall not be fewer than the number of magisterial districts in such counties, nor shall they exceed in number the following: Forty for counties having a population of one hundred thousand persons or more; thirty for counties having a population of fifty thousand to one hundred thousand; twenty for counties having a population of twenty thousand to fifty thousand; and such districts in counties having a population of less than twenty thousand persons shall be coextensive with the magisterial districts.

The executive committee districts shall be as nearly equal in population as practicable, and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of such districts as required by the increase or decrease in the population of such districts as determined by a decennial census. Such changes must be made within two years following such census.

All members of executive committees, selected for each political division as herein provided, shall reside
within the county or district from which chosen. The
term of office of all members of executive committees
elected at the primary election in the year one thousand
nine hundred ninety-four shall begin on the first day
of July, following said primary, and shall continue for
four years thereafter and until their successors are
elected and qualified. Vacancies in the state executive
committee shall be filled by the members of the
committee for the unexpired term. Vacancies in the
party's executive committee of a congressional district,
 senatorial district, delegate district or county shall be
filled by the party's executive committee of the county
in which such vacancy exists, and shall be for the
unexpired term.

As soon as possible after the certification of the
election of the new executive committees, as herein
provided, they shall convene an organizational meeting
within their respective political divisions, on the call of
the chairman of corresponding outgoing executive
committees, or by any member of the new executive
committee in the event there is no corresponding
outgoing executive committee and proceed to select a
chairman, a treasurer and a secretary, and such other
officers as they may desire, each of which officers shall
for their respective committees perform the duties that
usually appertain to such offices. The organizational
meeting may be conducted prior to the beginning of the
term, but no official action other than the election of
officers and the appointment to fill vacancies on the
committee may be made before the first day of July.

Any meeting of any political party executive commit-
tee shall be held only after public notice and notice to
each member is given according to party rules and shall
be open to all members affiliated with such party.
Meetings shall be conducted according to party rules, all
official actions shall be made by voice vote, and minutes
shall be maintained and shall be open to inspection by
members affiliated with such party.

§3-1-21. Printing of official and sample ballots; number;
packaging and delivery, correction of ballots.
(a) The board of ballot commissioners for each county shall provide the ballots and sample ballots necessary for the conduct of every election for public officers in which the voters of the county participate.

(b) The persons who shall provide the ballots necessary for the conduct of all other elections shall be:

1. The secretary of state, for any statewide special election ordered by the Legislature;
2. The board of ballot commissioners, for any county-wide special election ordered by the county commission;
3. The board of education, for any special levy or bond election ordered by the board of education; or
4. The municipal board of ballot commissioners, for any election conducted for or within a municipality, except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those caused to be printed by the proper authorities as specified in this section shall not be cast, received, or counted in any election.

(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. The circuit clerk shall determine the number of absentee official ballots, which number shall be not more than one tenth of the number of registered voters eligible to vote the ballot.

(d) The number of regular official ballots packaged for each precinct shall equal the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the circuit clerk, who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots contained therein. Each package of ballots for a precinct shall be clearly labeled, in a manner which cannot be altered, with the county name, the precinct number, and the number of ballots contained therein. If the packaging material conceals
Ch. 68] ELECTIONS

the face of the ballot, a sample ballot identical to the
official ballots contained therein shall be securely
attached to the outside of the package, or, in the case
of ballot cards, the type of ballot shall be included in
the label.

(e) All absentee ballots necessary for the conduct of
absentee voting in all voting systems shall be delivered
to the circuit clerk of the appropriate county not later
than the forty-second day before the election. All official
ballots in paper ballot systems shall be delivered to the
circuit clerk of the appropriate county not later than
twenty-eight days before the election.

(f) Upon a finding of the board of ballot commissioners
that an official ballot contains an error which in the
opinion of the board is of sufficient magnitude as to
confuse or mislead the voters, the board shall cause the
error to be corrected, either by the reprinting of the
ballots or by the use of stickers printed with the
correction and of suitable size to be placed over the error
without covering any other portion of the ballot.

§3-1-44. Compensation of election officials; expenses.

Each ballot commissioner shall be allowed and paid
a sum, to be fixed by the county commission, not
exceeding fifty dollars for each day he or she shall serve
as such, but, in no case shall a ballot commissioner
receive allowance for more than ten days' services for
any one primary, general or special election. Each
commissioner of election and poll clerk shall be allowed
and paid a sum, to be fixed by the county commission,
not exceeding fifty dollars for one day's services for
attending the school of instruction for election officials
if the commissioner or poll clerk provides at least one
day's service during an election and a sum not exceeding
one hundred dollars for his or her services at any one
election: Provided, That each commissioner of election
and poll clerk shall be paid and allowed a sum not
exceeding one hundred dollars for his or her services at
any of the three special elections hereinafter specified
and described. The commissioners of election obtaining
and delivering the election supplies, as provided in
section twenty-four of this article, and returning them
as provided in articles five and six of this chapter, shall
be allowed and paid an additional sum, likewise fixed
by the county commission, not exceeding fifty dollars for
all such services at any one election and, in addition,
shall be allowed and paid mileage at the rate of twenty-
five cents per mile necessarily traveled in the perform-
ance of such services. The compensation of election
officers, cost of printing ballots, and all other expenses
incurred in holding and making the return of elections,
other than the three special elections hereinafter
specified and described, shall be audited by the county
commission and paid out of the county treasury.

The compensation of election officers, cost of printing
ballots, and all other reasonable and necessary expenses
in holding and making the return of a special election
for the purpose of taking the sense of the voters on the
question of calling a constitutional convention, of a
special election to elect members of a constitutional
convention, and of a special election to ratify or reject
the proposals, acts and ordinances of a constitutional
convention shall be obligations of the state incurred by
the ballot commissioners, clerks of the circuit courts,
clerks of the county commissions, and county commis-
sions of the various counties as agents of the state, and
all such expenses shall be audited by the secretary of
state. The secretary of state shall prepare and transmit
to the county commissions forms on which the county'
commissions shall certify all such expenses of such
special elections to the secretary of state. If satisfied that
such expenses as certified by the county commissions
are reasonable and were necessarily incurred, the
secretary of state shall requisition the necessary
warrants from the auditor of the state to be drawn on
the state treasurer, and shall mail such warrants
directly to the vendors of such special election services,
supplies and facilities.

ARTICLE 3. VOTING BY ABSENTEEES.

§3-3-2b. Special absentee voting list.

1 Notwithstanding the provisions contained in section
twenty-five, article two of this chapter, any person who
is registered and otherwise qualified to vote and who is
permanently and totally physically disabled and who is
unable to vote in person at the polls in an election, may
apply to the office of the circuit clerk to have such
person's name placed upon a special absentee voting list.
The special absentee voting list shall be kept by the
circuit clerk in a bound book maintained for such
purpose.

An application shall be prescribed by the secretary of
state and shall be in substantially the following form:

APPLICATION TO BE PLACED UPON SPECIAL
ABSENTEE VOTING LIST

Date

I, ________________________________,
hereby declare that I am a permanent resident of the
State of West Virginia and of the County of ________,
with permanent address as follows:

_________________________ ______________ _____________.
Street City State

in the magisterial district of ________________________,
in said County; that I am registered in the precinct of
my residence as provided by law.

I declare further that I am permanently and totally
disabled physically and am unable to vote in person at
the polls in an election, and do hereby request that my
name be placed upon the special absentee voting list.

_________________________
Signature of Applicant

(or in case the applicant is illiterate he or she shall make his mark
and have it witnessed on the following lines):

_________________________
Mark of Applicant

_________________________
Signature of Witness
STATEMENT OF PHYSICIAN

I, ____________________________, hereby declare that I am a physician, duly licensed to practice in the State of ____________________________; that I examined ____________________________, the applicant, whose signature appears upon the above application on the ____ day of ________ 19____; and that in my opinion such person is permanently and totally disabled physically and would be unable to vote in person at the polls in an election.

____________________________________
Signature of Physician

Upon receipt of such application, properly completed, the circuit clerk shall enter the name of such person upon the special absentee voting list and the application shall be filed. The person's name shall remain on such list: (1) Until such person requests in writing that his or her name be removed; or (2) until such person removes his or her residence from the county, is purged from the voter registration books or otherwise becomes ineligible to vote; or (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States postal service; or (4) until the death of such person.

Each person whose name is contained on the special absentee voting list may make application for voting an absent voter's ballot by mail as provided in section five of this article, but such person shall not be required to produce a statement of a physician at the time of such application so long as such person's name remains on the special absentee voting list.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.
§3-4-11. Ballot label arrangement in machines; drawing by lot to determine position of candidates on machines; adjustment; records.
The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in such election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and challenged ballots. The labels shall be clearly printed in black ink on clear white material of such size as will fit the ballot frames. The paper ballots shall be printed in compliance with the provisions of this chapter governing paper ballots.

The heading, the names and arrangement of offices and the printing and arrangement of names of the candidates for each office indicated shall be placed on the ballot for the primary election as nearly as possible according to the provisions of sections thirteen and thirteen-a, article five of this chapter, and for the general election according to the provisions of section two, article six of this chapter: Provided, That the staggering of the names of candidates in multi-candidate races and the instructions to straight ticket voters prescribed by section two, article six of this chapter shall appear on paper ballots but shall not appear on ballot labels for voting machines which mechanically control crossover voting.

Each question to be voted on shall be placed at the end of the ballot and shall be printed according to the provisions of the laws and regulations governing such question.

The ballot labels so printed shall total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in such election. All such labels shall be delivered to the clerk of the circuit court at least twenty-eight days prior to the day of the election. The clerk of the circuit court shall determine the number of paper ballots needed for absentee voting and to supply the precincts for challenged ballots and ballots to be cast by persons unable to use the voting machine. All such paper ballots shall be delivered to the clerk of the circuit court at least forty-two days prior to the day of the election.
When the ballot labels and absentee ballots are delivered, the clerk of the circuit court shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct, and deliver the ballot labels to the clerk of the county commission, who shall insert one set in each machine prior to the inspection of the machines as prescribed in section twelve of this article. The remainder of such ballot labels for each machine shall be retained by the clerk of the county commission for use in an emergency.

In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot adequate for the orderly conduct of the election in each precinct in their county. In addition, they shall provide appropriate facilities for the reception and safekeeping of the ballots of absent voters and of challenged voters and of such "independent" voters who shall, in primary elections, cast their votes on nonpartisan candidates and public questions submitted to the voters.

§3-4-11. Ballot label arrangement in machines; drawing by lot to determine position of candidates on machines; adjustment; records.

When the ballot labels are printed and delivered to the clerk of the county commission, they shall be placed in the ballot frames of the voting machines 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 or row 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.

The clerk of the county commission shall cause the voting machines to be programmed so that each lever is properly set to record a vote and that the voter can vote for the maximum number of candidates allowed for
each office and no more. In general elections, the straight ticket lever shall cause a vote to be cast for every candidate of the straight ticket party unless the voter cancels a vote within that party by resetting one or more individual levers at the positions of specific candidates to the no-vote position.

The clerk shall then see that the counters referred to in subsection (11), section eight of this article are set at zero (000) and shall lock the operating device and mechanism and devices protecting the counter and ballot labels. The clerk shall then enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific voting machine or machines to be used in that precinct.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

The ballot commissioners of any county in which an electronic voting system utilizing voting devices for registering the voter's choices is to be used in any election shall cause to be printed for use in such election the ballot cards and ballot labels, as appropriate, for the electronic voting system.

(a) The ballot labels shall be clearly printed in black ink on clear white material of such size as will fit the vote recording devices. Arrows shall be printed on the ballot labels to indicate the place to punch the ballot card, which may be to the right or left of the name or proposition.

(b) The ballot labels shall contain the party emblem and shall clearly indicate the party designation of each candidate. The titles of offices may be arranged on the ballot labels in vertical columns or in a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the
candidates for each office and the number to be elected. The names of candidates for each office shall be printed in vertical columns or on separate pages, grouped by the offices which they seek.

(c) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office shall conform as nearly as possible to the provisions of sections thirteen and thirteen-a, article five of this chapter.

(d) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office shall conform as nearly as possible to the provisions of section two, article six of this chapter, except as otherwise provided in this article.

The secretary of state shall assign uniform numbers which shall be used by 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. After taking into account the numbers so assigned by the secretary of state, the clerk of the circuit court shall arrange the offices and the candidates within each office as prescribed by section two, article six of this chapter, and shall assign the appropriate number for each candidate.

When one candidate is to be elected and only two parties are on the ballot, the ballot label and the arrangement of the ballot shall conform as nearly as practical to the following example:

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For Governor</td>
<td>For Governor</td>
</tr>
<tr>
<td>(Vote for One)</td>
<td>(Vote for One)</td>
</tr>
</tbody>
</table>
When more than two parties are on the ballot for an office, the arrangement of the ballot shall be specified by the secretary of state, and may conform to the following example if practical:

For Governor
(Vote for One)

Democrat
(candidate's name)
(residence, county)
10

Republican
(candidate's name)
(residence, county)
11

People's
(candidate's name)
(residence, county)
12

The ballot label and the arrangement of the ballot for multi-candidate offices shall conform as nearly as practical to the following example:

Democratic Ticket
For House of Delegates
First Delegate District
(Vote For Not More Than Two)

If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices because your straight ticket vote will not be counted for this office.

Republican Ticket
For House of Delegates
First Delegate District
(Vote For Not More Than Two)

If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices because your straight ticket vote will not be counted for this office.
(candidate's name) 69 → (residence, county)

(candidate's name) 70 → (residence, county)

(candidate's name) 71 → (residence, county)

(candidate's name) 72 → (residence, county)

(e) Any nonpartisan office such as board of education and any question to be voted on shall be placed on a separate page or otherwise separated from the partisan ballots, which separate page shall constitute a separate ballot where required.

(f) In elections in which voters are authorized to vote for persons whose names do not appear on the ballot label, a separate write-in ballot, which may be in the form of a paper ballot or card or may be part of the secrecy envelope, shall be provided if required to permit a voter to enter the title of the office and the names of persons whose names are not on the ballot, for whom he or she wishes to vote. The manner of voting for write-in candidates upon electronic voting devices shall be as prescribed by rules and regulations of the secretary of state.

(g) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots, facsimile diagrams of the vote recording device ballot and official printed ballots or ballot cards adequate for the orderly conduct of the election in each precinct in their county. In addition they shall provide all other materials and equipment necessary to the conduct of the election, including voting booths, appropriate facilities for the reception and safekeeping of ballot cards, the ballots of
absent voters and of challenged voters and of such
"independent" voters who shall, in primary elections
cast their votes on nonpartisan candidates and public
questions submitted to the voters.

§3-4A-12. Ballot label arrangement in vote recording
devices; sealing of devices; record of identifying numbers.

In counties using electronic voting systems utilizing
electronic voting systems utilizing
vote recording devices:

(1) The number of ballot labels printed shall equal one
and one-half times the total number of corresponding
vote recording devices to be used in the election. All
such labels shall be delivered to the clerk of the county
commission at least thirty-five days prior to the election.
The circuit clerk shall immediately examine the ballot
labels for accuracy and assure that the appropriate
ballot labels are designated for each voting precinct.

(2) The total number of ballot cards printed and the
number packaged for each precinct and the require-
ments for ballot colors and packaging shall conform as
nearly as possible to the requirements for paper ballots.
Official ballot cards printed and packaged for the
various precincts shall be delivered to the clerk of the
circuit court at least twenty-eight days prior to the
election.

(3) The necessary number of ballot cards, ballot labels,
sample ballots, and other supplies necessary for absent-
te voting shall be delivered to the clerk of the circuit
court at least forty-two days prior to the election. The
clerk shall immediately check the ballot labels to assure
their accuracy and shall place them in vote recording
devices which are clearly designated for the proper
district and/or party for the purpose of absentee voting.

(4) When the ballot labels are delivered to the clerk
of the county commission, the clerk shall place them in
the vote recording devices in the proper order. The
remainder of such ballot labels for each machine shall
be retained by the clerk of the county commission for
use in an emergency.

(5) 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,
against 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.

§3-5-2. Delegates to national conventions; alternate delegates.
§3-5-3. Presidential preference.
§3-5-4. Nomination of candidates in primary elections.
§3-5-7. Filing announcements of candidacies; requirements; withdrawal of
candidates when section applicable.
§3-5-11. Withdrawals; filling vacancies in candidacy; publication.
§3-5-13. Form and contents of ballots and ballot labels.
§3-5-13a. Order of offices and candidates on the ballot; uniform drawing
date.
§3-5-19. Vacancies in nominations; how filled; fees.

§3-5-2. Delegates to national conventions; alternate delegates.

(a) At the primary election to be held in the year one
thousand nine hundred ninety-two, and in each fourth
year thereafter, there shall be elected by the voters of
each political party of the state, in accordance with a
plan adopted by the state party, persons to be delegates
to the national convention of the party to be held next
after the date of such primary.

(b) The plan adopted by each political party of the
state shall state the method, subject to compliance with
their national party rules and not inconsistent with the
provisions of this chapter, for the election of persons in
each congressional district of the state as delegates to
the national convention of the party, for the election or
selection of persons in each congressional district of the
state as alternate delegates to the national convention of
the party and for the selection of all remaining delegates
and alternate delegates allocated to the party in their
national convention. Not less than one hundred twenty
days before the primary election to be held in the year
one thousand nine hundred ninety-two, and in every
fourth year thereafter, the governing body of each
political party of the state shall certify the plan adopted
by the party under signature of the state party chair-
man and file the plan with the secretary of state. Any
questions regarding whether such plan was rightfully
adopted by the party shall be resolved by the party
based upon party rules.

(c) The plan adopted by each political party of the
state shall, to the extent permissible under their
national party rules, provide for the following:

(1) The voters of each political party shall elect in each
congressional district the number of persons as dele-
gates to the national convention of the party to which
the district is entitled.

(2) If the rules of the national political party do not
require the apportionment of delegates on the basis of
their commitment for president, the persons receiving
the highest number of votes as delegates in any
congressional district to the number to which the
district is entitled, shall be elected delegates. After the
election of delegates in each congressional district to the
number to which the district is entitled, the persons
receiving the next highest votes in each congressional
district and having qualified, as may be provided in the
plan adopted by the party, shall be elected as alternate
delegates to the number of alternate delegates to which
the district is entitled.

(3) If the rules of the national political party require
that the percentage of votes cast for the various
presidential candidates determine the apportionment of
committed candidates to be elected as delegates or
alternates, regardless of whether such committed
candidates received the highest number of votes, then
the plan adopted by the political party of the state shall
prescribe the number of delegates and alternates to be
elected under such apportionment, the method by which
the apportionment shall be made, and the method by
which the secretary of state shall determine which
delegates and alternates are elected. A committed
candidate for delegate to national convention is one
whose preference for a particular presidential candidate
appears on the ballot.

(4) In the event the number of persons elected in the
primary election in a congressional district is less than
the number to which the district is entitled as delegates
and alternate delegates to the national convention of the political party, the governing body of the political party of the state shall appoint persons from the congressional district to serve as delegates or alternate delegates to the national convention of the party unless the rules of the party otherwise provide.

(5) The number of persons which each of the congressional districts in the state are entitled to elect as delegates to the national convention of the political party shall be apportioned among the congressional districts in the same proportion to the total number of delegates to the party’s national convention elected in all congressional districts in the state as the population of the congressional district bears to the total population of the state based upon the census of population taken by the bureau of the census of the United States department of commerce in the year one thousand nine hundred ninety, and in every tenth year thereafter.

(d) The official primary ballot at the primary election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter shall, following the names of all candidates for delegates to the national convention of the party, contain the words “For election in accordance with the plan adopted by the party and filed with the secretary of state.”

(e) Unless and until a political party of the state has adopted and certified a plan for the election of delegates to the national convention of the party and filed the plan with the secretary of state, there shall be elected by the voters of the political party of the state at the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, the number of persons to which the party is entitled as delegates-at-large, and by the voters of each political party in each congressional district in the state the number of delegates to which the district is entitled. The persons receiving the highest number of votes in the state as delegates-at-large, to the number to which the state is entitled, shall be elected delegates. The persons receiving the highest number of votes as delegates in any congressional district, to the number to which the district is entitled, shall be elected delegates. Each
delegate so elected shall then appoint an individual to
serve as alternate delegate, and shall by registered
letter notify the secretary of state of such appointment
within forty days after the primary election.

§3-5-3. Presidential preference.

In presidential election years, in addition to the
candidates required to be nominated at the primary
election, the qualified voters of each political party shall
have the opportunity of voting for their choice among
those aspiring to be the candidates of their respective
parties for president of the United States. The names
of such aspirants shall be printed on the official election
ballot of their respective parties, as provided in section
thirteen of this article, upon the filing with the secretary
of state of the certificate of announcement as provided
in section seven of this article and the filing fee or
petition in lieu of filing fee as provided in sections eight
and eight-a of this article, and the ballot shall be
marked and the vote shall be counted, canvassed and
returned under the same conditions as to names,
certificates and other matters, as the names and
certificates of the party aspirants for the party nomina-
tion for the office of governor.

§3-5-4. Nomination of candidates in primary elections.

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 presiden-
tial elector shall be nominated at a primary election.

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 committe-
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 commis-
sioner 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 nomi-
nated 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 the
executive committee of the party for the political
division in which such persons are candidates.

§3-5-7. Filing announcements of candidacies; require-
ments; withdrawal of candidates when section
applicable.

Any person who is eligible to hold and seeks to hold
an office or political party position to be filled by
election in any primary or general election held under
the provisions of this chapter shall file a certificate of
announcement declaring as a candidate for the nomina-
tion or election to such office.

(a) The certificate of announcement shall be filed as
follows:

(1) With the secretary of state, if it be an office or
Ch. 68] ELECTIONS

10 political position to be filled by the voters of more than
11 one county;

12 (2) With the clerk of the circuit court, if it be for an
13 office to be filled by the voters of a single county or of
14 a subdivision less than a county;

15 (3) With the recorder or city clerk if it be for an office
16 to be filled by the voters of a municipality.

17 The certificate of announcement shall be filed with the
18 proper officer not earlier than the second Monday in
19 January next preceding the primary election day, and
20 not later than the first Saturday of February next
21 preceding the primary election day, and must be
22 received before midnight, eastern standard time, of that
23 day or, if mailed, shall be postmarked by the United
24 States postal service before that hour.

25 (b) The certificate of announcement shall be in a form
26 prescribed by the secretary of state on which the
27 candidate shall make a sworn statement before a notary
28 public or other officer authorized to give oaths, contain-
29 ing the following information:

30 (1) The date of the election in which the candidate
31 seeks to appear on the ballot;

32 (2) The name of the office sought; the district, if any;
33 and the division, if any;

34 (3) The legal name of the candidate, and the exact
35 name the candidate desires to appear on the ballot,
36 subject to limitations prescribed in section thirteen,
37 article five of this chapter;

38 (4) The county of residence and a statement that the
39 candidate is a legally qualified voter of that county; and
40 the magisterial district of residence for candidates
41 elected from magisterial districts or under magisterial
42 district limitations;

43 (5) The specific address designating the location at
44 which the candidate resides at the time of filing,
45 including number and street or rural route and box
46 number, and city, state and zip code;

47 (6) For partisan elections, the name of the candidate's
48 political party, and a statement that the candidate is a
member of and affiliated with that political party as is evidenced by the candidate's current registration as a voter affiliated with that party, and that the candidate has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or, a statement that the candidate prefers to remain “uncommitted”;

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words “subscribed and sworn to before me this _____ day of ______________, 19____ ,” and a space for the signature of the officer giving the oath.

The secretary of state or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate evidencing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate be filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate shall not be refused certification for this reason.

(c) The certificate of announcement shall be subscribed to and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on said certificate is guilty of false swearing and shall be punished as set forth in section three, article nine of this chapter.

(d) Any candidate for delegate to a national convention may change his or her statement of presidential
preference by notifying the secretary of state by letter
received by the secretary of state no later than the third
Tuesday following the close of candidate filing. When
the rules of the political party allow each presidential
candidate to approve or reject candidates for delegate
to convention who may appear on the ballot as commit­
ted to that presidential candidate, the presidential
candidate or the candidate's committee on his or her
behalf may file a list of approved or rejected candidates
for delegate, and the secretary of state shall list as
"uncommitted" any candidate for delegate who is
disapproved by the presidential candidate.

(e) No person shall be a candidate for more than one
office or office division at any election: Provided, That
a candidate for an office may also be a candidate for
president of the United States, for membership on a
political party executive committee or for delegate to a
political party national convention. Notwithstanding the
provisions of this section, nothing shall prohibit a
candidate from jointly running for or jointly holding the
offices of county clerk and circuit clerk in those counties
which operate a joint clerkship system.

(f) Any candidate who files a certificate of announce­
ment for more than one office or division and does not
withdraw, as provided by section eleven, article five of
this chapter, from all but one office prior to the close
of the filing period shall not be certified by the secretary
of state or placed on the ballot for any office by the
board of ballot commissioners.

The provisions of this section shall apply to the
primary election held in the year one thousand nine
hundred ninety-two and every primary election held
thereafter.

§3-5-11. Withdrawals; filling vacancies in candidacy;
publ ication.

(a) A candidate who has filed a certificate of an­
nouncement and wishes to withdraw and decline to
stand as a candidate for the office shall file a signed and
notarized statement of withdrawal with the same officer
with whom the certificate of announcement was filed.
If such statement of withdrawal is received not later
than the third Tuesday following the close of candidate filing, the name of a candidate who files that statement of withdrawal may not be printed on the ballot. No candidate who files a statement of withdrawal after that time may have his or her name removed from the ballot.

(b) Upon request of the candidate’s family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the circuit court shall give a written notice which shall be posted with the sample ballot at each precinct with the county to the following effect: “To the voter: (name) of (residence), a candidate for (office) is deceased.”

(c) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by failure of any person of a party to file for each available seat of each available office, the executive committee of the party for the political division within which such candidate was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer. Certification of the appointment by the executive committee or its chair, the candidate's certificate of announcement, and the filing fee must be received by the appropriate filing officer as follows: For an appointment by an executive committee, no later than the second Friday following the close of filing, for an appointment by its chair, no later than the third Tuesday following the close of filing. A candidate appointed to fill a vacancy on the ballot under this subsection shall have his or her name printed on the primary ballot for that party.

§3-5-13. Form and contents of ballots and ballot labels.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(a) The heading of every ballot shall be printed in display type. The heading shall contain a ballot title, the name of the county, the state, the words “Primary Election” and the month, day and year of the election.
The ballot title of the political party ballots shall contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading. The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the board of education shall contain the words "Nonpartisan Ballot of Election of Members of the ______ County Board of Education". The districts for which less than two candidates may be elected and the number of available seats shall be specified and the names of the candidates shall be printed without reference to political party affiliation, and without designation as to a particular term of office. Any other ballot or portion of a ballot on a question shall have a heading which clearly states the purpose of the election, according to the statutory requirements for that question.

(b) (1) For paper ballots, the heading of the ballot shall be separated from the rest of the ballot by heavy lines, and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket", and, in a presidential election year, "National Convention", or, in a nonpresidential election year "District Ticket". The columns shall be separated by heavy lines. Within the columns, the offices shall be arranged in the order prescribed in section thirteen-a of this article.

(2) For voting machines, electronic voting devices, and any ballot tabulated by electronic means, the offices shall appear in the same sequence as prescribed in section thirteen-a, and under the same headings as prescribed in subsection (a) of this section. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the secretary of state.

(3) The title of each office shall be separated from preceding offices or candidates by a line, and shall be printed in bold type, no smaller than eight point. Below the office shall be printed the number of the district, if any, the number of the division, if any, and the words "Vote for _____", with the number to be nominated or
elected or "Vote For Not More Than ____" in multi-
candidate elections. For offices in which there are
limitations relating to the number of candidates which
may be nominated, elected or appointed to or hold office
at one time from a political subdivision within the
district or county in which they are elected, there shall
be a clear explanation of such limitation, as prescribed
by the secretary of state, printed in bold type imme-
diately preceding the names of the candidates for those
offices on the ballot in every voting system.

(c) The location for indicating the voter's choices on
the ballot shall be clearly shown. For paper ballots,
other than those tabulated electronically, the official
primary ballot shall contain a square formed in dark
lines at the left of each name on the ballot, arranged in
a perpendicular column of squares before each column
of names.

(d) (1) The name of every candidate certified by the
secretary of state or the board of ballot commissioners
shall be printed in capital letters in no smaller than
eight point type on the ballot for the appropriate
precincts. Subject to the rules promulgated by the
secretary of state, the name of each candidate shall
appear in the form set out by the candidate on the
certificate of announcement, but in no case shall the
name misrepresent the identity of the candidate, nor
shall the name include any title, position, rank, degree
or nickname implying or inferring any status as a
member of a class or group or affiliation with any
system of belief.

(2) The city of residence of every candidate, the state
of residence of every candidate residing outside the
state, the county of residence of every candidate for an
office on the ballot in more than one county, and the
magisterial district of residence of every candidate for
an office subject to magisterial district limitations, shall
be printed in lower case letters beneath the names of
the candidates.

(3) The arrangement of names within each office shall
be determined as prescribed in section thirteen-a of this
article.
(4) If the number of candidates for an office exceeds the space available on a column or ballot label page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages shall be nearly equal, and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(e) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office, or for the voters to elect sufficient members to the board of education or to executive committees, the vacant positions on the ballot shall be filled with the words “No Candidate Filed”: Provided, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of board of education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office.

(f) In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the secretary of state” shall be printed following the names of all candidates for delegate to national convention.

(g) All paper ballots shall be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back. Ballot cards and paper for printing ballots using electronically sensible ink shall meet minimum requirements of the tabulating systems.

(h) Electronically tabulated ballots and ballot cards shall contain perforated tabs at the top of the ballots and shall be printed with unique sequential numbers from one to the highest number representing the total number of ballots or ballot cards printed. On paper ballots, the ballot shall be bordered by a solid line at least one sixteenth of an inch wide, and the ballot shall be trimmed to within one-half inch of that border.

(i) On the back of every official ballot or ballot card, there shall be printed the words “Official Ballot” with
the name of the county and the date of the election. Beneath shall be two blank lines, followed by the words “Poll Clerks”.

(j) Absent voters’ ballots shall be in all respects like other official ballots, except that three blank lines shall be printed on the back of the ballot or ballot card in the lower left corner with the words “Ballot Commissioners” printed underneath.

(k) The face of sample paper ballots and sample ballot labels shall be like other official ballots or ballot labels, except that the word “sample” shall be prominently printed across the front of the ballot in such a way that the names of candidates are not obscured, and the word “sample” may be printed in red ink. No printing shall be placed on the back of the sample.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and vice president in the general election), United States senator, member of the United States house of representatives

STATE TICKET: Governor, secretary of state, auditor, treasurer, commissioner of agriculture, attorney general, justice of the supreme court of appeals, state senator, member of the house of delegates, circuit judge in multi-county districts, any other multi-county office, state executive committee

COUNTY TICKET: Circuit judge in single-county districts, clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, magistrate, surveyor, congressional district executive committee, senatorial district executive committee in multi-county districts, delegate district executive committee in multi-county districts
24 NATIONAL CONVENTION: Delegate to the national convention — at-large, delegate to the national convention — congressional district

27 DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a.m., a drawing by lot shall be conducted in the office of the clerk of the circuit court in each county. Notice of the drawing shall be given on the form for the certificate of announcement, and no further notice shall be required. The clerk of the circuit court shall superintend and conduct the drawing, and the method of conducting the drawing shall be prescribed by the secretary of state.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.

§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy shall occur in the party nomination of candidates for office nominated at the primary
election or by appointment under the provisions of section eleven of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: Provided, That if the executive committee fails to make an appointment in a duly called meeting or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article, and, except for appointments made under subdivisions (4), (5) or (6) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of nomination is regularly filed for that office.

(3) If a vacancy in nomination is caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than the Thursday preceding the primary election.

(4) If a vacancy in nomination is caused by the disqualification or incapacity of the candidate, and if the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(5) If a vacancy in nomination is caused by the
withdrawal of the candidate no later than ninety-eight
days before the general election due to extenuating
personal circumstances which will prevent the candi-
date from serving in the office if elected, and if the
candidate or the chairperson of the executive committee
for the political division applies in writing to the state
election commission no later than ninety-five days before
the general election for permission to fill the vacancy,
the state election commission shall review the reasons
for the withdrawal. If the commission finds the circum-
stances warrant the withdrawal of the candidate, the
commission may authorize appointment by the executive
committee to fill the vacancy, upon which authorization
a nominee may be appointed by the executive committee
and certified to the proper filing officer no later than
seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the death
of the candidate occurring no later than twenty-five
days before the general election, a nominee may be
appointed by the executive committee and certified to
the proper filing officer no later than twenty-one days
following the date of such death, or no later than twenty-
two days before the general election, whichever date
occurs first.

(b) Except as otherwise provided in article ten of this
chapter, if any vacancy occurs in a partisan office or
position other than political party executive committee,
which vacancy creates an unexpired term for a position
which would not otherwise appear on the ballot in the
general election, and the vacancy occurs after the close
of candidate filing for the primary election but not later
than eighty-four days before the general election, a
nominee of each political party may be appointed by the
executive committee and certified to the proper filing
officer no later than seventy-eight days before the
general election. Appointments shall be filed in the same
manner as provided in subsection (a) of this section,
extcept that the filing fee shall be paid before the
appointment is complete.

(c) When a vacancy occurs in the board of education
after the close of candidate filing for the primary
election but not later than eighty-four days before the
general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the circuit court no earlier than the first Monday in August and no later than seventy-seven days before the general election.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

(a) All ballots prepared under the provisions of this section shall contain:

(1) The name and ticket of each party which is a political party under the provisions of section eight, article one of this chapter;

(2) The name chosen as the party name by each group of citizens which has secured nomination for two or more candidates by petition under the provisions of section twenty-three of this article;

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law, and no others.

(b) The provisions of subsections (b) (3), (c), (d) (1), (d) (2), (g), (h), (i), (j) and (k), section thirteen of article five pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading shall be in display type and shall contain the words, "Official Ballot, General Election" and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot shall contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem, the position for straight party voting for each party and the name of each party as prescribed in subsection (a) of this section. On paper ballots, the position for straight party voting shall be a heavy circle, three-fourths inch in
diameter, surrounded by the words “For a straight
ticket mark within this circle” printed in bold six point
type. On all other ballots or ballot labels, the positions
for straight party voting shall be marked “Straight
Party Ticket”. For ballots tabulated electronically, the
secretary of state shall prescribe a uniform number for
the straight ticket position for each party.

(3) The party whose candidate for president received
the highest number of votes at the last preceding
presidential election shall be placed in the left, or first
column, row or page, as is appropriate to the voting
system. The party which received the second highest
vote shall be next, and so on. Any groups or third parties
which did not have a candidate for president on the
ballot in the previous presidential election shall be
placed in the sequence in which the final certificates of
nomination by petition were filed.

(4) (A) Except for lever machine ballot labels, the
following general instructions for straight party voters
shall be printed in no smaller than eight point bold type:
“IF YOU MARKED A STRAIGHT TICKET: When you
mark any individual candidate in a different party, that
vote will override your straight party vote for that
office. When you mark any individual candidate in a
different party for an office where more than one will
be elected, YOU MUST MARK EACH OF YOUR
CHOICES FOR THAT OFFICE because your straight
ticket vote will not be counted for that office.” The last
sentence of the above instructions shall not be included
on any ballot which does not contain any office or
division where more than one candidate will be elected.

On paper ballots, the general instructions shall be
placed below the party name and across the top of all
columns, followed by a heavy line separating them from
the rest of the ballot. On ballots marked with electron-
ically sensible ink and on ballot labels for voting devices
in punch card systems, the general instructions shall be
placed after the position for straight voting and before
any office.

(B) Except for lever machine ballot labels, the
following specific instructions shall be printed on the
ballot for any partisan election for an office or division
to which more than one candidate is to be elected: "If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office."

On paper ballots, the specific instructions shall be placed below the office name of any partisan office where more than one is to be elected, and across the top of all columns for that office before the names of any candidates. On all other ballots and ballot labels, the specific instructions shall be placed above or to the side of the names of the candidates, as the voting system requires.

(5) For all ballots, any columns, rows or sections in which the ticket of one party appears shall be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices shall be arranged in the order prescribed in section thirteen-a, article five of this chapter, under the appropriate tickets, which shall be headed "National Ticket", "State Ticket" and "County Ticket". The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the secretary of state.

(d) The arrangement of names within each office for all ballot systems shall be as follows:

(1) In elections for presidential electors, the names of the candidates for president and vice president of each party shall be placed beside a brace with a single voting position, so that a vote for any presidential candidate shall be a vote for the electors of the party for which such candidates were named.

(2) The order of names of candidates for any office or division for which more than one is to be elected shall be determined as prescribed in section thirteen-a, article five of this chapter: Provided, That the drawing by lot shall be conducted on the seventieth day next preceding the date of the general election, beginning at nine o'clock a.m.

(3) Except in voting machine systems, in any office
where more than one person is to be elected, the names of the candidates for the office shall be staggered so that no two candidates for that office shall appear directly opposite any other candidate, as shown in the example below:

<table>
<thead>
<tr>
<th>For House of Delegates</th>
<th>For House of Delegates</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Delegate District</td>
<td>First Delegate District</td>
</tr>
<tr>
<td>(Vote For Not More Than Two)</td>
<td>(Vote For Not More Than Two)</td>
</tr>
</tbody>
</table>

[If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office.]

<table>
<thead>
<tr>
<th>SUSAN B. ANTHONY</th>
<th>JOHN ADAMS</th>
</tr>
</thead>
<tbody>
<tr>
<td>City (County)</td>
<td>City (County)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ABRAHAM LINCOLN</th>
<th>JAMES MONROE</th>
</tr>
</thead>
<tbody>
<tr>
<td>City (County)</td>
<td>City (County)</td>
</tr>
</tbody>
</table>

(4) Each voting system shall provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line equal to the space which would be occupied by the name of the candidate shall be placed under the proper office for each vacancy in nomination, and for an office for which more than one is to be elected, any such
vacancy shall appear after any other candidates for the office.

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot label, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words "No Candidate Nominated" shall be printed in the space that would be occupied by the name of the candidate, and for an office for which more than one is to be elected, any such vacancy shall appear after any other candidates for the office.

(5) In a general election in any county in which unexpired terms of the board of education are to be filled by election, a separate section or page of the ballot shall be set off by means clearly separating the nonpartisan ballot from the ballot for the political party candidates, and shall be headed "Nonpartisan Board of Education".

(e) Any constitutional amendment shall be placed following all offices, followed by any other issue upon which the voters shall cast a vote. The heading for each amendment or issue shall be printed in large, bold type according to the requirements of the resolution authorizing such election.

(f) The board of ballot commissioners may not place any issue on the ballot for election which is not specifically authorized under the West Virginia constitution or statutes, or which has not been properly ordered by the appropriate governmental body charged with calling such election.

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.
§3-10-6. Vacancy in office of circuit court clerk.
§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.
§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

§3-10-1. Elections to fill vacancies.
Except as provided in sections three and four of this article, elections to fill vacancies shall be conducted to fill any unexpired term when more than one year of the term of office remains at the time of such election. When less than one year of the term of office remains at the time of the election, the person appointed to fill the vacancy shall continue in office until the completion of the term. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections. The persons elected, having first duly qualified, shall enter upon the duties of their respective offices.

§3-10-6. Vacancy in office of circuit court clerk.

When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges, or the chief judge thereof in vacation, shall fill the same by appointment of a person of the same political party as the officeholder vacating the office until the next general election, or until the completion of the term if the term ends on the thirty-first day of December following the next general election and the person so appointed shall hold office until his or her successor is elected and qualified. At such general election a clerk shall be elected for the unexpired term if the unexpired term is greater than one year. The circuit court, or the chief judge thereof in vacation, shall cause a notice of such election to 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 the county. If the vacancy occurs no later than the eighty-fourth day before the primary election held to nominate candidates to be voted for at the general election, at which any such vacancy is to be filled, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in section eleven, article five of this chapter. If the vacancy occurs after the eighty-fourth day before the
primary but not later than the eighty-fourth day before
the general election, they shall be nominated by the
county executive committee in the manner provided in
section nineteen, article five of this chapter, as in the
case of filling vacancies in nominations, and the names
of the persons, so nominated and certified to the clerk
of the circuit court of such county, shall be placed upon
the ballot to be voted at such next general election.

§3-10-7. Vacancies in offices of county commissioner and
clerk of county commission.

Any vacancy in the office of county commissioner or
clerk of county commission shall be filled by the county
commission of the county, unless the number of vacan-
cies in a county commission deprive that body of a
quorum, in which case the governor of the state shall
fill any vacancy in such county commission necessary to
create a quorum thereof. Persons appointed shall be of
the same political party as the officeholder vacating the
office and shall continue in office until the next general
election is certified, or until the completion of the term
if the term ends on the thirty-first day of December
following the next general election. The vacancy shall
be filled by election for the unexpired term if the
unexpired term is greater than one year: Provided, That
in the event a quorum of the county commission cannot
agree upon a person to fill a vacancy in the office of
county commissioner it shall be the mandatory, nondis-
cretionary duty of each such county commissioner,
within sixty days from the date such vacancy occurs, to
submit in person to the chief judge of the circuit court
of such county, the name of one person who is a member
of the same political party as was the person whose
vacancy is being filled and was such a member for at
least one year next preceding the filling of such vacancy
and who is legally qualified and willing to fill such
vacancy. The judge shall thereupon, in the presence of
the quorum of the county commission, cause each name
to be written on a separate piece of paper, shall fold or
roll up the pieces of paper so as to resemble each other
and so that the name written thereon shall not be visible
on the outside, and shall deposit the pieces of paper in
a box from which one of the county commissioners, selected by lot under the supervision of such judge, shall, in the presence of each other and the judge, draw one of the names and the person whose name is so drawn shall be the county commission's choice to fill such vacancy. The circuit court shall have jurisdiction to compel compliance with the provisions of this proviso.

Notice of such election as aforesaid shall be given by order of the county commission and published as prescribed in section six of this article. Nomination of candidates to fill the office for an unexpired term in the office of county commissioner or clerk of the county commission shall be made in the manner prescribed for making nominations to fill a vacancy in the office of the clerk of the circuit court.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county commission by appointment of a person of the same political party as the officeholder vacating the office, and the appointed person shall hold the office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. Such vacancy shall be filled by election for the unexpired term if the unexpired term is greater than one year. Notice of an election to fill a vacancy in any of the offices named in this section shall be given by the county commission, or by the president thereof in vacation, and published or posted in the manner prescribed in section six of this article. Nomination of candidates to fill any such vacancy shall be made in the manner prescribed in said section six of this article for nominating candidates to fill a vacancy in the office of the clerk of the circuit court.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-2. Filling vacancies.
(a) The board shall, by appointment, fill within forty-five days any vacancy that occurs in its membership. In the event that the board does not fill the vacancy within forty-five days, the state superintendent of schools shall appoint a person to fill the vacancy:

(b) (1) When the vacancy occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirtieth day of June following the next primary election, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs after the eighty-fourth day before a general election and not later than the close of candidate filing for the next succeeding primary election, and the affected term of office does not end on the thirtieth day of June following the next primary election, an election for the unexpired term shall be held at the next primary election, and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in the general election, and the appointment shall continue until a successor is elected and certified.

CHAPTER 69

(Com. Sub. for H. B. 2509—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to information required in financial statements prepared in connection with political campaign activities; setting forth specific requirements; providing for the reporting of contributions to membership organizations; and defining certain terms.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5a. Information required in financial statement.

1. (a) Each financial statement required by the provisions of this article shall contain the following information:

2. (1) The first name, middle initial, if any, and last name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person, and the full name, address and telephone number of each association, organization or committee filing a financial statement.

3. (2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

4. (3) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation. A contribution totaling more than fifty dollars by any one contributor is prohibited unless it is made by money order or by check, and a violation of this provision is subject to section five-d of this article. As used herein, the term "check" shall have the meaning ascribed to that term in section one hundred four, article three, chapter forty-six of this code.

5. (4) The total amount of contributions received during the period covered by the financial statement.

6. (5) The first name, middle initial, if any, and the last
name, residence and mailing address of any individual or the full name and mailing address of each firm, association or committee making or cosigning a loan and the amount of any loan received, the date and terms of the loan, including interest and repayment schedule, along with a copy of the loan agreement.

(6) The first name, middle initial, if any, and the last name, residence and mailing address of any individual or the full name and mailing address of each firm, association or committee having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The first name, middle initial, if any, and the last name, residence and mailing address of any individual, or the full name and mailing address of each firm, association or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a balance in the next following financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the
following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held, and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate, or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person, firm, association or committee may make any contribution except from their own funds, unless such person, firm, association or committee discloses in writing to the person required to report under this section the first name, middle initial, if any, and the last name in the case of an individual, or the full name in case of a firm, association or committee, residence and mailing address and the major business affiliation and occupation of the person, firm, association or committee which furnished the funds to such contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.
(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person, firm, association or committee may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any issue or thing to be voted upon unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any candidate, organization, committee or person receives any anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the general revenue fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction assessing them as part of its membership dues or as a separate assessment may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes
through such payroll deductions during the reporting period, and to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(I) For purposes of this section:

(1) “Political purposes” means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the retirement of the debt of a candidate or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee or advocating or opposing the passage of a ballot issue.

(2) “Membership organization” means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its membership dues for purposes other than political purposes. This term shall not include organizations that grant membership upon receiving a contribution.

(3) “Fund-raising event” means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.
AN ACT to amend and reenact section fourteen, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the fees to be charged by sheriffs for service of process, subpoenas and various writs; and increasing the mileage charge for conveying prisoners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

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The county commission shall determine the amount which the sheriff may charge, which charges shall not exceed the following:

- For serving on any person a declaration in ejectment, or an order, notice, summons or other process where the body is not taken, except a subpoena served on a witness, and making return thereof .................................................. $20.00
- For summoning a witness ................................................................. 20.00
- For serving on any person an attachment or other process under which the body is taken ................................................................. 20.00
- For levying an attachment on real estate and making the return ................................................................. 20.00
- For making any other levy ................................................................. 20.00
- For conveying a prisoner to or from jail, for each mile of necessary travel either in going or returning ................................................................. .25
20 For taking any bond ........................................ 1.00

21 When a jury is sworn in court, for
22 summoning and impaneling
23 such jury .................................................. 1.00

24 For serving a writ of possession ....................... 20.00

25 For issuing receipt to purchaser at
26 delinquent tax sale ..................................... 1.00

27 The county commission, giving due regard to the cost
28 thereof, may from time to time prescribe the amount
29 which the sheriff may charge for keeping any property
30 or in removing any property. When, after distraining or
31 levying, he neither sells nor receives payment, and
32 either takes no bond or takes one which is not forfeited,
33 he shall, if guilty of no default, have (in addition to the
34 one dollar for a bond, if one was taken) a fee of three
35 dollars, unless this be more than half of what his
36 commission would have amounted to if he had received
37 payment; in which case he shall (whether a bond was
38 taken or not) have a fee of one dollar at the least, and
39 so much more as is necessary to make the said half of
40 his commission. The commission to be included in a
41 forthcoming bond (when one is taken) shall be five
42 percent on the first three hundred dollars of the money
43 for which the distress or levy is made, and two percent
44 on the residue of such money; but such commission shall
45 not be received, in whole or in part, except as herein-
46 before provided, unless the bond be forfeited, or the
47 amount (including the commission) be paid to the
48 plaintiff. An officer receiving payment in money, or
49 selling property, shall have the like commission of five
50 percent on the first three hundred dollars of the money
51 paid or proceeds from such sale, and two percent on the
52 residue, except that when such payment or sale is on an
53 execution on a forthcoming bond, his commission shall
54 be only half what it would be if the execution were not
55 on such bond. Any amounts collected by the sheriff
56 pursuant to this section shall be credited to the account
57 of the sheriff and used for the expense of providing the
58 services herein described.
CHAPTER 71
(S. B. 118—By Senators Spears and Brackenrich)

[Passed February 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article four, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing the citizens hearing committee of the purchasing division of the department of administration.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the citizens hearing committee.

1 Article four, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 72
(H. B. 2842—By Delegates Houvouras and Burk)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and twenty-four, article two, chapter five-a 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 thirty-three, all relating to creating a financial accounting and reporting section within the finance division of the department of administration; requiring the section to establish and maintain a centralized accounting system and issue certain financial statements; adding board of investments to users of centralized accounting system; and setting forth the powers and responsibilities of the comptroller.

Be it enacted by the Legislature of West Virginia:
That sections one and twenty-four, article two, chapter five-a 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 thirty-three, all to read as follows:

**ARTICLE 2.  FINANCE DIVISION.**

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


§5A-2-33.  Financial accounting and reporting section; comptroller; powers and responsibilities.

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

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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, a budget section and a financial accounting and reporting 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.

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.

The financial accounting and reporting section shall establish and maintain the centralized accounting system required by section twenty-four of this article and issue annual general purpose financial statements in accordance with generally accepted accounting principles and with this article.


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It is the intent of this section to establish a centralized accounting system for the offices of the auditor, treasurer, board of investments, secretary of adminis-
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 accordance with generally accepted accounting principles to be used by the auditor, treasurer, board of investments, secretary and all spending units. The accounting system shall provide for adequate internal controls, accounting procedures, recording income collections, systems operation procedures 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 accounting 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, board of investments, 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, board of investments and secretary shall provide on-line interactive access to the daily records maintained by their offices.

§5A-2-33. Financial accounting and reporting section; comptroller; powers and responsibilities.

The financial accounting and reporting section created under section one of this article shall be under the control and supervision of a comptroller. The provisions of this section shall apply to all component
units of state government, as defined by generally accepted accounting principles.

The comptroller, under the direction and supervision of the director of the finance division, has the power and responsibility to:

(1) Maintain financial records supporting the comprehensive annual financial report required under subsection (8) of this section, in accordance with generally accepted accounting principles;

(2) Maintain the official chart of accounts of the state;

(3) Maintain the centralized accounting system;

(4) Maintain the statewide accounting policies and procedures;

(5) Direct the establishment and maintenance of an adequate internal control structure by the various component units of state government;

(6) Verify the periodic reconciliation of assets as reported by the board of investments and budgetary fund balances as reported by the state auditor;

(7) Issue management financial reports by component unit and department, as well as consolidated management financial reports, as follows:

(a) Monthly budgetary basis reports by revenue and expense, budget compared to actual, and encumbrances;

(b) Financial position reports, including, but not limited to, cash, investments, indebtedness, obligations and accounts payable.

(8) Issue a comprehensive annual financial report in accordance with generally accepted accounting principles;

(9) Have the general purpose financial statements of the state audited annually by independent certified public accountants;

(10) Require the state pension systems, workers' compensation commission, public employees insurance
agency, board of risk and insurance management and
the various other component units of the state to prepare
financial statements audited by independent certified
public accountants and submit the audited financial
statements to the financial accounting and reporting
section in the form and within the time frames estab-
lished by the financial accounting and reporting section;
(11) Maintain controls over access to the centralized
accounting system and the required modifications, as
well as edits, controls and tables;
(12) Promulgate legislative rules in accordance with
article three, chapter twenty-nine-a of this code to
effectuate the intent and purpose of this section:
Provided, That such rules may initially be implemented
by emergency rule; and
(13) Do all things necessary and convenient to main-
tain the centralized accounting system, to issue financial
reports of the state and to carry out its powers and
responsibilities.

CHAPTER 73
(Com. Sub. for H. B. 2085—By Delegates Love and Schadler)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three,
chapter twenty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to requiring the installation of smoke detectors in all
one- and two-family dwellings, including manufactured
homes; and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section sixteen-a, 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.
§29-3-16a. Smoke detectors in one- and two-family dwell-
ings; penalty.
1. On or before the first day of July, one thousand nine hundred ninety-one, an operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. Such smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided for in the National Fire Protection Association Standard 74, "Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment," 1989 edition, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

2. The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the operational smoke detectors required by this section. So as to assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) which is not occupied by the owner thereof, the tenant in any such dwelling shall perform routine maintenance on the smoke detectors within such dwelling.

3. Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of such individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.


5. After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.
(f) Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(g) A violation of this section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(h) A violation of this section shall not constitute a defense in any civil action or proceeding involving any insurance policy.

(i) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling described in subsection (a) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors than is required by this section.

CHAPTER 74

(Com. Sub. for H. B. 2252—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and five, article two-d, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia guaranteed work force program; allowing participation by firms that create at least ten jobs; allowing training assistance to be provided to help in the retention of jobs; providing for the establishment of program requirements allowing for retraining in certain instances; funding; and allowing certain program activities.

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, article two-d, chapter five-b of the code of West Virginia, one thousand nine hundred
ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.

§5B-2D-3. Training program.
§5B-2D-4. Funds.
§5B-2D-5. Program activities.

§5B-2D-3. Training program.

1 The governor's office of community and industrial development 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, the governor's office of community and industrial development may pay up to one hundred percent or one thousand dollars per employee, whichever is less, of training costs of new employees in firms creating at least ten 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 retention of existing jobs or the creation of additional jobs, or both: Provided, That the governor's office of community and industrial development may pay up to one hundred percent or one thousand dollars per employee, whichever is less, for the training, retraining or upgrading. Training costs associated with this program will be paid directly by the governor's office of community and industrial development to the training provider.

Provision of training services will depend upon the
employer meeting program requirements as set forth by
the governor's office of community and industrial
development and this article. The state of West Virginia
guarantees if employer satisfaction is not achieved, the
governor's office of community and industrial develop-
ment will carefully review the effectiveness of the
recently completed training plan and program with the
employer and the training provider. After such review,
if the governor's office of community and industrial
development determines that the training program was
inadequate to meet the employer's specifications and
satisfaction as originally agreed to, then those employees
so trained shall be eligible for retraining under the
guarantee provision except when the training program
curriculum and/or provider were selected solely at the
discretion of the employer, then no such additional
training shall be considered or approved: Provided, That
in no instance may the cost of training and retraining
an employee exceed two thousand dollars.

§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 Partner-
ship 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 Legislature that the program estab-
lished 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 contrib-
utions, 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 the governor's office of community and
industrial development for vocational related training or
retraining provided by public or private training
institutions within West Virginia and for contracted
services through the governor’s office of community and
industrial development 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.

1. The primary concern in the provision of training
services shall be the needs and types 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 and training program
curriculum. Training services may begin upon execu-
tion of a written agreement between the governor’s
office of community and industrial development and the
employer.

Program activities may include, but not be limited to,
the following:

(a) The performance of a job skills analysis and the
designing of a training curriculum for an employer.

(b) The recruitment and referral of trainee applicants
to an employer.

(c) The provision of off site preemployment training
to prospective employees of a new or expanding business
or industry or to existing employees for purposes of
retraining or upgrading: Provided, That on site preem-
ployment training may be provided if off site preem-
ployment training is not practical.

(d) Retraining of employees in response to a techno-
logical change.

(e) The provision of job upgrade training, if the
training will retain or increase the employer’s total
work force.
(f) Contracting with persons, public or private educational institutions, agencies or other bodies for training or consultative services for an employer.

(g) The provision of 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) Assisting 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) Taking any other action that is considered to be necessary or desirable for the furtherance of the provisions of this article.

Funds may not 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.

CHAPTER 75

(Com. Sub. for H. B. 2141—By Mr. Speaker, Mr. Chambers, and Delegate Grubb)

[Passed February 23, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter twenty by adding thereto a new article, designated article five-j, all relating to providing rule-making and certain enforcement authority regarding infectious medical waste to the secretary of the department of health and human resources; making legislative findings and stating purpose; providing definitions; prohibiting commercial infectious medical waste facilities, exceptions; designating depart-
ment of health and human resources as the primary agency for medical waste management; providing for permitting, licensing and regulation of medical waste by the department of health and human resources; providing powers of secretary of health and human resources; requiring promulgation of rules; permitting the charging of fees; permitting inspections and right of entry onto medical waste generators premises; permitting inspection of records; permitting the issuance of subpoenas and subpoenas duces tecum; providing for enforcement orders, injunctions, civil actions, cease and desist orders; hearings; providing for the regulation of haulers of infectious medical waste by the public service commission; and generally providing for the regulation and control of medical waste.

Be it enacted by the Legislature of West Virginia:

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

Article
5E. Hazardous Waste Management Act.
5J. Medical Waste Act.

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such legislative rules shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such
14 legislative rules shall apply to the interstate transpor-
15 tation of hazardous waste within the boundaries of this
16 state, as well as the intrastate transportation of such
17 waste.
18 In lieu of those enforcement and inspection powers
19 conferred upon the commissioner of highways elsewhere
20 by law with respect to the transportation of hazardous
21 waste, the commissioner of highways has the same
22 enforcement and inspection powers as those granted to
23 the chief, his authorized representative or agent, or any
24 authorized employee or agent of the division of natural
25 resources, as the case may be, under sections eleven,
26 twelve, thirteen, fourteen, fifteen, sixteen and seventeen
27 of this article. The limitations of this subsection shall not
28 affect in any way the powers of the division of highways
29 with respect to weight enforcement.
30 (b) The public service commission, in consultation
31 with the director, and avoiding inconsistencies with and
32 avoiding duplication to the maximum extent practicable
33 with rules and regulations required to be promulgated
34 pursuant to this article by the director or any other rule-
35 making authority, and in accordance with the provisions
36 of chapter twenty-nine-a of this code, shall promulgate,
37 as necessary, rules and regulations governing the
38 transportation of hazardous wastes by railroad in this
39 state. Such rules and regulations shall be consistent with
40 applicable rules and regulations issued by the federal
41 department of transportation and consistent with this
42 article: Provided, That such rules and regulations apply
43 to the interstate transportation of hazardous waste
44 within the boundaries of this state, as well as the
45 intrastate transportation of such waste.
46 In lieu of those enforcement and inspection powers
47 conferred upon the public service commission elsewhere
48 by law with respect to the transportation of hazardous
49 waste, the public service commission has the same
50 enforcement and inspection powers as those granted to
51 the chief, his authorized representative or agent or any
52 authorized employee or agent of the division of natural
53 resources, as the case may be, under sections eleven,
54 twelve, thirteen, fourteen, fifteen, sixteen and seventeen
of this article.

(c) The rules and regulations required to be promulgated pursuant to subsections (a) and (b) of this section shall apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves or combinations thereof. Such rules and regulations shall establish such standards, applicable to transporters of hazardous waste identified or listed under this article, as may be necessary to protect public health, safety and the environment. Such standards shall include, but need not be limited to, requirements respecting (A) record keeping concerning such hazardous waste transported, and its source and destination; (B) transportation of such waste only if properly labeled; (C) compliance with the manifest system referred to in subdivision (3), subsection (a), section six of this article; and (D) transportation of all such hazardous waste only to the hazardous waste treatment, storage or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under: (1) This article or any rule and regulation required by this article to be promulgated; (2) Subtitle C; (3) the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the Resource Conservation and Recovery Act; or (4) Title I of the Federal Marine Protection, Research and Sanctuaries Act.

(d) The secretary of the department of health and human resources, in consultation with the director of the division of natural resources, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director of the division of natural resources or any other rule-making authority, shall promulgate rules pursuant to article five-j of this chapter. The secretary of the department of health and human resources shall have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the
division of natural resources, as the case may be, under
sections eleven, twelve, thirteen, fourteen, fifteen,
sixteen and seventeen of this article, and in addition
thereto, the department of health and human resources
shall have those inspection and enforcement powers with
respect to hazardous waste with infectious characteristics
as provided for in article five-j of this chapter.

(e) The air pollution control commission, in consulta-
tion with the director, and avoiding inconsistencies with
and avoiding duplication to the maximum extent
practicable with rules and regulations required to be
promulgated pursuant to this article by the director or
any other rule-making authority, and in accordance
with the provisions of article twenty, chapter sixteen
and chapter twenty-nine-a of this code, shall promulgate
such legislative rules establishing air pollution perfor-
mance standards and permit requirements and proce-
dures as may be necessary to comply with the require-
ments of this article. Such permits shall be in addition
to those permits required by section eight of this article.
All legislative rules promulgated pursuant to this
subsection shall be consistent with this article.

The commission shall adopt regulations for the
monitoring and control of air emissions at hazardous
waste treatment storage and disposal facilities, includ-
ing, but not limited to, open tanks, surface impound-
ments and landfills, as may be necessary to protect
human health and the environment.

The commission shall promulgate legislative rules
establishing standards applicable to the owners and
operators of facilities which burn, for purposes of energy
recovery, any fuel produced from any hazardous waste
identified or listed pursuant to subdivision (2), subsec-
tion (a), section six of this article or which is produced
from any hazardous waste identified or listed pursuant
to subdivision (2), subsection (a), section six of this
article and any other material, as may be necessary to
protect human health and the environment: Provided,
That such legislative rules shall be consistent with
Subtitle C.
With respect to this article, and any legislative rules or regulations promulgated pursuant thereto, the director of the air pollution control commission has the same enforcement and inspection powers as those of the chief under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article: Provided, that no action for penalties may be initiated by the director of the air pollution control commission without the approval of that commission. Any person aggrieved or adversely affected by an order of the director of the air pollution control commission made and entered in accordance with the provisions of this article, or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of this article, may appeal to the air pollution control commission in accordance with the procedure set forth in section six, article twenty, chapter sixteen of this code, and orders made and entered by said commission shall be subject to judicial review in accordance with the procedures set forth in section seven, article twenty, chapter sixteen of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

(f) The director of the division of natural resources has exclusive responsibility for carrying out any requirement of this article with respect to coal mining wastes or overburden for which a permit is issued under the surface coal mining and reclamation act of 1980, article six of this chapter.

(g) To the extent that this article relates to activities with respect to oil and gas wells, liquid injection wells and waste disposal wells now regulated by articles four, four-b and seven, chapter twenty-two of this code, the administrator of the office of oil and gas and the shallow gas-well review board has the jurisdiction with respect
to the regulation of such activities and shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article: Provided, That nothing in this subsection may be construed to diminish or alter the authority and responsibility of the chief or the water resources board under articles five and five-a of this chapter.

In lieu of those enforcement and inspection powers conferred upon the administrator of the office of oil and gas and the shallow gas-well review board elsewhere by law, with respect to hazardous wastes, the administrator of the office of oil and gas and the shallow gas-well review board have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the division of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(h) The water resources board, in consultation with the director, and avoiding inconsistency with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate legislative rules governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of hazardous waste as may be required by this article. Such legislative rules shall be consistent with this article.

(i) All legislative rules promulgated pursuant to this section shall be consistent with rules and regulations promulgated by the federal environmental protection agency pursuant to the resource conservation and recovery act.

(j) The director shall submit his written comments to the legislative rule-making review committee regarding all legislative rules promulgated pursuant to this article.

ARTICLE 5J. MEDICAL WASTE ACT.

§20-5J-2. Legislative findings and purpose.


§20-5J-5. Designation of secretary of the department of health and human resources as the state infectious medical waste management primary agency; prohibitions; requiring permits.

§20-5J-6. Powers of secretary; authority to promulgate rules.

§20-5J-7. Inspections; right of entry; sampling; reports and analyses; subpoenas.


§20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.


1 This article shall be known and cited as the “West Virginia Medical Waste Act.”

§20-5J-2. Legislative findings and purpose.

1 The Legislature finds that the proper and environmentally-sound disposal of infectious and noninfectious medical waste is an important issue facing all West Virginians.

2 The Legislature further finds that effective controls for the management of medical waste are necessary to ensure the protection of the public health, safety and welfare, and the environment.

3 The Legislature further finds that regulation of the generation, handling, storage, transportation, treatment and disposal of medical waste is an important and necessary function of state government.

4 The Legislature further finds that toxic pollutants emitted by medical waste incinerators are an important public health hazard.

5 The Legislature further finds that commercial incineration of medical waste, and its transportation in the infectious state, pose a potentially serious threat to the health, safety and welfare of West Virginians.

6 The Legislature further finds that safe and cost-effective alternatives to the incineration of infectious and noninfectious medical waste should be encouraged.
The Legislature further finds that the public interest is best served by:

(1) Efforts to reduce the volume of medical waste generated at all levels;

(2) On-site separation and treatment of infectious medical waste;

(3) Treatment and disposal of infectious medical waste in local infectious medical waste management facilities; and

(4) Treatment and disposal in approved regional infectious waste management facilities when administrative proceedings result in a finding that on-site or local treatment of infectious medical waste is not feasible.

The Legislature further finds that local responsibility for the minimization in volume, and for the treatment and disposal of infectious and noninfectious medical waste is an important part of a sound and rational waste management program.

The Legislature further finds that small quantity generators of infectious medical waste should either render such waste noninfectious on-site, or properly label and package the waste for transportation to a local infectious waste management facility for proper treatment and disposal.

The Legislature further finds that generators of medical waste should be informed and educated in its management; that training should be provided to all workers likely to come in contact with medical waste, including in-home health care workers; and that relevant information on the potential for infection and disease related to medical waste should be made available to the general public, including in-home health care patients.

The Legislature further finds that the necessity for transporting infectious medical waste be minimized, and that any infectious medical waste transported be safely packaged and identified by source and content.
The Legislature further finds that public policy favors a reduction in the volume of infectious and noninfectious medical waste, the separation of infectious medical waste from noninfectious medical waste, and that efforts to reduce medical waste should be fostered and strongly encouraged at all levels of generation.

The Legislature further finds that noninfectious medical waste is solid waste.

The Legislature further finds that noninfectious medical waste should be handled by environmentally-sound disposal technologies, and that alternative disposal technologies promoting safe recycling and limiting the need for incineration should be emphasized, developed and utilized.

Therefore, it is the policy of the state of West Virginia to prohibit commercial infectious medical waste facilities; to regulate and control the generation, handling, storage, transportation, treatment and disposal of infectious and noninfectious medical waste; to reduce the generation of infectious and noninfectious medical waste; to encourage local responsibility for the minimization, management and disposal of infectious and noninfectious medical waste; and to authorize the department of health and human resources to promulgate rules and regulations necessary to carry out the purposes of this article.


As used in this article:

1. “Commercial infectious medical waste facility” means any infectious medical waste management facility at which thirty-five percent or more by weight of the total infectious medical waste stored, treated, or disposed of by said facility in any calendar year is generated off-site.

2. “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any infectious medical waste into or on any land or water so that such waste, or any constituent thereof, may be emitted into the air, discharged into any waters, including ground-
(3) "Generator" means any person, by site location, whose act or process produces medical waste.

(4) "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 services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(5) "Infectious medical waste" means medical waste identified as capable of producing an infectious disease. Medical waste shall be considered capable of producing an infectious disease if it has been, or is likely to have been, contaminated by an organism likely to be pathogenic to healthy humans, if such organism is not routinely and freely available in the community, and such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. For the purposes of this article, infectious medical waste shall include the following:

(A) Cultures and stocks of microorganisms and biologicals;

(B) Blood and blood products;

(C) Pathological wastes;

(D) Sharps;

(E) Animal carcasses, body parts, bedding and related wastes;

(F) Isolation wastes;

(G) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of any infectious medical waste; and

(H) Any waste contaminated by or mixed with infectious medical waste.
(6) "Medical waste" means infectious and noninfectious solid waste generated in the course of the diagnosis, treatment or immunization of human beings or animals, or in research pertaining thereto, or in the production or testing of biologicals. Such term does not include low-level radioactive waste, any hazardous waste identified or listed under Subtitle C, or any household waste as defined in the regulations promulgated pursuant to Subtitle C.

(7) "Noncommercial infectious medical waste facility" means any infectious medical waste facility at which less than thirty-five percent by weight of the total infectious medical waste stored, treated or disposed of by said facility in any calendar year is generated off-site.

(8) "Noninfectious medical waste" means any medical waste not capable of producing an infectious disease or infectious medical waste which has been rendered noninfectious. Noninfectious medical waste is considered solid waste for purposes of this code.

(9) "Off-site" means a facility or area for the collection, storage, transfer, processing, treatment or disposal of infectious medical waste that is not on the generator's site, or a facility or area that received infectious medical waste for storage or treatment that has not been generated on-site.

(10) "On-site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way controlled by said person and to which the public does not have access is also considered on-site property. Hospitals with more than one facility located in the same county shall be considered one site.

(11) "Secretary" means the secretary of the department of health and human resources or his or her designee.
“(12) “Small quantity generator” means any generator of infectious medical waste who generates fifty pounds or less during a one-month period.

“(13) “Storage” means the containment of infectious medical waste on a temporary basis. Storage shall not constitute disposal of the waste.


“(15) “Treatment” means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any infectious medical waste so as to render such waste noninfectious.


It shall be unlawful to construct or operate a commercial infectious medical waste facility in the state of West Virginia: Provided, That the secretary may authorize an exception to this prohibition solely for facilities not utilizing incineration technology in any form, including the manufacture or burning of refuse derived fuel: Provided, however, That such an exception may be granted only following: (1) The promulgation of legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, containing guidelines for such an exception that are being fully consistent with the findings and purposes contained in section two of this article; (2) a public hearing on the record in the region affected by the proposed facility; (3) an investigation of the infectious medical waste stream in the region affected by the proposed facility; and (4) a determination that programs to minimize and reduce the infectious medical waste stream have been implemented.

§20-5J-5. Designation of secretary of the department of health and human resources as the state infectious medical waste management primary agency; prohibitions; requiring permits.
1 (a) The secretary is hereby designated as the infectious medical waste management primary agency for this state and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of this legislation pertaining to infectious medical waste. In carrying out the purposes of this article, the secretary is hereby authorized to cooperate with agencies of the federal government, this state and other states, and other interested persons, in all matters relating to medical waste management.

(b) On or after the first day of October, one thousand nine hundred ninety-one, no person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of infectious medical waste, nor shall any person store, treat or dispose of any such infectious medical waste without first obtaining a permit from the secretary, unless specifically excluded or exempted by rules promulgated by the secretary.

§20-5J-6. Powers of secretary; authority to promulgate rules.

(a) The secretary shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, necessary to effectuate the findings and purposes of this article. Said rules shall include, but not be limited to, the following:

(1) A plan designed to encourage and foster reduction in the volume of infectious and noninfectious medical waste and the separation of infectious and noninfectious medical waste;

(2) Guidelines and procedures for the development and implementation of local infectious medical waste management plans, to be followed by all generators, that set forth proper methods for the management of infectious and noninfectious medical waste;

(3) Criteria for identifying the characteristics of infectious medical waste and identifying the characteristics of infectious medical waste;

(4) Standards applicable to generators of medical waste necessary to protect public health, safety and the
environment, which standards shall establish requirements respecting:

(A) Record-keeping practices that accurately identify the quantities of infectious medical waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such waste;

(B) Labeling practices for containers used in the storage, transportation or disposal of infectious medical waste which will accurately identify such waste;

(C) Use of appropriate containers for infectious medical waste;

(D) Furnishing of information regarding the general composition of infectious medical wastes to persons transporting, treating, storing or disposing of such waste;

(E) Use of a manifest system and other reasonable means to assure that all infectious medical waste is designated for and arrives at treatment, storage or disposal facilities for which the secretary has issued permits, other than facilities on the premises where the waste is generated; and

(F) The submission of reports to the secretary, at such times as the secretary deems necessary, setting out the quantity of infectious medical waste generated during a particular time period, and the disposition of such infectious medical waste;

(5) Performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of infectious medical waste necessary to protect public health and safety and the environment, which standards shall include, but need not be limited to, requirements respecting:

(A) Maintaining records of all infectious medical waste and the manner in which such waste was treated, stored or disposed of;

(B) Reporting, monitoring and inspection of and compliance with the manifest system referred to in
subdivision (4), subsection (a) of this section;

(C) Treatment, storage or disposal of all infectious medical waste received by the facility pursuant to operating methods, techniques and practices as may be satisfactory to the secretary;

(D) The location, design and construction of infectious medical waste treatment, disposal or storage facilities;

(E) Contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of infectious medical waste;

(F) The maintenance or operation of such facilities and requiring additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; Provided, That no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing infectious medical waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of infectious medical waste; and

(G) Compliance with the requirements of this article respecting permits for treatment, storage or disposal;

(6) The terms and conditions under which the secretary shall issue, modify, suspend, revoke or deny permits required by this article. The legislative rules required by this subdivision shall be promulgated by the first day of August, one thousand nine hundred ninety-one;

(7) Establishing and maintaining records; making reports; taking samples and performing tests and analyses; installing, calibrating, operating and maintaining monitoring equipment or methods; and providing any other information necessary to achieve the purposes of this article;

(8) Standards and procedures for the certification of personnel at infectious medical waste treatment, storage
or disposal facilities or sites;

(9) Procedures for public participation in the implementation of this article;

(10) Procedures and requirements for the use of manifests during the transportation of infectious medical wastes;

(11) Procedures and requirements for the submission and approval of a plan by the owners or operators of infectious medical waste storage, treatment and disposal facilities, for closure of such facilities, post-closure monitoring and maintenance, and for both sudden and nonsudden accidental occurrences; and

(12) A schedule of fees to recover the costs of processing permit applications and renewals, training, enforcement, inspections and program development.

(b) The legislative rules required by subsection (a) shall be promulgated within six months after the effective date of this article.

(c) Within twelve months after the effective date of this article, the secretary shall conduct and publish a study of infectious medical waste management in this state which shall include, but not be limited to:

(1) A description of the sources of infectious medical waste generation within the state, including the types and quantities of such waste;

(2) A description of current infectious medical waste management practices and costs, including treatment, storage and disposal within the state; and

(3) An inventory of existing infectious medical waste treatment, storage and disposal sites.

(d) Any person aggrieved or adversely affected by an order of the secretary pursuant to this article, or by the denial or issuance of a permit, or the failure or refusal of said secretary to act within a reasonable time on an application for a permit or the terms or conditions of a permit granted under the provisions of this article, may appeal to a special hearing examiner appointed to
hear contested cases in accordance with the provisions
of chapter twenty-nine-a of this code. The secretary shall
promulgate legislative rules establishing procedures for
appeal and the conduct of hearings.

(e) In addition to those enforcement and inspection
powers conferred upon the secretary elsewhere by law, the secretary shall have the enforcement and inspection
powers as provided in sections seven, eight and nine of
this article.

(f) Nothing in this section shall be construed to
diminish or alter the authority of the air pollution
control commission or its director under article twenty,
chapter sixteen of this code.

§20-5J-7. Inspections; right of entry; sampling; reports
and analyses; subpoenas.

(a) The secretary, upon the presentation of proper
credentials and at reasonable times, may enter any
building, property, premises, place, vehicle or permitted
facility where infectious medical wastes are or have
been generated, treated, stored, transported or disposed
of for the purpose of promptly investigating any person's
compliance with the provisions of this article, legislative
rules or permits issued by the secretary.

(b) The secretary shall make periodic inspections of
every permitted facility as necessary to effectively
implement and enforce the requirements of this article
or the legislative rules promulgated by or permits issued
by the secretary. After an inspection is made, a report
shall be prepared and filed with the secretary. A copy
of such inspection report shall be promptly furnished to
the person in charge of such building, property,
premises, place, vehicle or facility. All inspection
reports shall be available to the public in accordance
with the provisions of article one, chapter twenty-nine-
b of this code.

(c) Whenever the secretary has cause to believe that
any person is in violation of any provision of this article,
any condition of a permit issued by the secretary, any
order or any legislative rule promulgated by the
secretary under this article, he shall immediately order an inspection of the building, property, premises, place, vehicle or permitted facility at which the alleged violation is occurring.

(d) Upon presentation of proper credentials and at reasonable times, the secretary may enter any establishment, building, property, premises, vehicle or other place maintained by any person where infectious medical waste is being or has been generated, transported, stored, treated or disposed of to inspect and take samples of waste and the contents of any containers. The division shall promptly provide a copy of any analysis to the owner, operator or agent in charge.

(e) Upon presentation of proper credentials and at reasonable times, the secretary shall be given access to all records relating to the generation, transportation, storage, treatment or disposal of infectious medical waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste. The secretary shall be furnished with copies of all such records or given the records for the purpose of making copies. If the secretary, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of this article, he is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.


(a) If the secretary, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or legislative rules promulgated hereunder, he may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order issued under this section may suspend, revoke or modify
Permits, require a person to take remedial action, or require a person to cease and desist activities which violate the provisions of this article;

(2) Seek an injunction in accordance with subsection (b) of section nine of this article; or

(3) Institute a civil action in accordance with subsection (a) of section nine of this article.

(b) Any person who is subject to a cease and desist order may file a notice of request for reconsideration with the secretary within seven days of the issuance of the order. Within ten days of filing of the notice of a request for reconsideration, said person shall have a hearing before the secretary at which he may contest the terms and conditions of the cease and desist order. The filing of a notice of request for reconsideration shall not stay or suspend execution or enforcement of such cease and desist order.


(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 twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court of the county wherein the violation occurs or in the circuit court of Kanawha County.

(b) The secretary may seek an injunction, or may institute a civil action against any person who violates any provision of this article or any permit, legislative rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable harm will occur if the injunction is not issued or that there is no adequate remedy at law. A petition for an injunction filed pursuant to this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.
(c) At the request of the secretary, the attorney general, or the prosecuting attorney of the county in which the violation occurs, shall assist the secretary in any civil action under this section.

(d) In any action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

§20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.

(a) On and after the first day of July, one thousand nine hundred ninety-one, collectors, haulers and transporters of infectious medical waste who are "common carriers by motor vehicle," as defined in section two, article one, chapter twenty-four-a of this code, shall be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a and rules and regulations promulgated thereunder. The rules of the public service commission shall not conflict nor take precedence over the rules promulgated by the secretary.

(b) The commission shall provide a separate and distinct category of special certificates of convenience and necessity for infectious medical waste collectors, haulers and transporters regulated by this section: Provided, That within six months of the effective date of this article, the commission may issue such special certificates to existing common carriers of solid waste who are presently transporting infectious medical waste and who demonstrate that they are in compliance with the provisions of this article: Provided, however, That such common carriers need not make any additional demonstration of public convenience and necessity. Regulation of collectors, haulers and transporters of medical waste shall be separate and distinct from the regulation of solid waste collectors, haulers and transporters provided for in section twenty-three, article twenty-six, chapter sixteen of this code.

(c) At any hearing conducted by the public service
30 commission pertaining to infectious medical waste
31 collectors, haulers and transporters, the secretary may
32 appear before the commission and present evidence.

CHAPTER 76

(Com. Sub. for H. B. 2461—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections four and six, article one, and section five-a, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article one of said chapter; and to further amend said chapter sixteen by adding thereto a new article, designated article one-a, all relating to the West Virginia health care planning commission; abolishing the board of health; promulgation of rules by the secretary of the department of health and human resources; providing legislative findings; creating the West Virginia health care planning commission and providing for the designation and appointment of members thereto and meetings thereof; continuing and providing for the state health plan and the regional health advisory councils; defining specific health planning duties of the commission, including requiring the commission to hold six public hearings by the thirtieth day of September, one thousand nine hundred ninety-one; to present by the first day of November, one thousand nine hundred ninety-one, an initial report regarding alternative systems of access to health care for all state residents, recommendations for legislative and administrative initiatives consistent with certain principles; to prepare by the first day of July, one thousand nine hundred ninety-two, amendments to the state health plan regarding certificate of need standards; to present by the first day of December, one thousand nine hundred ninety-two, a report making further legislative and administrative proposals, proposing guidelines for expenditures, licensing, and regulatory initiatives, and
recommending the future role of the commission; creating the legislative health care oversight committee; providing for funding; and providing a termination date of the first day of July, one thousand nine hundred ninety-three.

Be it enacted by the Legislature of West Virginia:

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

Article
1. State Division of Health.
1A. Health Care Planning Commission.

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-7. Promulgation of rules and regulations; references to board to mean secretary of department of health and human resources.

The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof: Provided, That no rules or regulations shall be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of said tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single family dwelling units. The provisions next above notwithstanding, nothing in this section shall be construed to abate the authority of the department of health and human resources to: (1) Restrict the subdivision or development of such tract for any more intense or higher density occupancy than such single family dwelling unit; (2) promulgate and enforce rules and
regulations applicable to single family dwelling units
for single family dwelling unit sanitary sewerage
disposal systems; or (3) restrict any subdivision or
development which might endanger the public health,
the sanitary condition of streams, or sources of water
supply. The secretary shall have the power to appoint
or designate advisory councils of professionals in the
areas of hospitals, nursing homes, barbers and beauti-
cians, postmortem examinations, mental health and
mental retardation centers and such other areas as it
deems necessary to advise the secretary on rules and
regulations. Such rules and regulations shall include,
but not be limited to, the regulation of:

(1) The sanitary condition of all institutions and
schools, whether public or private, public conveyances,
dairies, slaughterhouses, workshops, factories, labor
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 consump-
tion, and places where trades or industries are
conducted;

(2) Occupational and industrial health hazards, the
sanitary conditions of streams, sources of water supply,
sewerage facilities and plumbing systems, and the
qualifications of personnel connected with any of such
facilities, without regard to whether such supplies or
systems are publicly or privately owned; and the design
of all water systems, plumbing systems, sewerage
systems, sewage treatment plants, excreta disposal
methods, swimming pools in this state, whether publicly
or privately owned;

(3) Food and drug standards, including cleanliness,
proscription of additives, proscription of sale, and other
requirements in accordance with article seven of this
chapter, as are necessary to protect the health of the
citizens of this state;

(4) The training and examination requirements for
emergency medical service attendants and mobile
intensive care paramedics; the designation of the health
care facilities, health care services, and the industries
63 and occupations in the state which must have emergency
64 medical service attendants and mobile intensive care
65 paramedics employed, and the availability, communica-
66 tions, and equipment requirements with respect thereto;
67 (5) The collection of data on health status, the health
68 system and the costs of health care;
69 (6) Other health-related matters which the depart-
70 ment of health is authorized to supervise, and for which
71 the rule-making authority has not been otherwise
72 assigned.
73 Notwithstanding any other provision of this code to
74 the contrary, whenever in this code there is a reference
75 to the state board of health, it shall be construed to mean
76 and shall be a reference to the secretary of the state
77 department of health and human resources.

ARTICLE 1A. HEALTH CARE PLANNING COMMISSION.
§16-1A-1. Short title.
§16-1A-2. Legislative findings.
§16-1A-3. Health care planning commission created; composition; appoint-
ment; terms; oaths; removal; vacancies; expenses and compen-
sation; meetings; quorum; records.
§16-1A-4. State health plan.
§16-1A-5. Specific health planning duties of commission.
§16-1A-6. Legislative health care oversight committee.
§16-1A-7. Funding.
§16-1A-8. Effective date and termination date.

§16-1A-1. Short title.
1 This article shall be known and may be cited as the
2 “West Virginia Health Care Planning Commission Act.”

§16-1A-2. Legislative findings.
1 Based upon careful review of information from health
2 care providers, governmental entities, third-party
3 payers, consumers, and other persons involved or
4 otherwise interested in the state’s health care system,
5 the Legislature makes the following findings:
6 (1) Over one out of five state residents do not have
7 health insurance, and, thus, must forego basic health
8 care when they are needed and cannot afford to pay for
9 health services when they are provided. At least half of
10 the uninsured are wage earners and their dependents.
The number of uninsured is increasing at an alarming rate;

(2) Children, low-income working and unemployed persons, disabled persons, and persons with chronic health conditions are especially unable to obtain access to health care. Nearly one hundred thousand children in West Virginia have no health insurance. Failing to obtain preventive and primary care because of their inability to pay, uninsured people endure unnecessary pain, suffering, and permanent physical and mental health problems;

(3) The state has twenty-five percent more uncompensated charity care than the national average. The costs of providing health care to people who cannot afford to pay are charged in the form of higher health care costs to other health care consumers, especially public and private employers providing health insurance for their employees. The resulting cost shift is an invisible tax, spread among the already insured, and is an unplanned, inefficient method of providing basic preventive, primary and acute care for uninsured and underinsured residents of the state;

(4) The costs and charges of health care and health-related insurance are increasing dramatically. Costs of health care services are inappropriately increased by underutilization of certain health care facilities, overutilization of certain tests and techniques, and inappropriate use of health care facilities by consumers;

(5) The cost of private health insurance is becoming prohibitively expensive for large portions of society, especially small business employers. Disputes over the allocation of health care costs are a continuing source of labor-management conflict;

(6) The already low number of health care providers in rural areas of the state is declining. Forty-six counties in the state and large segments of the state’s population are medically underserved, especially with regard to primary care, including family practice physicians. Children and their mothers, whether insured or not, are particularly unable to find adequate health care;
(7) Too few graduates of the state's medical schools remain in the state to practice in underserved specialties and in underserved regions of the state; and

(8) Improvements in the health care system are impeded by lack of resources and statutory authority at existing public agencies and the lack of a single entity charged with developing and implementing proposals to reduce health care costs while increasing access to appropriate basic, quality health care.

§16-1A-3. Health care planning commission created; composition; appointment; terms; oaths; removal; vacancies; expenses and compensation; meetings; quorum; records.

There is hereby created the West Virginia health care planning commission within the office of the governor. There shall be seven members of the commission. Two of the members, designated at the will and pleasure of the governor, shall be full-time state officials having involvement and impact on health policy for the state. The other five members shall be appointed by the governor with the advice and consent of the Senate, and shall not be state officials employed by the state on a full-time basis. Members shall be appointed on the basis of their ability, experience and interest in health care and on their ability to represent the diverse geographic health care needs of the state. No more than three of the five appointed members may be of the same political party and no person serving as a member of the Legislature, or employed in an advisory or support staff capacity at the time of the enactment or amendment of this article shall, during or for a five-year period subsequent to his or her employment, be appointed or serve as a member of the commission. Appointments shall be made by the governor no later than the fifteenth day of April, one thousand nine hundred ninety-one. The governor may remove a commission member only for cause. Within thirty days of removal or resignation of an appointed person, the governor shall appoint a qualified person to fill the vacancy. All members of the commission shall be citizens of the state. Each appointed member of the commission may be paid fifty dollars for
each day of performing services as a member and
reimbursed for all reasonable and necessary expenses
actually incurred in the performance of his or her
duties, in the same manner as are members of the
Legislature.

The governor shall designate a chairperson and a vice
chairperson from among the commission members. A
staff person designated by the commission shall serve as
the secretary-treasurer of the commission but shall not
be a voting member. A majority of the members of the
commission shall constitute a quorum, and a quorum
must be present for the commission to conduct business.
Each member of the commission is a voting member.
Unless bylaws adopted by the commission require a
larger number, action may be taken by majority vote of
the members present. The commission shall meet at
least twice per month for the first year and shall have
staff perform the day-to-day planning functions of the
commission. Records of the commission shall be kept in
accordance with the provisions of article nine-a, chapter
six of this code. The commission may exercise all powers
necessary or appropriate to carry out the health
planning purposes of this article, said powers being
related to developing a comprehensive state health plan.

§16-1A-4. State health plan.

(a) The commission shall be responsible for coordinat-
ing and developing the health planning research efforts
of the state and for amending and modifying the state
health plan.

(b) The state health plan heretofore approved by the
governor shall remain in effect until replaced or
modified as follows: The commission staff, contracting
as necessary with consultants and experts, shall prepare
drafts of all proposed amendments to or modifications
of the state health plan and shall then hold public
hearings on the amendments or modifications.
Following the public hearings, the commission shall
submit the proposed amendments or modifications to the
governor for his or her approval. Within thirty days of
receiving said proposed amendments and modifications,
the governor shall either approve or disapprove all or part of said amendments and modifications, and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the governor shall be revised and resubmitted to the governor. The commission shall submit to the legislature's joint committee on government and finance any and all amendments or modifications approved by the governor for that committee's review and comment.

(c) In addition to other duties required by other provisions of this article, the state health plan shall describe those institutional health services which entail annual operating costs in excess of the expenditure minimum for annual operating costs which are needed to provide for the well-being of persons receiving care within the state. At a minimum, these shall include acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services. The state health plan shall also describe other health services needed to provide for the well-being of persons receiving care within the state, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The state health plan shall also describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goal of the plan and shall state the extent to which existing health services facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health services facilities need to be constructed or acquired. Finally, the state health plan shall contain a detailed statement of goals.

(d) The regional health advisory councils created under the former provisions of section five-a, article two-d, chapter sixteen of this code shall be continued in each planning and development council region of the state. Each council shall meet at least quarterly and shall review health services and health care needs and organize public hearings on the health care issues
within the region. The councils shall regularly report to
the commission regarding recommendations on health
services and health care needs and concerns in their
respective regions. Each council shall consist of three
members from each county within the planning and
development region, with one member from each county
who is actively involved in health care delivery in the
county for which said member is appointed, and two
members from each county who have no direct affiliation
with any health care provider and who are
consumers of health care services. Members shall be
appointed by the governor from lists submitted by the
respective county commissions for three-year terms. No
more than two members appointed from each county
may be from the same political party. Each county
commission shall designate which members from its
county has a term of one year, who has a term of two
years and who has a term of three years, all beginning
the first day of April, one thousand nine hundred ninety-one. Thereafter, members shall serve for three-year
terms. The presence of a majority of members at council
meetings shall constitute a quorum for purposes of
transacting business. The commission shall designate at
least one staff person to provide support and assistance
to the regional health advisory councils.

(e) All state agencies shall transfer forthwith to the
commission all health-related data and information
reasonably requested by the commission in a form
reasonably requested by the commission in order to
provide the commission with the information it needs to
carry out the health planning functions required by this
and other sections in this article. The division of health
and health care cost review authority shall transmit to
the commission such data, records, reports, analyses and
summaries filed, collected and developed by the division
as are necessary to health planning functions or related
to health planning activities.

§16-1A-5. Specific health planning duties of commission.

(a) On or before the thirtieth day of September, one
thousand nine hundred ninety-one, the commission shall
hold at least six public hearings throughout the state for
the purposes of gathering information and opinions regarding health services and any other health needs and concerns of health care providers, consumers, and other interested parties. The dates and places of said hearings shall be made public by the first day of July, one thousand nine hundred ninety-one. Each hearing shall be attended by the director and at least one commission member.

(b) On or before the first day of November, one thousand nine hundred ninety-one, the commission shall present to the governor and the Legislature a report containing the following:

(1) The components of basic, quality health services to which all persons in the state should be entitled;

(2) A description of alternative systems, including all-payer and single-payer health insurance models, designed to provide all persons in the state with access to basic, quality health care services, detailing the costs, benefits and detriments of each system;

(3) A statement as to the reasons that too few graduates of the state’s medical schools remain in the state to practice in underserved specialties and underserved regions of the state;

(4) Specific recommendations to the governor and the Legislature regarding legislative, regulatory, and executive initiatives designed to develop a health care system in this state that is consistent with the following principles:

(i) That all persons in the state have access to appropriate basic, quality health services;

(ii) That such access be attained without reliance on any form of uncompensated care or unreimbursed services;

(iii) That the financial burden of providing health services to all residents of the state be equitably shared by government, employers, health care providers, and individual citizens;

(iv) That consumers be allowed flexibility and free-
dom of health care provider choice, within a cost-effective managed health services delivery system;

(v) That health care providers receive fair and equitable compensation for their services in a timely and efficient manner;

(vi) That a system of reimbursement for health services be developed that minimizes administrative costs and prevents health care providers from needing to differentiate among consumers' sources of payment;

(vii) That health care providers have freedom to choose their practice settings, while being provided with incentives to participate in cost-effective systems of health services and to serve underserved areas and populations of the state;

(viii) That quality of care be promoted by the ongoing development and enforcement of acceptable standards for health care providers and facilities; and

(ix) That illness and injury prevention, wellness, and other health promotion programs and incentives be developed, including preventive health services to improve the health of all residents of the state and reduce the need for expensive long-term care: Provided, That the principles defined in this subsection shall not be construed to require the state to create or to fund any specific health care programs.

(c) On or before the first day of July, one thousand nine hundred ninety-two, the commission staff shall develop and the commission shall present to the governor proposed amendments and modifications to the certificate of need standards contained in the state health plan heretofore approved by the governor. Said amendments and modifications shall address, among other things, the need to increase the availability of community-based, primary and preventive health services within the state. Within thirty days of receiving said proposed amendments and modifications, the governor shall either approve or disapprove all or part of said amendments and modifications, and, for any
portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the governor shall be revised and resubmitted to the governor by the first day of December, one thousand nine hundred ninety-two.

(d) On or before the first day of December, one thousand nine hundred ninety-two, the commission shall present to the governor and the Legislature a report on the health care system in this state that addresses all aspects of the state's health care system and that recommends a comprehensive set of legislative and administrative proposals designed to improve the state's health care system. Said report shall include proposed amendments to the state health plan that will provide guidelines, based upon the principles contained in section 5 (b) (4) (i)-(ix), for future public health-related expenditures, licensing, and regulatory initiatives, and shall make specific recommendations for implementation of said guidelines, including what function the commission should play in future health planning and implementation. All public health-related expenditures, licensing, and regulatory initiatives shall be consistent with the standards and guidelines of these guidelines once approved by governor for inclusion in the state health plan: Provided, That any proposed changes to public health-related expenditures, licensing, and regulatory initiatives, other than those requiring only executive action, shall be submitted to the legislature in the form of proposed legislation.

(e) In performing all of its above duties, the commission shall solicit input from each of the regional health advisory councils located in this state.

§16-1A-6. Legislative health care oversight committee.

The president of the Senate and the speaker of the House of Delegates shall each designate five members of their respective houses, at least one of whom from each house shall be a member of the minority party, to serve on a legislative oversight committee charged with immediate and ongoing oversight of the commission
created by this article. This committee shall study, review and examine the work of the commission and its staff and monitor the development and implementation of the state health plan. The committee shall review and make recommendations to the Legislature regarding any plan or policy proposed by the commission.

§16-1A-7. Funding.

To the extent the operation and activities of the commission are not funded through the general revenue fund, the health care cost review authority shall provide two hundred thousand dollars and the insurance commission shall provide one hundred fifty thousand dollars, through interagency transfer to the commission: Provided, That any amounts so transferred from the insurance commission shall be transferred from special revenues in account number 8016. The commission shall actively solicit grants and other nonstate funding. The commission shall solicit and is authorized to accept foundation and other nonstate financial support in order to carry out the health planning purposes of this article.

§16-1A-8. Effective date and termination date.

This article shall be in effect from passage. The commission shall terminate on the first day of July, one thousand nine hundred ninety-three, unless extended by legislation before that date.

CHAPTER 77

(Com. Sub. for S. B. 88—By Senators Spears, Tomblin, Lucht and Felton)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact 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 ten-b, relating to requiring the commissioner of the bureau of public health to establish a uniform health professionals data collection and reporting system; requiring cooperation and support of various health professional boards; and providing for annual reports.

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 ten-b, to read as follows:

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-10b. Establishment of a uniform health professionals data collection system.

1 The commissioner of the bureau of public health shall establish a uniform health professionals data system to collect and maintain data on health professionals in this state. This data shall include, but not be limited to, the following information about each health professional:
2 His or her name, profession, the area of the state where practicing, educational background, employer's name, and number of years practicing within the profession.
3 The boards provided for under articles three, four, four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one, twenty-three and twenty-eight, chapter thirty of this code shall collect the data on health professionals under their jurisdiction on an annual basis and in the format prescribed by the commissioner. Each such board shall be required to pay to the bureau of health an amount, to be determined by the commissioner, to cover expenses incurred by the bureau of health in establishing the uniform health professionals data system required by this section. The commissioner shall publish annually and make available, upon request, a report setting forth the data which was collected the previous year; areas of the state which the collected data indicates have a shortage of health professionals; and projections, based upon the collected data, as to the need for more health professionals in certain areas.

CHAPTER 78

(Com. Sub. for H. B. 2194—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 6, 1991; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two, four, five and eleven, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five and six, article five-f; and sections three, five, seven, eight, eighteen, twenty, twenty-one and twenty-eight, article twenty-nine-b of said chapter; and to further amend said article twenty-nine-b by adding thereto two new sections, designated sections six and nineteen-a, all relating to health care cost containment; providing definitions; reducing expense and expenditure thresholds governing when certificate of need review is required; eliminating certain exemptions from certificate of need review; extending moratorium on intermediate care and skilled nursing beds; providing for the conversion of certain beds; defining transfer of certificate of need; expanding scope of covered facility reporting and financial disclosure requirements to include related organizations; requiring covered facilities and related organizations to furnish copies of tax returns; requiring confidentiality of tax returns; requiring report to governor and Legislature; continuing health care cost review authority until the first day of July, one thousand nine hundred ninety-seven; deleting term limitation on board membership; increasing salaries of board members; creating health care cost review council to serve as advisory body to the board; exempting staff of health care cost review authority from civil service salary schedules; permitting promulgation of certain emergency rules; mandating cost-based review system; exempting regulations implementing cost-based review system from legislative rule-making; requiring filing of certain contracts; requiring contracts granting discounts to purchasers or third-party payors be reviewed and approved by the health care cost review authority; and changing standard for automatic rate increases.

Be it enacted by the Legislature of West Virginia:

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

Article
2D. Certificate of Need.
5F. Health Care Facility Financial Disclosure.
29B. West Virginia Health Care Cost Review Authority.

ARTICLE 2D. 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.
§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

§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;
(7) Third-party payors who reimburse health care facilities similar to those proposed for services;
(8) Any agency which establishes rates for health care facilities similar to those proposed; or
(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 institu-
tional 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 subparagraph (i), paragraph
(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 paragraph (B), subdivision (2)
of this definition is made shall be included in determin-
ing 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 department such that they will constitute a significant modernization of the department.

(g) "Expenditure minimum" means seven hundred fifty thousand dollars per fiscal year.

(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 paragraph (A), subdivision (2), subsection (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 three hundred 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 three hundred 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, civil, 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 organized by the state.

(v) “Physician” means a doctor of medicine or osteopathy legally authorized to practice 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 professional 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 rehabilitation 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 or its successor agency.

(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 any change, with which a capital expenditure is associated, that increases or decreases the bed capacity, or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns
existing beds as swing beds between acute care and long-term care categories: Provided, That a decrease in bed capacity in response to federal rural health initiatives shall be excluded from this definition.

(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 the following:

(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
certificate of need review;

(2) Dispensaries and first-aid stations located within
business or industrial establishments maintained solely
for the use of employees: Provided, 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 board-
inghouses, 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 combina-
tion 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 paragraph (A), subdivision (2), subsec-
tion (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 paragraph (C), subdi-
vision (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 paragraph (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 combina-
tion of health maintenance organizations which meets
the enrollment requirements of subparagraph (i),
paragraph (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 subparagraphs (ii) and (iii), paragraph
(A), subdivision (1), subsection (b) of this section; or

(ii) A health care facility which meets the inpatient, enrollment and accessibility requirements of subparagraphs (i), (ii) and (iii), paragraph (B), subdivision (1), subsection (b) of this section and with respect to its patients meets the enrollment requirements of subparagraph (iv), paragraph (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 equip-
ment, 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 paragraphs (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 compar-
able 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 operating costs of less than the expenditure minimum for annual operating costs. For purposes of this subsection, "expenditure minimum for annual operating costs" means three hundred thousand dollars for the first twelve months following the effective date of this section 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 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
257 regulations and under what circumstances mobile MRI
258 and mobile lithotripsy may be so exempted from review.
259 In no case, however, will mobile cardiac catheterization
260 be exempted from certificate of need review. In
261 addition, if the shared services mobile unit proves less
262 cost effective than a fixed unit, the acute care facility
263 will not be exempted from certificate of need review.

264 On a yearly basis, the state agency shall review
265 existing technologies to determine if other shared
266 services should be included under this exemption.

§16-2D-5. Powers and duties of state health planning and
development agency.

1 (a) The state agency is hereby empowered to admin-
2 ister the certificate of need program as provided by this
3 article.

4 (b) The state agency shall cooperate with the health
5 care planning council or its successor agency in
6 developing rules and regulations for the certificate of
7 need program to the extent appropriate for the achieve-
8 ment of efficiency in their reviews and consistency in
9 criteria for such reviews.

10 (c) The state agency may seek advice and assistance
11 of other persons, organizations, and other state agencies
12 in the performance of the state agency’s responsibilities
13 under this article.

14 (d) For health services for which competition appro-
15 priately allocates supply consistent with the state health
16 plan, the state agency shall, in the performance of its
17 functions under this article, give priority, where
18 appropriate to advance the purposes of quality assur-
19 ance, cost effectiveness and access, to actions which
20 would strengthen the effect of competition on the supply
21 of such services.

22 (e) For health services for which competition does not
23 or will not appropriately allocate supply consistent with
24 the state health plan, the state agency shall, in the
25 exercise of its functions under this article, take actions,
26 where appropriate to advance the purposes of quality
27 assurance, cost effectiveness and access and the other
purposes of this article, to allocate the supply of such
services.

(f) 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 determina-
tion request, or the filing of any request for a
declaratory ruling. The fees charged may vary accord-
ing 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.

(g) No hospital, nursing home or other health care
facility shall add any intermediate care or skilled
nursing beds to its current licensed bed complement.
This prohibition also applies to the conversion of acute
care or other types of beds to intermediate care or
skilled nursing beds: Provided, That hospitals eligible
under the provisions of section four-a and subsection (i),
section five of this article may convert acute care beds
to skilled nursing beds in accordance with the provisions
of these sections, upon approval by the state agency.
Furthermore, no certificate of need shall be granted for
the construction or addition of any intermediate care or
skilled nursing beds except in the case of facilities
designed to replace existing beds in unsafe existing
facilities. A health care facility in receipt of a certificate
of need for the construction or addition of intermediate
care or skilled nursing beds which was approved prior
to the effective date of this section must incur an
obligation for a capital expenditure within twelve
months of the date of issuance of the certificate of need.
No extensions shall be granted beyond the twelve-month
period.

(h) 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. V. 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.

(i) Notwithstanding the provisions of subsection (g), section five of this article and, further notwithstanding the provisions of subsection (d), section three of this article, an existing acute care hospital may apply to the health care cost review authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are medicare certified only: Provided, however, That any hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement for any beds so converted. In converting beds, the hospital must convert a minimum of one acute care bed into one medicare certified only skilled nursing bed. The health care cost review authority may require a hospital to convert up to and including three acute care beds for each medicare certified only skilled nursing bed. The health care cost review authority shall adopt rules to implement this subsection which require that:

(1) 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.

(2) 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.

(3) The hospital must demonstrate a need for the project.

(4) 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 section.

(5) 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.

(j) Notwithstanding the provisions of subsection (g), section five of this article, a retirement life care center with no skilled nursing beds may apply to the health care cost review authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan shall not be applicable to projects submitted under 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 eighty beds are to be distributed on a statewide basis;

(2) There shall be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(3) The unit developed by the retirement life care center shall meet all federal and state licensing certification and operational requirements applicable to nursing homes;

(4) The retirement center must demonstrate a need for
The retirement center must offer personal care, home health services and other lower levels of care to its residents; and

The retirement center must demonstrate both short and long-term financial feasibility.

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.

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.

§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

A certificate of need is nontransferable and shall be valid for a maximum of one year from the date of issuance. A transfer includes the sale, lease, transfer of stock or partnership shares, or other comparable arrangement which has the effect of transferring the control of the owner of the certificate of need. Upon the expiration of the certificate or during the certification period, the person proposing the new institutional health service shall provide the state agency such information on the development of the project as the state agency may request. The state agency shall periodically monitor capital expenditures obligated under certificates, determine whether sufficient progress is being made in meeting the timetable specified in the approved application for the certificate and whether there has been compliance with the application and any conditions of certification. The state agency shall take into account recommendations made by the health systems agency in making its determination. The certificate of need may be extended by the state agency for additional periods.
of time as are reasonably necessary to expeditiously complete the project. A certificate of need may no longer be in effect, and may no longer be required, after written notice of substantial compliance with the approved application and any conditions of certification is issued to the applicant, after the activity is undertaken for which the certificate of need was issued, and after the state agency is provided written notice of such undertaking. The person proposing a new institutional health service may not be issued a license therefor until the state agency has issued a written notice of substantial compliance with the approved application and any conditions of certification, nor may a new institutional health service be used until such person has received such notice. A new institutional health service may not be found to be in substantial compliance with the approved application and any conditions of certification if there is a substantial change, as defined in regulations adopted pursuant to subsection (i), section three of this article, in the approved new institutional health service for which change a certificate of need has not been issued.

(b) (1) The certificate of need may be withdrawn by the state agency for:

(A) Insufficient progress in meeting the timetable specified in the approved application for the certificate and for not making a good faith effort to meet it in developing the project; or

(B) Noncompliance with any conditions of certification; or

(C) A substantial change, as defined in regulations adopted pursuant to subsection (i), section three of this article, in an approved new institutional health service for which change a certificate of need has not been issued; or

(D) Material misrepresentation by an applicant upon which the state agency relied in making its decision; or

(E) Other reasons that may be established by the state agency in regulations adopted pursuant to section eight
(2) Any decision of the state agency to withdraw a certificate of need shall be based solely on:

(A) The provisions of this article and on regulations adopted in accordance with section eight of this article; and

(B) The record established in administrative proceedings held with respect to the state agency's proposal to withdraw the certificate.

(3) In the case of a proposed withdrawal of a certificate of need:

(A) After commencement of a hearing on the state agency's proposal to withdraw a certificate of need and before a decision is made on withdrawal, there may be no ex parte contacts between (i) the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and (ii) any person in the state agency who exercises responsibility respecting withdrawal of the certificate;

(B) The state agency shall follow the notification of review provisions of subsections (g) and (h), the public hearing provisions of subsection (n), the notification of the status of review and findings provisions of subsection (g), the annual report provisions of subsection (r), and the reconsideration provisions of subsection (t), all of section seven of this article, and the conditional decision provisions of subsection (d), the notification of decision and findings provisions of subsection (h), and the statement to the applicable health systems agency provisions of subsection (k), all of section nine of this article; and

(C) Appeals of withdrawals of certificates of need shall be made pursuant to section ten of this article.

(4) A new institutional health service may not be acquired, offered, or developed within this state if a certificate of need authorizing that new institutional health service has been withdrawn by the state agency and the acquisition, offering, or development of the new
in institutional health service is subject to review under this article.

ARTICLE 5F. HEALTH CARE FACILITY FINANCIAL DISCLOSURE.

§16-5F-1. Legislative findings; purpose; intent of article.

(1) The West Virginia Legislature finds that the rising cost of health care and services provided by health care facilities are matters of vital concern to the people of this state and have a direct relationship to the ability of the people to obtain necessary health care.

(2) The citizens of this state have an inherent right to receive and have available to them health care programs and services which are capable of meeting individual needs.

(3) Such services should be available to all citizens in all regions of this state.

(4) The furnishing of health care services is an essential public service.

(5) The public has a right to know the financial position of facilities and related organizations.

It is the purpose of this article to provide that the facilities and organizations covered herein shall make a public disclosure of their financial position and to bring about a review as to the reasonableness of the costs of health care services.

§16-5F-2. Definitions.

As used in this article:

(1) "Annual report" means an annual financial report for the covered facility's or related organization's fiscal
year prepared by an accountant or the covered facility’s
or related organization’s auditor.

(2) “Board” means the West Virginia health care cost
review authority.

(3) “Covered facility” means any hospital, skilled
nursing facility, kidney disease treatment center,
including a free-standing hemodialysis unit; interme­
diate care facility; ambulatory health care facility;
ambulatory surgical facility; home health agency;
rehabilitation facility; health maintenance organization;
or community mental health or mental retardation
facility, 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.

(4) “Related organization” means an organization,
whether publicly owned, nonprofit, tax-exempt, or for
profit, related to a covered facility through common
membership, governing bodies, trustees, officers, stock
ownership, family members, partners or limited
partners including, but not limited to, subsidiaries,
foundations, related corporations and joint ventures. For
the purposes of this subsection family members shall
mean brothers and sisters whether by the whole or half
blood, spouse, ancestors and lineal descendents.

(5) “Rates” means all rates, fees or charges imposed
by any covered facility for health care services.

(6) “Records” includes accounts, books, charts, con­
tracts, documents, files, maps, papers, profiles, reports,
annual and otherwise, schedules and any other fiscal
data, however recorded or stored.

§16-5F-3. General powers and duties of the board re­
garding reporting and review.

(a) In addition to the powers granted to the board
elsewhere in this article, the board shall have the powers
as indicated by this section and it shall be its duty to:

(1) Promulgate rules and regulations in accordance
with the provisions of article three, chapter twenty-nine-
§16-5F-4. Reports required to be published and filed; form of reports; right of inspection.

(a) Every covered facility and related organization defined in this article, within one hundred twenty days after the end of each of their fiscal years, unless an
extension be granted by the board for good cause shown, shall be required to file with the board and publish, as a Class I legal advertisement, pursuant to section two, article three, chapter fifty-nine of the code of West Virginia, in a qualified newspaper published within the county within which such covered facility or related organization is located, an annual report prepared by the covered facility's or related organization's auditor or an independent accountant.

Such report shall contain a complete statement of the following:

1. Assets and liabilities;
2. Income and expenses;
3. Profit or loss for the period reported;
4. A statement of ownership for persons owning more than five percent of the capital stock outstanding and the dividends paid thereon, if any, and to whom paid for the period reported unless the covered facility or related organization be duly registered on the New York stock exchange, American stock exchange, any regional stock exchange, or its stock traded actively over the counter. Such statement shall further contain a disclosure of ownership by any parent company or subsidiary, if applicable.

Such annual report shall also include a prominent notice that the details concerning the contents of the advertisement, together with the other reports, statements and schedules required to be filed with the board by the provisions of this section, shall be available for public inspection and copying at the board's office.

(b) Every covered facility and related organization shall also file with the board the following statements, schedules or reports in such form and at such intervals as may be specified by the board, but at least annually:

1. A statement of services available and services rendered;
2. A statement of the total financial needs of such covered facility or related organization and the resour-
(3) A complete schedule of such covered facility's or related organization's then current rates with costs allocated to each category of costs, in accordance with the rules and regulations as promulgated by the board pursuant to section three hereof;

(4) A copy of such reports made or filed with the federal health care financing administration, or its successor, as the board may deem necessary or useful to accomplish the purposes of this article;

(5) A statement of all charges, fees or salaries for goods or services rendered to the covered facility or related organization for the period reported which shall exceed in total the sum of fifty-five thousand dollars and a statement of all charges, fees or other sums collected by the covered facility or related organization for or on the account of any person, firm, partnership, corporation or other entity, however structured, which shall exceed in total the sum of fifty-five thousand dollars during the period reported;

(6) Such other reports of the costs incurred in rendering services as the board may prescribe. The board may require the certification of specified financial reports by the covered facility's or related organization's auditor or independent accountant; and

(7) A copy of all tax returns required to be filed by federal and state law.

(c) Notwithstanding any provision to the contrary herein, any data or material that is furnished to the board pursuant to the provisions of subdivision (4), subsection (b) of this section need not be duplicated by any other requirements of this section requiring the filing of data and material.

(d) No report, statement, schedule or other filing required or permitted to be filed hereunder shall contain any medical or individual information personally identifiable to a patient or a consumer of health services, whether directly or indirectly. All such reports,
statements and schedules filed with the board under this section shall be open to public inspection and shall be available for examination during regular hours. Copies of such reports shall be made available to the public upon request and the board may establish fees reasonably calculated to reimburse the board for its actual costs in making copies of such reports: Provided, That all tax returns filed pursuant to this article shall be confidential and it shall be unlawful for the board or any member of its staff to divulge or make known in any manner the tax return, or any part thereof, of any covered facility or related organization.

(e) Whenever further fiscal information is deemed necessary to verify the accuracy of any information set forth in any statement, schedule or report filed by a covered facility or related organization under the provisions of this article, the board shall have the authority to require the production of any records necessary to verify such information.

(f) From time to time, the board shall engage in or carry out analyses and studies relating to health care costs, the financial status of any covered facility or related organization or any other appropriate related matters, and make determinations of whether, in its opinion, the rates charged by a covered facility are economically justified.

§16-5F-5. Injunctions.

1 Whenever it appears that any covered facility or related organization, required to file or publish such reports, as provided in this article, has failed to file or publish such reports, the attorney general, upon the request of the board, may apply in the name of the state to, and the circuit court of the county in which such covered facility or related organization is located shall have jurisdiction for the granting of a mandatory injunction to compel compliance with the provisions of this article.

§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.

1 Every covered facility and related organization failing to make and transmit to the board any of the reports
required by law or failing to publish or distribute the
reports as so required shall forthwith be notified by the
board and, if such failure continues for ten days after
receipt of said notice, such delinquent facility or
organization shall be subject to a penalty of one
thousand dollars for each day thereafter that such
failure continues, such penalty to be recovered by the
board through the attorney general in a civil action and
paid into the state treasury to the account of the general
fund. Review of any final judgment or order of the
circuit court shall be by appeal to the West Virginia
supreme court of appeals.

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW
AUTHORITY.

§16-29B-3. Definitions.
§16-29B-5. West Virginia health care cost review authority continued;
composition of the board; qualifications; terms; oath; compensation and expenses of members; vacancies; appoint­
ment of chairman, and meetings of the board.
§16-29B-6. Advisory council.
§16-29B-7. Staff.
§16-29B-8. Powers generally; budget expenses of the board.
§16-29B-18. Hospital and related organizations' annual financial reporting.
§16-29B-19a. Additional legislative findings and directives.
§16-29B-20. Rate determination.
§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and
revisions of rate schedules.
§16-29B-28. Termination date.

§16-29B-3. Definitions.

As used in this article, unless a different meaning
clearly appears from the context:

(a) "Charges" means the economic value established
for accounting purposes of the goods and services a
hospital provides for all classes of purchasers;

(b) "Class of purchaser" means a group of potential
hospital patients with common characteristics affecting
the way in which their hospital care is financed.
Examples of classes of purchasers are medicare bene-
ficiaries, welfare recipients, subscribers of corporations
established and operated pursuant to article twenty-
four, chapter thirty-three of this code, members of
health maintenance organizations and other groups as
(c) "Board" means the three member board of directors of the West Virginia health care cost review authority, an autonomous division within the state department of health;

(d) "Health care provider" means a person, partnership, corporation, facility or institution licensed, certified or authorized by law to provide professional health care service in this state to an individual during this individual's medical care, treatment or confinement;

(e) "Hospital" means a facility subject to licensure as such under the provisions of article five-b of this chapter and any acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, and does not include state mental health facilities or state long-term care facilities;

(f) "Person" means an individual, trust, estate, partnership, committee, corporation, association or other organization such as a joint stock company, estate or political subdivision or instrumentality thereof;

(g) "Purchaser" means a consumer of patient care services, a natural person who is directly or indirectly responsible for payment for such patient care services rendered by a hospital, but does not include third-party payors;

(h) "Rates" means all value given or money payable to hospitals for health care services, including fees, charges and cost reimbursements;

(i) "Records" means accounts, books and other data related to health care costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and
information, the disclosure of which would be an invasion of privacy;

(j) "Third-party payor" means any natural person, person, corporation or government entity responsible for payment for patient care services rendered by hospitals; and

(k) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a hospital through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subsection family members shall mean brothers and sisters, whether by the whole or half blood, spouse, ancestors and lineal descendents.

§16-29B-5. West Virginia health care cost review authority continued; composition of the board; qualifications; terms; oath; compensation and expenses of members; vacancies; appointment of chairman, and meetings of the board.

The "West Virginia Health Care Cost Review Authority," heretofore created as an autonomous division of the department of health, hereinafter referred to as the board, is hereby continued as an autonomous division of the department of health and human resources.

(a) The board shall consist of three members, appointed by the governor, with the advice and consent of the Senate. The board members shall be citizens and residents of this state. No more than two of said board members may be members of the same political party. One board member shall have a background in health care finance or economics, one board member shall have previous employment experience in human services, business administration or substantially related fields and one board member shall be a consumer of health services with a demonstrated interest in health care issues.
(b) Each board member shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article IV of the constitution of the state of West Virginia, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the board members to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the board. The governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article. The governor shall appoint three board members, one for a term of two years, one for a term of four years and one for a term of six years, with all the terms beginning on the effective date of this article. All future appointments shall be for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired term only.

(c) No person while in the employ of, or holding any official relation to, any hospital subject to the provisions of this article, or who has any pecuniary interest therein, may serve as a member of the board or as an employee thereof. Nor may any such board member be a candidate for or hold public office or be a member of any political committee while acting as such board member; nor may any board member or employee of said board receive anything of value, either directly or indirectly, from any hospital subject to the provisions of this article. Should any of the board members become a candidate for any public office or for membership on any political committee, the governor shall remove said board member from the board and shall appoint a new board member to fill the vacancy created. No board member may accept employment with any hospital subject to the jurisdiction of the board within two years after said board member ceases to be a board member.

(d) The concurrent judgment of two of the board members when in session as the board shall be deemed the action of the board. A vacancy in the board shall not affect the right or duty of the remaining board members to function as a board.
(e) In order to adequately compensate the chairman of the board and other members of the board for additional duties newly imposed by law and not heretofore required by law, the annual salary of the chairman of the board shall be fifty-five thousand dollars and the annual salary of the other board members shall be thirty-six thousand five hundred dollars: Provided, That effective the first day of July, one thousand nine hundred ninety-one, the annual salary of other board members shall be fifty-one thousand two hundred dollars.

§16-29B-6. Advisory council.

There is created the West Virginia health care cost review council, hereinafter referred to as the council.

(a) The council is composed of thirteen members. Five of the members shall be defined as government members, those members being the secretary of the department of health and human resources, the workers' compensation commissioner or the successor to his or her duties and responsibilities, the director of the public employees insurance agency, the commissioner of insurance, and the director of the division of vocational rehabilitation, or their respective designated representatives. Eight members shall be defined as nongovernment members who shall be appointed by the governor, with the advice and consent of the Senate, and shall be selected as follows: One representative of the health insurance industry, one administrator of a small hospital, one administrator of a large hospital, one physician, and four members who are consumers of health services. When selecting the members who are consumers of health services, in addition to other factors, consideration shall be given to constituencies of organized labor, major purchasers of health insurance, and senior citizens.

(b) No more than five of the nongovernment members of the council may belong to the same political party, and at least two but no more than four may reside in the same congressional district. Selection of all nongovernment members of the council shall be made with due
diligence to ensure membership thereon by persons representing all cultural, demographic, and ethnic segments of the population of the state. Nongovernment members of the council shall be appointed for terms of three years each, except that of the members first appointed, three members shall be appointed for terms of one year, three members for terms of two years, and two members for terms of three years. Members shall be eligible for reappointment for a second three-year term. Vacancies shall be filled in the same manner as the original appointments for the duration of the unexpired term. The board shall appoint a chairman of the council who shall serve at the will and pleasure of the board.

(c) The presence of a majority of the members of the council shall constitute a quorum for the transaction of business. The council shall elect from among its members a vice chairman and such other officers as are necessary. The council shall meet no less than four times during the calendar year, and additional meetings shall be held upon a call of the chairman or a majority of the members, or the board.

(d) The council shall serve as an advisory body to the board on the development of health care cost containment policy, strategies and methods, and shall review and from time to time make recommendations in regard thereto and on state-of-the-art concepts in health care policy at the national, state and local level and their application to the deliberations of the board. The council shall serve as a conduit for the collection and transmission of information to the board regarding the consequences of board policy upon health care cost containment and upon hospitals that are subject to the provisions of this article. The council shall serve as a means of coordinating health care cost containment policy among departments of state government. The council shall review decisions of the board and make public comments thereon as it sees fit.

(e) In order to assist with the council's deliberations, the board's staff shall gather information on cost containment efforts, including, but not limited to, the
provision of alternative delivery systems, prospective payment systems, alternative rate-making methods, and programs of consumer education. The council shall pay particular attention to the economic and health status impact of such efforts on purchasers or classes of purchasers, particularly the elderly and those on low or fixed incomes.

(f) The board staff shall further gather information on state-of-the-art advances in medical technology, the cost effectiveness of such advances and their impact on health care advances in hospital and health care management practices, and any other state-of-the-art concepts relating to health care cost containment, health care improvement or other issues the council finds relevant and directs staff to investigate. The board staff shall prepare and keep a register of such information and update it on an annual basis.

(g) The board shall consider any recommendations of the council regarding additions or modifications to the board's rate setting and cost containment responsibilities as well as other responsibilities under the board's purview.

(h) The council shall make its own report to the board, the governor and the Legislature within thirty days of the close of each fiscal year. This report shall include summaries of all meetings of the council and any public comments on board decisions, together with any suggestions and policy recommendations.

(i) Council members shall be reimbursed from the board funds for sums necessary to carry out its responsibilities and for reasonable travel expenses to attend council meetings.

§16-29B-7. Staff.

(a) The board may employ such persons as may be necessary to effect the provisions of this article. The board shall set the respective salaries or compensations of all staff. Any person employed by the board other than on a part-time basis shall devote full time to the performance of his or her duties as such employee
during the regular working hours of the board.

(b) The board shall appoint general counsel who shall act as legal counsel to the board. The general counsel shall serve at the will and pleasure of the board:

(1) The general counsel may act to bring and to defend actions on behalf of the board in the courts of the state and in federal courts.

(2) In all adjudicative matters before the board, the general counsel shall advise the board. The staff shall represent itself in all such actions before the board.

(c) The board may contract with third parties, including state agencies, for any services that may be necessary to perform the duties imposed upon it by this article where such contractual agreements will promote economy, avoid duplication of effort or make the best use of available expertise.

(d) The board shall identify which members of the staff of the health care cost review authority shall be exempted from the salary schedules or pay plan adopted by the state personnel board, and further identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation. This information shall be filed by the board with the director of the division of personnel no later than the first day of July, one thousand nine hundred ninety-one, and thereafter as necessary.

§16-29B-8. Powers generally; budget expenses of the board.

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, rules and regulations in accordance with article three, chapter twenty-nine-a of this code: Provided, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not exempt from the provisions of article three, chapter twenty-nine-a of this code may be
implemented by emergency rule;

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of services in hospitals subject to the provisions of this article and may subpoena witnesses, papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the state of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;

(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: Provided, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commissioner and subject to the approval of the Legislature;

(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and

(6) Exercise, subject to limitations or restrictions herein imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.
(b) The board shall annually prepare a budget for the next fiscal year for submission to the governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff.

(c) Each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the gross revenues of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital's obligation. The amount of such fee shall be determined by the board except that in no case shall the hospital's obligation exceed one tenth of one percent of its gross revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the state treasury and kept as a special revolving fund designated "health care cost review fund," with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.

(d) During the board's start-up period, before the first day of July, one thousand nine hundred eighty-four, each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the gross revenues of each hospital as reported under the provisions of article five-f, chapter sixteen of this code. Within sixty days of passage of this article, the department of health shall notify each hospital of the amount of such fee, which in no case shall exceed one tenth of one percent of the gross revenue of each hospital, the total amount of which fees shall not in any event exceed five hundred thousand dollars during said start-up period. Such fees shall be paid into the aforementioned special fund in two equal installments, the first of which shall be paid on the first day of April, one thousand nine hundred eighty-three, the second of which shall be paid on the first day of January, one thousand nine hundred eighty-four.

(e) Each hospital's assessment shall be treated as an
allowable expense by the board.

(f) The board is empowered to withhold rate approvals if any such fees remain unpaid.

§16-29B-18. Hospital and related organizations' annual financial reporting.

(a) It shall be the duty of every hospital which comes under the jurisdiction of this article to file with the board the following financial statements or reports in a form and at intervals specified by the board, but at least annually:

(1) A balance sheet detailing the assets, liabilities and net worth of the hospital for its preceding fiscal year;

(2) A statement of income and expenses for the
   preceding fiscal year;

(3) A statement of services rendered and services available; and

(4) Such other reports as the board may prescribe.

Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(b) It shall be the duty of every related organization to file with the board, within thirty days from the effective date of this section, the following financial statements or reports for each of its three prior fiscal years:

(1) A balance sheet detailing the assets, liabilities and net worth of the related organization;

(2) A statement of income and expenses;

(3) A statement of cash flows; and

(4) Such other information as the board may prescribe.

After the initial filing of the financial information required by this subsection, every related organization shall thereafter file annual financial reports with the
board in a form specified by the board.

(c) The annual financial statements filed pursuant to this section shall be prepared in accordance with the system of accounting and reporting adopted under section seventeen of this article. The board may require attestations from responsible officials of the hospitals or related organizations that such reports have to the best of their knowledge been prepared truthfully and in accordance with the prescribed system of accounting and reporting.

(d) All reports filed under any provisions of this article, except personal medical information personally identifiable to a purchaser and any tax return, shall be open to public inspection and shall be available for examination at the offices of the board during regular business hours.

(e) Whenever a further investigation is deemed necessary or desirable to verify the accuracy of any information set forth in any statement, schedule or report filed by a hospital or related organization under the provisions of this section, the board may require a full or partial audit of the records of the hospital or related organization.

§16-29B-19a. Additional legislative findings and directives.

The Legislature hereby finds and declares that a cost-based rate review system is more effective in containing the cost of acute care hospital services than a revenue-based system. Accordingly, the Legislature directs the board to create a task force to advise the board on the development of a methodology to implement a cost-based rate review system. One member of the task force shall be designated by the governor, one member shall be designated by the president of the Senate, one member shall be designated by the speaker of the House of Delegates, and six members of the task force shall be appointed by the board. The board shall develop a cost-based rate review system and shall adopt regulations to implement the cost-based rate review methodology by the first day of July, one thousand nine hundred ninety-
Provided, That the board shall file a report with the governor, the president of the Senate, and the speaker of the House of Delegates by the first day of December, one thousand nine hundred ninety-one, which shall outline the status of the development of the cost-based rate review methodology. Regulations promulgated by the board to implement the cost-based rate review system shall be exempt from the requirements of article three, chapter twenty-nine-a of this code. Upon implementation of the regulations, the task force shall be dissolved.

The Legislature further directs the board to implement the utilization review and quality assurance program established by section twenty-three of this article.

The Legislature further finds and directs that the hospital cost containment methodology-phase one adopted by the board effective the twenty-eighth day of May, one thousand nine hundred eighty-five, and approved by the Legislature effective the eighth day of March, one thousand nine hundred eighty-six, shall remain in effect during the development period of the cost based rate review system.

The Legislature further finds and declares that discounts to third-party payors by hospitals have contributed to cost shifting thereby increasing the cost of acute care hospital services to purchasers and other third-party payors. Accordingly, the Legislature directs that every hospital who contracts with a third-party payor for the payment of patient care services shall file with the board a copy of every contract in force on the first day of January, one thousand nine hundred ninety-one. No third-party payor shall be entitled to a greater discount than the discount specified in any contract in effect on the first day of January, one thousand nine hundred ninety-one, unless a subsequent contract is approved by the board pursuant to the provisions of section twenty of this article.

The Legislature further directs the board to examine the problems associated with health care costs in this
§16-29B-20. **Rate determination.**

(a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:

1. The costs of the hospital's services are reasonably related to the services provided and the rates are reasonably related to the costs;

2. The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or regulations conflict with this requirement. On and after the effective date of this section, a summary of every proposed contract for the payment of patient care services between a purchaser or third-party payor and a hospital shall be filed by the hospital with its rate application for review by the board. No contract for the payment of patient care services between a purchaser or third-party payor and a hospital which establishes discounts to the purchaser or third-party payor shall take effect until it is approved by the board. The board shall approve or deny the proposed contract within the overall rate review period established in section twenty-one of this article. No discount shall be approved by the board which constitutes an amount below the actual cost to the hospital.
The hospital shall demonstrate to the board that the cost of any discount contained in the contract will not be shifted to any other purchaser or third-party payor. The hospital shall further demonstrate that the discount will not result in a decrease in its proportion of medicare, medicaid or uncompensated care patients. In addition, the hospital shall demonstrate to the board that the discount is based upon criteria which constitutes a quantifiable economic benefit to the hospital. All information submitted to the board shall be certified by the hospital administrator as to its accuracy and truthfulness;

(3) The rates of payment for medicaid are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated hospitals subject to the provisions of this article. The rates shall take into account the situation of hospitals which serve disproportionate numbers of low income patients and assure that individuals eligible for medicaid have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality;

(4) The rates are equitable in comparison to prevailing rates for similar services in similar hospitals as determined by the board; and

(5) In no event shall a hospital's receipt of emergency disaster funds from the federal government be included in such hospital's gross revenues for either rate-setting or assessment purposes.

(b) In the interest of promoting efficient and appropriate utilization of hospital services, the board shall review and make findings on the appropriateness of projected gross revenues for a hospital as such revenues relate to charges for services and anticipated incidence of service. The board shall further render a decision as to the amount of net revenue over expenditures that is appropriate for the effective operation of the hospital.

(c) When applying the criteria set forth above, the board shall consider all relevant factors, including, but not limited to, the following: The economic factors in the
hospital's area; the hospital's efforts to share services; the hospital's efforts to employ less costly alternatives for delivering substantially similar services or producing substantially similar or better results in terms of the health status of those served; the efficiency of the hospital as to cost and delivery of health care; the quality of care; occupancy level; a fair return on invested capital, not otherwise compensated for; whether the hospital is operated for profit or not for profit; costs of education; and income from any investments and assets not associated with patient care, including, but not limited to, parking garages, residences, office buildings, and income from related organizations and restricted funds whether or not so associated.

(d) Wages, salaries and benefits paid to or on behalf of nonsupervisory employees of hospitals subject to this article shall not be subject to review unless the board first determines that such wages, salaries and benefits may be unreasonably or uncustomarily high or low. Said exemption does not apply to accounting and reporting requirements contained in this article, nor to any that may be established by the board. “Nonsupervisory personnel,” for the purposes of this section, means, but is not limited to, employees of hospitals subject to the provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for new services and capital projects subject to article two-d of this chapter shall not be allowed by the board if such costs were incurred subsequent to the eighth day of July, one thousand nine hundred seventy-seven, unless they were exempt from review or approved by the state health planning and development agency prior to the first day of July, one thousand nine hundred eighty-four, pursuant to the provisions of article two-d of this chapter.

(f) The board shall consult with relevant licensing agencies and may require them to provide written findings with regard to their statutory functions and information obtained by them in the pursuit of those functions. Any licensing agency empowered to suggest
or mandate changes in buildings or operations of hospitals shall give notice to the board together with any findings.

(g) Rates shall be set by the board in advance of the year during which they apply except for the procedure set forth in subsection (c), section twenty-one of this article and shall not be adjusted for costs actually incurred.

(h) All determinations, orders and decisions of the board with respect to rates and revenues shall be prospective in nature.

(i) No hospital may charge for services at rates in excess of those established in accordance with the requirements of and procedures set forth in this article.

(j) Notwithstanding any other provision of this article, the board shall approve all requests for rate increases by hospitals which are licensed for one hundred beds or less and which are not located in a standard metropolitan statistical area where the rate of increase is equal to or less than the lowest rate of inflation as established by a recognized inflation index for either the national or regional hospital industry. The board may, by regulation, impose reporting requirements to ensure that a hospital does not exceed the rate of increases permitted herein.

(k) Notwithstanding any other provision of this article, the board shall develop an expedited review process applicable to all hospitals licensed for more than one hundred beds or that are located in a standard metropolitan statistical area for rate increase requests which may be based upon a recognized inflation index for the national or regional hospital industry.

§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and revisions of rate schedules.

(a) No hospital subject to this article may change or amend its schedule of rates except in accordance with the following procedures:
(1) Any request for a change in rate schedules or other changes must be filed in writing to the board with such supporting data as the hospital seeking to change its rates considers appropriate, in the form prescribed by the board. Upon receipt of notice, the board, if it considers necessary, may hold a public hearing on the proposed change. Such hearing shall be held no later than forty-five days after receipt of the notice. The review of the proposed change may not exceed an overall period of one hundred eighty days from the date of filing to the date of the board’s order. If the board fails to complete its review of the proposed change within the time period specified for the review, the proposed change shall be deemed to have been approved by the board. Any proposed change shall go into effect upon the date specified in the order. The review period is complete upon the date of the board’s final order notwithstanding an appeal of the order to the agency of the state designated by the governor, a circuit court, or the supreme court of appeals by an affected party;

(2) Each hospital shall establish, in a written report which shall be incorporated into each proposed rate application, that it has thoroughly investigated and considered:

(A) The economic and social impact of any proposed rate increase, or service decrease, on hospital cost containment and upon health care purchasers, including classes of purchasers, such as the elderly and low and fixed income persons;

(B) State-of-the-art advances in health care cost containment, hospital management and rate design, as alternatives to or in mitigation of any rate increase, or service decrease, which report shall describe the state-of-the-art advances considered and shall contain specific findings as to each consideration, including the reasons for adoption or rejection of each;

(C) Implementation of cost control systems, including the elimination of unnecessary or duplicative facilities and services, promotion of alternative forms of care, and other cost control mechanisms;
(D) Initiatives to create alternative delivery systems; and

(E) Efforts to encourage third-party payors, including, but not limited to, insurers, health service, care and maintenance organizations, to control costs, including a combination of education, persuasion, financial incentives and disincentives to control costs;

(3) In the event the board modifies the request of a hospital for a change in its rates so that the hospital obtains only a partial increase in its rate schedule, the hospital shall have the right to accept the benefits of the partial increase in rates and charge its purchasers accordingly without in any way adversely affecting or waiving its right to appeal that portion of the decision and order of the board which denied the remainder of the requested rate increase.

(b) The board shall allow a temporary change in a hospital's rates which may be effective immediately upon filing and in advance of review procedures when a hospital files a verified claim that such temporary rate changes are in the public interest, and are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to relieve undue financial hardship. The verified claim shall state the facts supporting the hospital's position, the amount of increase in rates required to alleviate the situation, and shall summarize the overall effect of the rate increase. The claim shall be verified by either the chairman of the hospital's governing body or by the chief executive officer of the hospital.

(c) Following receipt of the verified claim for temporary relief, the board shall review the claim through its usual procedures and standards; however, this power of review does not affect the hospital's ability to place the temporary rate increase into effect immediately. The review of the hospital's claim shall be for a permanent rate increase and the board may include such other factual information in the review as may be necessary for a permanent rate increase review. As a result of its findings from the permanent review, the board may
allow the temporary rate increase to become permanent, to deny any increase at all, to allow a lesser increase, or to allow a greater increase.

(d) When any change affecting an increase in rates goes into effect before a final order is entered in the proceedings, for whatever reasons, where it deems it necessary and practicable, the board may order the hospital to keep a detailed and accurate account of all amounts received by reason of the increase in rates and the purchasers and third-party payors from whom such amounts were received. At the conclusion of any hearing, appeal or other proceeding, the board may order the hospital to refund with interest to each affected purchaser and/or third-party payor any part of the increase in rates that may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital shall, under appropriate terms and conditions determined by the board, charge over and amortize by means of a temporary decrease in rates whatever income is realized from that portion of the increase in rates which was subsequently held to be excessive or unreasonable.

(e) The board, upon a determination that a hospital has overcharged purchasers or charged purchasers at rates not approved by the board or charged rates which were subsequently held to be excessive or unreasonable, may prescribe rebates to purchasers and third-party payors in effect by the aggregate total of the overcharge.

(f) The board may open a proceeding against any hospital at any time with regard to compliance with rates approved and the efficiency and effectiveness of the care being rendered in the hospital.

§16-29B-28. Termination date.

Pursuant to the provisions of section four, article ten, chapter four of this code, the health care cost review authority shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, to allow for a completion of an audit by the joint committee on government operations.
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 changing the name of the division of health to the bureau of public health and the director of health to the commissioner of public health; and permit funding of a special funds account.

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.

With respect to the vouchers or coupons or drafts authorized by the bureau of public 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 commissioner of the bureau of public 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 may be funded by
the commissioner of the bureau of public 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 commissioner of the bureau of public
health shall select the bank by competitive bidding in
the same manner as the state treasurer selects depos-
itory 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 commissioner shall commence proce-
dures for the selection of the bank and for implementa-
tion 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 80
(Com. Sub. for H. B. 2616—By Delegates Spencer and Kessel)

[Passed March 9, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article five,
chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to registration of newborn infants and minors with a
hearing impairment or with risk of developing a
hearing impairment; requiring that such information be
recorded and reported to the commission on the hearing
impaired on forms provided by the commission.
Be it enacted by the Legislature of West Virginia:

That section twelve-a, article five, 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 5. VITAL STATISTICS.

§16-5-12a. Registration of infants born with specified birth defects; requiring physician or midwife to check for defects, registration of minors with previously undiagnosed birth defects; form for reporting birth defects to be provided by and filed with registrar of vital statistics; confidentiality; exceptions; parental consent to subsequent reporting to various agencies; form for hearing impairment to be provided by and filed with commission on hearing impaired; definitions; registration of infants born with hearing impairments or risk of hearing impairment; registration of minors with previously undiagnosed hearing impairments.

(a) When a live birth occurs, the physician or midwife in attendance at, or present immediately after, the birth shall examine the infant for any of the following birth defects:

1. Anencephaly;
2. Spina bifida;
3. Hydrocephaly;
4. Cleft palate;
5. Total cleft lip;
6. Esophageal atresia and atenosis;
7. Rectal and anal atresia;
8. Hypospadias;
(9) Reduction and deformity — upper limb;
(10) Reduction and deformity — lower limb;
(11) Congenital dislocation of the hip;
(12) Down’s syndrome;
(13) Visual impairments; and
(14) Others as may be requested by the director of health.

(b) If any such impairment is found in an infant, and/or if such impairment is found in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife or other health care provider licensed under chapter thirty of the code shall within thirty days of the examination make a report of the diagnosis to the state registrar of vital statistics on forms provided by the state registrar of vital statistics. The report shall include the name of the child, the name or names of the parents or parent or guardian and a description of the impairment.

(c) The information received by the state registrar pursuant to this section pertaining to the identity of the persons named shall be kept confidential: Provided, That if consent of the parents, or if only one of the parents exists, of the parent, or of the guardian is obtained, the registrar may provide such information to the division of health, the division of human resources, the department of education, the division of vocational rehabilitation, and the school for the deaf and the blind so that such information can be utilized to provide assistance or services for the benefit of the child.

(d) The commission on the hearing impaired as provided for in section one, article fourteen, chapter five of this code shall develop and provide a form, to every physician or midwife attending a birth or providing medical care to a newborn infant, which assists the physician or midwife in collecting information from the
infant's family about the infant's potential for a hearing impairment. The form shall identify an infant with a hearing impairment or at risk of developing a hearing impairment. For purposes of this section, an infant with a hearing impairment is a child at birth with a significant hearing loss which prevents the acquisition of speech and language through normal channels. An infant at risk of being hearing impaired is a child at birth who is at a higher risk than normal of being hearing impaired due to one or more of the following factors present at birth:

1. Family history of a congenital hearing loss;
2. Rubella or virus during pregnancy;
3. Congenital ear, nose or throat anomalies;
4. Below normal birth weight;
5. Abnormal level of jaundice;
6. Anoxia or apnea; and
7. A low APGAR score derived from the evaluation of the infant's color, muscle tone, reflexes, pulse rate and respiration.

(e) If any such hearing impairment or risk of hearing impairment is found in an infant, and/or if such impairment or risk of hearing impairment is found in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife shall within thirty days of the examination make a report of the diagnosis to the commission on the hearing impaired on the forms provided by the commission on the hearing impaired. The report shall include the name of the child, the name or names of the parents or parent or guardian and a description of the hearing impairment or of the risk of hearing impairment.
CHAPTER 81
(S. B. 391—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

(Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.)

AN ACT to repeal article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state continuum of care services for elderly, impaired and terminally ill.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to the coordination of continuum of care for the elderly, impaired and terminally ill.

1 Article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 82
(Com. Sub. for S. B. 104—By Senators Burdette, Mr. President, Holliday, M. Manchin, Pritt, Wehrle, Blatnik, Humphreys and Lucht)

[Passed March 9, 1991; in effect ninety days 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 five-k, relating to the provision of early intervention services for infants and toddlers with or at risk of having a developmental delay; setting forth findings and purpose; designating the department of health and human resources as the coordinating agency and setting forth the department's responsibilities; defining certain terms; establishing a coordinating council; and setting forth the council's responsibilities.

Be it enacted by the Legislature of West Virginia:
That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-k, to read as follows:

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-1. Legislative findings and statement of purpose.


§16-5K-3. Responsibilities of the department of health and human resources.

§16-5K-4. Interagency coordinating council.

§16-5K-5. Provision of early intervention services.

§16-5K-1. Legislative findings and statement of purpose.

The Legislature hereby finds and declares that early intervention services for children who are developmentally delayed is essential in helping to maximize each child's potential and is in the best interest of the state. These early intervention services will reduce future educational costs, minimize the likelihood of having to provide institutional care and enhance the capacity of families to meet the special needs of the children. In order to meet this important need, a statewide comprehensive, coordinated, interagency program of early intervention services is required for children and the families of children from birth to thirty-six months of age who are developmentally delayed. By facilitating coordination of payment for early intervention services from various public and private sources, enhancing the capacity to provide quality early intervention services, and expanding and improving existing services, the interagency program will ensure that children who are developmentally delayed will receive necessary services which are cost effective.


Unless the context clearly otherwise indicates, as used in this article:

(a) "Cabinet" means the governor's cabinet on children and families.

(b) "Council" means the governor's early intervention interagency coordinating council.
(c) "Department" means the department of health and human resources.

(d) "Early intervention services" means developmental services which:

1. Are designed to meet the developmental needs of developmentally delayed infants and toddlers and the needs of the family related to enhancing the child's development;

2. Are selected in collaboration with the parents;

3. Are provided under public supervision in conformity with an individualized family service plan, and at no cost to families;

4. Meet the state's early intervention standards, as established by the department of health and human resources with the assistance of the governor's early intervention interagency coordinating council;

5. Include audiology case management, family training, counseling and home visits, health services necessary to enable a child to benefit from other early intervention services, medical services only for diagnostic or evaluation purposes, nursing services, nutrition services, occupational therapy, physical therapy, psychological services, social work services, special instruction, speech-language pathology and transportation; and

6. Are provided by licensed or otherwise qualified personnel, including audiologists, nurses, nutritionists, occupational therapists, physical therapists, physicians, psychologists, social workers, special educators, speech-language pathologists and paraprofessionals appropriately trained and supervised.

(e) "Infants and toddlers with developmental delay" means children from birth to thirty-six months of age who need early intervention services for any of the following reasons:

1. They are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Cognitive development, physical development, language
and speech development, psycho-social development or
self-help skills; or

(2) They have a diagnosed physical or mental condi-
tion that has a high probability of resulting in develop-
mental delay.

§16-5K-3. Responsibilities of the department of health
and human resources.

(a) The department of health and human resources is
the administering agency for the development of a
statewide, comprehensive, coordinated, interagency
system of early intervention services.

(b) Consistent with the provisions of Public Law 99-
457, as enacted by the Congress of the United States,
the department has the following responsibilities:

(1) To carry out the general administration, supervi-
sion and monitoring of early intervention programs and
activities;

(2) To resolve complaints regarding the requirements
of Public Law 99-457;

(3) To identify and coordinate all available resources
within the state from federal, state, local and private
sources;

(4) To enter into formal interagency agreements with
other state agencies involved in early intervention; and

(5) To resolve intraagency and interagency disputes
and to ensure that early intervention services are
provided in a timely manner pending the resolution of
such disputes.

(c) The department may adopt rules necessary to
carry out the purposes of this article.

(d) The department of health and human resources
and the department of education shall enter into a
formal interagency agreement regarding early interven-
tion services. The agreement shall define the financial
responsibility of each agency, describe the transition of
services to children and their families between service
systems, and establish procedures for resolving disputes.
§16-5K-4. Interagency coordinating council.

(a) The governor's early intervention interagency coordinating council is hereby established. The council is composed of fifteen members appointed by the governor with additional ex officio members representing specific agencies serving infants and toddlers with developmental delays.

(b) The membership of the council shall consist of the following:

(1) At least three parents of children, ages birth through six years of age, who have developmental delays;

(2) At least three persons, representative of the public or private service providers;

(3) At least one member of the House of Delegates recommended by the speaker of the House of Delegates and one member of the Senate recommended by the Senate president;

(4) At least one person from higher education involved in training individuals to provide services under this article; and

(5) A representative of each of the agencies involved in the provision of or payment for early intervention services to infants and toddlers with developmental delays and their families.

(c) The council shall meet at least quarterly and in such place as it considers necessary.

(d) The council is responsible for the following functions:

(1) To advise and assist the department of health and human resources in the development and implementation of early intervention policies;

(2) To assist the department in achieving the full participation of all relevant state agencies and programs;

(3) To collaborate with the governor's cabinet on
children and families in the coordination of early
intervention services with other programs and services
for children and families;

(4) To assist the department in the effective implementa-
tion of a statewide system of early intervention
services;

(5) To assist the department in the resolution of
disputes;

(6) To advise and assist the department in the
preparation of grant applications; and

(7) To prepare and submit an annual report to the
governor, the Legislature and the United States secre-
tary of education on the status of early intervention
programs within the state.

§16-5K-5. Provision of early intervention services.

(a) The department may enter into contracts with
public or private providers of early intervention services
who meet state early intervention standards.

(b) Within available resources, as determined by the
department, appropriate early intervention services
shall be made available to eligible children and their
families.

CHAPTER 83

(Com. Sub. for H. B. 2582—By Delegates P. White and S. Cook)

[Passed March 9, 1991; in effect ninety days 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 five-I, relating to creating a state long-term care
ombudsman program within the commission on aging;
short title; legislative purpose; definitions; employment
of a state long-term care ombudsman, qualifications and
duties; creation of regional long-term care ombudsman
programs; employment of regional long-term care
ombudsmen, qualifications and duties; creation of long-term care ombudsman volunteer programs; qualifications of ombudsman volunteers; duties; training and certification of long-term care ombudsman volunteers; investigation of complaints, including administrative and legal actions; access to long-term care facilities; access to records; subpoena powers; cooperation among government departments or agencies; confidentiality of investigations; limitations on liability for good faith actions of ombudsmen and persons assisting ombudsmen and for long-term care facilities for the actions of ombudsman and good faith actions of employees assisting ombudsmen; availability of legal counsel; penalties for willful interference, retaliatory actions; facility posting of long-term care ombudsman program information; funding; promulgation of rules; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.

§16-5L-1. Short title.
§16-5L-2. Legislative purpose.
§16-5L-3. Definitions.
§16-5L-4. Creation of the state long-term care ombudsman program.
§16-5L-5. State long-term care ombudsman; qualifications; duties.
§16-5L-6. Establishment of regional long-term care ombudsman programs.
§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.
§16-5L-8. Long-term care ombudsman volunteers; qualifications; duties.
§16-5L-10. Investigation of complaints.
§16-5L-11. Access to long-term care facilities.
§16-5L-12. Access to records.
§16-5L-14. Cooperation among government departments or agencies.
§16-5L-15. Confidentiality of investigations.
§16-5L-16. Limitations on liability.
§16-5L-17. Availability of legal counsel.
§16-5L-18. Willful interference; retaliation; penalties.
§16-5L-20. Funding for long-term care ombudsman programs.
§16-5L-22. Severability.

§16-5L-1. Short title.

This article may be known and cited as the "West Virginia Long-Term Care Ombudsman Program Act."

§16-5L-2. Legislative purpose.

The Legislature recognizes that the state commission on aging, as set forth in article fourteen, chapter twenty-nine of this code, pursuant to a grant from the federal government, has established a West Virginia long-term care ombudsman program. The Legislature declares that it is the public policy of this state to encourage community contact and involvement with residents of long-term care facilities. The Legislature finds that in order to comply with the federal Older Americans Act of 1965, as amended, and to effectively assist residents of long-term care facilities in the assertion of their civil and human rights, the structure, powers and duties of the West Virginia long-term care ombudsman program shall be herein defined under this article.

§16-5L-3. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) "Government agency" means any department, division, office, bureau, board, commission, council, authority, or any other agency or instrumentality created by the state or political subdivision thereof or to which the state is a party or by any county or municipality which is responsible for the regulation, visitation, inspection, or supervision of long-term care facilities or which provides services to residents or long-term care facilities;

(b) "Long-term care facility" means any nursing home, personal care home, or residential board and care home as defined in section two, article five-c of this chapter; nursing homes operated by the federal government or the state government; extended care facilities operated in connection with hospitals; and any similar
institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management for consideration, for the express and implied purpose of providing accommodations and care or personal assistance to one or more persons who are ill or otherwise incapacitated or are dependent upon the services of others by reasons of physical or mental impairment and who are not related within the degree of consanguinity of second cousin to the owner or manager of the institution, residence or place;

(c) "Long-term care ombudsman volunteer" or "ombudsman volunteer" means any uncompensated individual who performs the duties enumerated under section eight of this article: Provided, That the individual has received appropriate certification as set forth in section nine of this article;

(d) "Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(e) "Regional long-term care ombudsman" means any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the state commission on aging and meets the qualifications set forth in section seven of this article;

(f) "Resident" means an individual living in a nursing home, personal care home, a residential board and care home, or any long-term care facility as defined in subsection (b) of this section, or who has lived in such a setting, or who has made application to live in such a setting: Provided, That nothing in this article shall be construed to give a long-term care ombudsman the right to obtain the waiting list of a long-term care facility;

(g) "State long-term care ombudsman" means an individual who meets the qualifications of section five of this article and who is employed by the state commission on aging to implement the state long-term
care ombudsman program as set forth in this article;  
and  
(h) "Guardian" means a person lawfully invested with  
the power and charged with the duty of taking care of  
another person and managing the property and rights  
of another person who for some peculiarity of status or  
defect of age, understanding or self control is considered  
incapable of administering his or her own affairs, to  
include committees or other references under the code.

§16-5L-4. Creation of the state long-term care ombudsman program.

There is hereby created within the state commission  
on aging, as set forth in article fourteen, chapter twenty-nine of this code, the West Virginia long-term care  
ombudsman program, pursuant to the Older Americans  
Act of 1965, as amended.

§16-5L-5. State long-term care ombudsman; qualifications; duties.

(a) The state commission on aging shall employ a state  
long-term care ombudsman to effect the purposes of this  
article. The state long-term care ombudsman shall have  
at least a master's degree in gerontology, social work,  
health or a related field and shall have demonstrated  
experience in one of the following areas: (1) The field  
of aging; (2) health care; (3) community programs; (4)  
long-term care issues; (5) working with health care  
providers; (6) working with an involvement in volunteer  
programs; and (7) administrative and managerial  
experience. In lieu of the above educational and  
experience qualifications, the state long-term care  
ombudsman shall have a four-year degree in gerontology, social  
work, health or a related field, plus five years  
of full-time equivalent experience in gerontology, social  
work, health or a related field. The state long-term care  
ombudsman shall participate in ongoing training  
programs related to his or her duties or responsibilities.  
The state long-term care ombudsman shall not have  
been employed within the past two years prior to the  
date of his or her employment under this section by a  
long-term care facility, or by any association of long-  
term care facilities, or by any organization or corpora-
tion that directly or indirectly regulates, owns, or operates a long-term care facility.

(b) Neither the state long-term care ombudsman nor any member of his or her immediate family shall have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. For the purposes of this section, the term “immediate family” shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the state long-term care ombudsman.

(c) The duties of the state long-term care ombudsman shall include, but are not limited to, the following:

(1) Establishing a mandatory statewide procedure to receive, investigate, and resolve complaints filed on behalf of a resident, or filed on the state or regional long-term care ombudsman's own initiative on behalf of residents, relating to action, inaction or decisions of providers of long-term care services, or the representatives of such providers, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare and rights of such residents;

(2) Monitoring the development and implementation of federal, state and local legislation, regulations and policies with respect to long-term care facilities;

(3) Advocating for the rights of residents in long-term care facilities;

(4) Establishing a mandatory statewide training program and certification procedures for regional long-term care ombudsmen, excluding clerical staff, which shall include training in the following areas: (i) The review of medical records; (ii) regulatory requirements for long-term care facilities; (iii) confidentiality of records; (iv) techniques of complaint investigation; (v) the effects of institutionalization; and (vi) the special needs of the elderly;

(5) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for
the purpose of identifying and resolving significant problems faced by residents as a class. Such data shall be submitted to the office of health facility licensure and certification of the department of health and human resources on a regular basis;

(6) Promulgating mandatory statewide rules, regulations and training related to the use of long-term care ombudsman volunteers in the program, including procedures to assure that the responsibility and authority of ombudsman volunteers shall be restricted to activities which do not involve access to confidential resident or facility records, which do not involve complaint investigation other than information gathering to ascertain the nature and facts of a complaint, and which do not involve the initiation or pursuit of legal proceedings, actions or remedies; and

(7) Other duties as mandated by the Older Americans Act of 1965, as amended.

§16-5L-6. Establishment of regional long-term care ombudsman programs.

(a) The state commission on aging shall designate and maintain regional long-term care ombudsman programs encompassing all planning and development areas of the state under the direction of the state long-term care ombudsman. Any regional long-term care ombudsman program so designated and maintained shall be a representative of the state long-term care ombudsman program.

(b) In order to be so designated, a regional long-term care ombudsman program shall meet the following requirements: (1) It shall have no pecuniary, licensing, or organizational interest with long-term care facilities or an association thereof; and (2) it shall (i) maintain a private, nonprofit status as defined under the Internal Revenue Code of 1986, or (ii) function as a local or regional government agency.

§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.

(a) Each regional long-term care ombudsman pro-
2 gram shall employ one or more regional long-term care
3 ombudsmen to effect the purposes of this article. The
4 regional long-term care ombudsman shall have at least
5 a four-year degree in gerontology, social work, health,
6 or a related field and demonstrated experience in one
7 of the following areas: (1) The field of aging; (2) health
8 care or social service programs; (3) community pro-
9 grams; and (4) long-term care issues: Provided, That
10 persons employed in a designated regional long-term
11 care ombudsman program on the date of enactment of
12 this article may be given a waiver from these require-
13 ments provided that within one year from the date of
14 enactment of this article they enter into a program
15 leading to a degree in gerontology, social work, health
16 or a related field or complete fifty hours of continuing
17 education units in gerontology, social work, health or a
18 related field every two calendar year periods. The
19 regional long-term care ombudsman shall participate in
20 ongoing training programs related to his or her duties
21 or responsibilities. The regional long-term care ombuds-
22 man may not have been employed within the past two
23 years prior to the date of his or her employment under
24 this section by a long-term care facility, or by any
25 association of long-term care facilities, or by any
26 organization or corporation that directly or indirectly
27 regulates, owns, or operates a long-term care facility.

28 (b) Neither the regional long-term care ombudsman
29 nor any member of his or her immediate family may
30 have, or have had within the two years preceding his
31 or her employment under this section, any pecuniary
32 interest in the provision of long-term care. For the
33 purposes of this section, the term “immediate family”
34 shall mean the spouse, children, natural mother, natural
35 father, natural brothers or natural sisters of the regional
36 long-term care ombudsman.

37 (c) The duties of the regional long-term care ombuds-
38 man shall include, but are not limited to, the following:

39 (1) Regularly monitoring long-term care facilities and
40 investigating complaints filed on behalf of a resident, or
41 filed on the regional long-term care ombudsman's own
42 initiative, relating to the health, safety, welfare and
rights of such residents, in accordance with complaint investigation procedures developed by the state long-
term ombudsman care program: Provided, That nothing
in this section shall be construed as to grant a regional
long-term care ombudsman the right of entry to a long-
term care facility's drug rooms or to treatment rooms
occupied by a resident unless prior consent has been
obtained from the resident;

(2) Monitoring the development and implementation
of federal, state and local laws, regulations and policies
with respect to long-term care facilities;

(3) Training certified volunteers in accordance with
the training and certification program developed by the
state long-term care ombudsman program;

(4) Encouraging, cooperating with, and assisting the
development and operation of referral services which
can provide current, valid and reliable information on
long-term care facilities and alternatives to institution-
alization to persons in need of these services and the
general public;

(5) Submitting reports as required by the state long-
term care ombudsman program; and

(6) Other duties as mandated by the Older Americans
Act of 1965, as amended.

(d) The state long-term care ombudsman shall de-
velop and implement procedures for training and
certification of regional long-term care ombudsmen.
Regional long-term care ombudsmen who satisfactorily
complete the training requirements shall be certified by
the state commission on aging and shall be given
identification cards which shall be presented to em-
ployees of a long-term care facility upon request. No
regional long-term care ombudsman may investigate
any complaint filed with the West Virginia long-term
care ombudsman program unless such person has been
certified by the state commission on aging. Consistent
with the provisions of this article and any rules and
regulations promulgated pursuant to section twenty-one,
certified regional long-term ombudsmen shall be
§16-5L-8. Long-term care ombudsman volunteers; qualifications; duties.

(a) The regional long-term care ombudsman programs shall each create and maintain a volunteer program to effect the purposes of this article, pursuant to rules promulgated by the state long-term care ombudsman and the state commission on aging.

(b) A long-term care ombudsman volunteer shall have demonstrated interest in the field of aging and long-term care issues and be able to communicate effectively orally and in writing.

(c) No long-term care ombudsman volunteer nor any member of his or her immediate family shall have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. Nor shall any long-term care ombudsman volunteer perform his or her duties in any specific facility in which an immediate family member of the long-term care ombudsman volunteer is or has been a resident or applicant of that specific facility. For the purposes of this section, the term "immediate family" shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the long-term care ombudsman volunteer.

(d) The long-term care ombudsman volunteer shall perform only those duties assigned by the regional long-term care ombudsman, including, but not limited to, the following:

(1) Regularly visiting and talking with residents of long-term care facilities, and inspecting all public areas of the facility;

(2) Interviewing residents, family members and employees of long-term care facilities to ascertain the nature and facts of a complaint;

(3) Preparing reports for the regional long-term care
ombudsman's review or approval relating to complaint
interviews and the health, safety, welfare and rights of
residents of long-term care facilities;
(4) Informing residents as to the availability of
ombudsman services;
(5) Establishing and maintaining a cooperative
working relationship with employees of long-term care
facilities;
(6) Working to establish and maintain resident and
family councils to encourage interaction among resi-
dents, their families and long-term care facility staff;
and
(7) Performing other duties as assigned by the
regional long-term care ombudsman which are not
contrary to this article, to any applicable federal law,
or to rules promulgated by the state long-term care
ombudsman and the state commission on aging.

(e) Notwithstanding the duties described above, no
ombudsman volunteer may undertake or be assigned
duties involving complaint investigation activities, as
defined in section ten of this article, except for informa-
tion gathering to ascertain the nature and facts of a
complaint for the ombudsman's review. No ombudsman
volunteer, during the course of his or her volunteer
service, may initiate or pursue legal proceedings, actions
or remedies on behalf of a resident or long-term care
ombudsman program relating to a long-term care
facility, its employees, or its residents.

§16-5L-9. Long-term care ombudsman volunteer training
and certification.
(a) The state long-term care ombudsman shall develop
procedures for training and certification of long-term
care ombudsman volunteers. The regional long-term
care ombudsman shall implement certification training
for all ombudsman volunteers in accordance with the
procedures developed by the state long-term care
ombudsman. No ombudsman volunteer shall perform
any of the duties enumerated in section eight of this
article prior to the completion of the training program,
(b) Ombudsman volunteers who have satisfactorily completed the training and certification requirements shall be given identification cards valid for one year which shall be presented to employees of a long-term care facility upon request. Every year thereafter, the long-term care ombudsman volunteer shall complete at least seven hours of additional training before a new identification card is issued. Consistent with the provisions of this article and any rules and regulations promulgated pursuant to section twenty-one, certified long-term ombudsman volunteers shall be representatives of the state long-term care ombudsman program.

§16-5L-10. Investigation of complaints.

(a) Upon receipt of a complaint filed on behalf of a resident, or on his or her own initiative, a state or regional long-term care ombudsman shall investigate any act, practice, policy or procedure of any long-term care facility or government agency which affects the health, safety, welfare or rights of any resident.

(b) Investigative activities of the state or regional long-term care ombudsman shall include, but shall not be limited to: Information gathering, mediation, negotiation, informing parties of the status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The state or regional long-term care ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the...
investigatory authority of the long-term care ombudsman program; or

(5) A real or apparent conflict of interest exists and no other ombudsman is available to investigate the complaint in an impartial manner. If a determination is made by a regional long-term care ombudsman not to investigate any complaint, then the complaint shall be referred to the state long-term care ombudsman who shall make a final decision as to whether the matter warrants further investigation.

(d) State and regional long-term care ombudsmen may institute actions on behalf of residents to obtain injunctive and declaratory relief, but not damages. In order to enable ombudsman to bring such actions, the secretary of the department of health and human resources shall either:

(1) Establish an administrative hearing process under the procedures for contested cases defined at article five, chapter twenty-nine-a of this code to be available to any state or regional ombudsmen bringing an action on behalf of a resident against a long-term care facility or governmental agency; or

(2) Ensure that state and regional ombudsmen have sufficient access to legal counsel to bring actions on behalf of residents in civil court. Provided, That nothing in this subsection shall be construed to prevent a resident of a long-term care facility from filing directly, on his or her own behalf, a suit for relief of any sort in any state or federal court.

(e) The state commission on aging and other appropriate state governmental agencies shall establish and implement cooperative agreements for receiving, processing, responding to and resolving complaints involving state governmental agencies under the provisions of this section.

§16-5L-11. Access to long-term care facilities.

(a) A state or regional long-term care ombudsman shall, with proper identification, have access to any long-term care facility for the purposes of investigations of
a complaint filed pursuant to section ten of this article. The state or regional long-term care ombudsman may enter a facility at a time appropriate to the complaint. The visit may be announced in advance or be made unannounced as appropriate to the complaint under investigation. Upon entry of the facility, the state or regional long-term care ombudsman shall promptly and personally advise one of the following persons of his or her presence: (1) The administrator or acting administrator; (2) the residence director; or (3) another available supervisory agent of the facility. If entry is refused by the person in charge of said facility, the long-term care ombudsman may apply to the magistrate court of the county in which the facility is located for a warrant authorizing entry, and the court shall issue an appropriate warrant if it finds good cause therefor.

(b) For activities other than those specifically related to the investigation of a complaint, a state or regional long-term care ombudsman, upon proper identification, shall have access to any long-term care facility between the hours of 8:00 a.m. and 8:00 p.m. in order to:

(1) Visit, talk with, and make ombudsman and social services available to all residents;

(2) Inform residents of their rights and entitlements, and their corresponding obligations, under applicable federal and state laws by means of distribution of educational materials and discussion in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and other public entitlements; and

(4) Supervise, direct or assist a long-term care ombudsman volunteer in the performance of his or her assigned duties.

Access to long-term care facilities under this section shall be deemed to include the right to private communication with residents.

(c) A state or regional long-term care ombudsman who has access to a facility under this section shall not
enter the living area of a resident without identifying himself or herself to the resident. After identifying himself or herself, an ombudsman shall be permitted to enter the living area of a resident unless that resident communicates on that particular occasion the resident's desire to prevent the ombudsman from entering. A resident shall have the right to terminate, at any time, any visit by a representative of the ombudsman program who has access under this section or any other applicable section of this article.

(d) Access to a facility pursuant to subsection (a) or (b) of this section includes the right to tour the facility unescorted: Provided, That individual residents may terminate at any time any communication by an ombudsman having access under this section and that nothing in this section shall be construed as to grant a long-term care volunteer ombudsman the right of entry to the drug rooms and treatment rooms of a long-term care facility.

§16-5L-12. Access to records.

(a) The long-term care ombudsman is allowed access to any resident's records, including medical records, reasonably necessary to any investigation carried out pursuant to the provisions of section ten of this article, under the following conditions:

(1) If the resident is competent and has the ability to write, access may only be obtained by the written consent of the resident;

(2) If the resident is competent but unable to write, oral consent may be given in the presence of a third party who shall witness the resident's consent in writing;

(3) If the resident is under a guardianship committee as set forth in article eleven, chapter twenty-seven of this code or has granted a medical power of attorney which is in effect as set forth in article thirty-a, chapter sixteen of this code, or granted any other power of attorney which is in effect, access may only be obtained by the written consent of the guardian or attorney in
fact, unless the existence of guardianship, medical power of attorney or attorney in fact is unknown to the long-term care ombudsman upon investigation and to the long-term care facility, or unless the guardian or attorney in fact cannot be reached through normal communications channels within five working days;

(4) If the resident is unable to express written or oral consent and there is no guardian or attorney in fact or the notification of the guardian or attorney in fact is not achieved for the reasons set forth in subsection (3) of this section, or if the resident is deceased, inspection of records may be made by the ombudsman.

(b) The state or regional long-term care ombudsman is allowed access to all records of any long-term care facility that are reasonably necessary for the investigation of a complaint under section ten of this article, including, but not limited to, facility incident reports, dietary records, policies and procedures of the facility that the facility is required to maintain under federal or state law, admission agreements, staffing schedules, any document depicting the actual staffing pattern of the facility and resident council and grievance committee minutes.


(a) The state long-term care ombudsman, or the designee of the state long-term care ombudsman, may, in the course of any investigation carried out pursuant to section ten of this article:

(1) Apply to the circuit court of the appropriate county or the circuit court of the county of Kanawha for the issuance of a subpoena to compel at a specific time and place, by subpoena, the appearance, before a person authorized to administer oaths, the sworn testimony of any person whom the state or regional long-term care ombudsman reasonably believes may be able to give information relating to a matter under investigation; or

(2) Apply to the circuit court of the appropriate county or the circuit court of the county of Kanawha for the issuance of a subpoena duces tecum to compel any
person to produce at a specific time and place, before
a person authorized to administer oaths, any documents,
books, records, papers, objects or other evidence which
the state or regional long-term care ombudsman
reasonably believes may relate to a matter under
investigation.

(b) No subpoena or subpoena duces tecum applied for
by the state ombudsman or designee pursuant to
subsection (a) of this section shall be issued until a
circuit court judge in term or vacation thereof has
personally reviewed the application and accompanying
affidavits and approved, by a signed order entered by
the judge, the issuance of the subpoena or subpoena
duces tecum. Subpoenas or subpoenas duces tecum
applied for pursuant to this section may be issued on an
ex parte basis following review and approval of the
application by the judge in term or vacation thereof.

(c) The attorney general shall, upon request, provide
legal counsel and services to the long-term care
ombudsman program in all administrative proceedings
and in all proceedings in any circuit court and the West
Virginia supreme court of appeals. The prosecuting
attorney of any county shall provide without compensa-
tion legal counsel and services in criminal actions to the
long-term care ombudsman program in circuit court
proceedings in that county.

§16-5L-14. Cooperation among government departments
or agencies.

(a) The state or regional long-term care ombudsman
shall have access to publicly disclosable records of any
state government department, agency, or office reason-
ably necessary to any investigation carried out pursuant
to section ten of this article. The regional long-term care
ombudsman shall be notified of and be allowed to
observe any survey conducted by a government agency
affecting the health, safety, welfare or rights of
residents of a long-term facility.

(b) The state long-term care ombudsman shall de-
velop referral procedures to refer any complaint to any
appropriate state government department, agency or
office. The department or agency shall acknowledge receipt and disposition within thirty calendar days on any complaint referred to it by a state or regional long-term care ombudsman.

(c) When abuse, neglect or exploitation of a resident of a long-term care facility is suspected, the state or regional long-term care ombudsman shall make a referral to the office of adult protective services of the department of health and human resources and to the office of health facility licensure and certification of the department of health and human resources. The state or regional long-term care ombudsman shall coordinate with the office of adult protective services and the office of health facility licensure and certification on any investigation of suspected abuse, neglect or exploitation undertaken by those offices under the provisions of this subsection.

(d) Any state government department, agency, or office which responds to a complaint referred to it by a state or regional long-term care ombudsman shall forward to the long-term care ombudsman copies of publicly disclosable inspection reports and plans of correction, and notices of any citations and sanctions levied against the long-term care facility identified in the complaint.

(e) The state or regional long-term care ombudsman shall seek to establish coordination with programs which provide legal services for the elderly, including, but not limited to, programs funded by the federal legal services corporation or under the Older Americans Act of 1965, as amended.

§16-5L-15. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint pursuant to section ten of this article that contains the identity of the complainant or resident shall remain confidential except:

(1) Where disclosure is authorized in writing by the complainant, or resident or the guardian, committee, attorney in fact or representative of the resident;

(2) Where disclosure is necessary to the office of adult
protection services of the department of health and human resources in order for such office to determine the appropriateness of initiating an investigation regarding potential abuse, neglect or emergency circumstances as defined in article six, chapter nine of this code;

(3) Where disclosure is necessary to the office of health facility licensure and certification of the department of health and human resources in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure and/or certification; or

(4) Upon order of any appropriate county circuit court after the judge in term or vacation thereof has conducted a hearing following adequate notice to all parties and rendered a determination as the interests of justice may require.

(b) Notwithstanding any other section within this article, all information, records and reports received by or developed by a state or regional long-term care ombudsman which relate to a resident of a facility, including written material identifying a resident, are confidential and are not subject to the provisions of chapter twenty-nine-b of this code, and shall not be disclosed or released by the long-term care ombudsman, except under the circumstances enumerated in this section.

(c) Nothing in subsection (a) or (b) of this section shall be construed to prohibit the preparation and submission by any state or regional long-term ombudsman of statistical data and reports, as required to implement the provisions of this article or any applicable federal law, exclusive of any material that identifies any resident or complainant.

(d) The executive director of the state commission on aging shall have access to the records and files of the long-term care ombudsman program to verify its effectiveness and quality where the identity of any complainant or resident is not disclosed.
§16-5L-16. Limitations on liability.

1. (a) An ombudsman participating in an investigation carried out pursuant to section ten of this article and long-term care ombudsman volunteers who are performing their duties pursuant to section eight of this article shall be immune from any civil liability that otherwise might result by reason of his or her participation in the investigation as long as such participation is not violative of any applicable law, rule or regulation, done within the scope of their employment and done in good faith.

2. (b) If an act or omission by any long-term care ombudsman, or by any facility employee acting in good faith at the direction of a long-term care ombudsman pursuant to a specific resident complaint, causes a resident's rights to be violated, no long-term care facility, its owners, administrators, officers, director, agents, consultants, employees or any member of management shall be held civilly liable as a result of said act or omission.

§16-5L-17. Availability of legal counsel.

1. The state commission on aging shall establish and maintain procedures to ensure that:

2. (a) Adequate legal counsel is available to the long-term care ombudsman program for advice, consultation and representation as necessary for any state or regional long-term care ombudsman or ombudsman volunteer in connection with the performance of the ombudsman's or ombudsman volunteer's official duties; and

3. (b) The long-term care ombudsman program has the ability to pursue administrative, legal and other appropriate remedies on behalf of residents of long-term care facilities.

§16-5L-18. Willful interference; retaliation; penalties.

1. (a) Any individual who willfully interferes with or impedes a state or regional long-term care ombudsman or ombudsman volunteer in the performance of his or
her official duties shall be guilty of a misdemeanor, and,  
upon conviction thereof, shall be fined not more than one  
hundred dollars, or imprisoned in the county jail for not  
more than ninety days, or both fined and imprisoned.

(b) Any individual who institutes or commits a  
discriminatory, disciplinary, retaliatory or reprisal  
action against any officer or employee of a long-term  
care facility or government department or agency,  
against any resident of a long-term care facility or  
against any guardian, attorney in fact or against any  
family member of any resident of a long-term care  
facility for having filed a complaint with or provided  
information in good faith to a state or regional long-term  
ombudsman or ombudsman volunteer to aid the long-  
term care ombudsman or ombudsman volunteer in  
carrying out the duties pursuant to this article is guilty  
of a misdemeanor, and, upon conviction thereof, shall be  
fined not more than one hundred dollars, or imprisoned  
in the county jail for not more than ninety days, or both  
fined and imprisoned.

(c) Any individual violating the provisions of subsec-  
tion (a) or (b) of this section shall, for the second or any  
subsequent offense under either of these subsections, be  
guilty of a misdemeanor, and, upon conviction thereof,  
shall be fined not more than two hundred fifty dollars,  
or imprisoned in the county jail for not more than ninety  
days, or both fined and imprisoned. Each day of a  
continuing violation after conviction shall be considered  
a separate offense.

(d) There shall be a rebuttable presumption in any  
civil action that any reprisal action, as defined below,  
within ninety days of the incident, is discriminatory,  
disciplinary or retaliatory in violation of the public  
policy of this state. For the purpose of this section, the  
term "reprisal action" refers to action taken by the  
entity involved in a complaint or report against the  
person making the complaint or report, or the person  
with respect to whom the complaint or report was made  
because of the complaint or report, and includes, but is  
not limited to, the following:
(1) Discharge of transfer from a long-term care facility;
(2) Termination of service;
(3) Restriction or prohibition of access to the long-term care facility or its residents;
(4) Discharge from or termination of employment;
(5) Demotion or reduction in remuneration for services;
(6) Any restriction of rights affecting the person's ability to perform his or her employment duties or responsibilities or affecting the person's health, safety or welfare; or
(7) Any restriction against a state or regional long-term care ombudsman or ombudsman volunteer which impedes the carrying out of duties pursuant to this article.

(e) Nothing in this section shall be construed as to infringe upon the rights of an employer to supervise, discipline or terminate an employee for other reasons.

Every long-term care facility in this state shall provide each resident with a copy and shall post in a conspicuous location in at least ten-point type a notice of information on the long-term care ombudsman program. Such notice shall include: (1) The name, address and telephone number of the designated long-term care ombudsman program serving the region in which the facility is located; (2) a brief description of the services provided by the long-term care ombudsman program; and (3) a statement as to the penalties for willful interference and retaliation as provided in section eighteen of this article. The form and wording of the notice shall be approved by the state long-term care ombudsman program.

§16-5L-20. Funding for long-term care ombudsman programs.
The state long-term care ombudsman program shall receive such funds as are appropriated pursuant to the Older Americans Act of 1965, as amended, for the operation of the state long-term care ombudsman program, and shall receive such funds as are appropriated by the Legislature for the operation of the program.

The regional long-term care ombudsman program shall receive such funds as are appropriated by the area agencies on aging pursuant to the Older Americans Act of 1965, as amended.

Any long-term care ombudsman program may solicit and receive funds, gifts and contributions to support the operation of the program. No program shall solicit or receive any funds, gifts or contributions where the solicitation or receipt would jeopardize the independence and objectivity of the program.


Pursuant to chapter twenty-nine-a of this code, the state long-term care ombudsman and the state commission on aging shall promulgate rules to effectuate the purposes and provisions of this article.

§16-5L-22. Severability.

If any provision of this article, or the application thereof to any provision or circumstance, shall be held unconstitutional or otherwise invalid, such invalidity or unconstitutionality shall not affect the provisions or application of this article which can be given effect without the unconstitutional or invalid provisions of application, and to this end the provisions of this article are declared to be severable.

CHAPTER 84

(Com. Sub. for H. B. 2822—By Delegate Brown)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article twenty-two, chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, relating to the detection and control of phenylketonuria, galactosemia, hypothyroidism, and authorizing additional testing for certain other diseases in newborn children; authorizing the bureau of public health to test for and establish programs relating to the same; requiring hospitals, birthing centers, parents or guardians, as well as physicians, to test for such diseases on newborns; replacing the department of health with the bureau of public health; authorizing the state public health commissioner to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article twenty-two, 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 22. DETECTION AND CONTROL OF PHENYLKETONURIA, GALACTOSEMIA, HYPOTHYROIDISM, AND CERTAIN OTHER DISEASES IN NEWBORN CHILDREN.

§16-22-1. Findings.
§16-22-2. Program to combat mental retardation or other severe health hazards; rules; facilities for making tests.
§16-22-3. Tests for phenylketonuria, galactosemia and hypothyroidism and certain other diseases specified by the state public health commissioner; reports; assistance to afflicted children; public health commissioner to promulgate rules.

§16-22-1. Findings.

1 The Legislature finds that phenylketonuria, galactosemia, hypothyroidism, and certain other diseases are usually associated with mental retardation or other severe health hazards. Laboratory tests are readily available to aid in the detection of these diseases and hazards to the health of those suffering thereof may be lessened or prevented by early detection and treatment. Damage from these diseases, if untreated in the early months of life, is usually rapid and not appreciably affected by treatment.

§16-22-2. Program to combat mental retardation or other severe health hazards; rules; facilities for making tests.
The state bureau of public health is hereby authorized to establish and carry out a program designed to combat mental retardation or other severe health hazards in our state's population due to phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the state public health commissioner, and may adopt reasonable rules and regulations necessary to carry out such a program. The bureau of public health shall establish and maintain facilities at its state hygienic laboratory for testing specimens for the detection of phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the state public health commissioner. Tests shall be made by such laboratory of specimens upon request by physicians, hospital medical personnel and other individuals attending newborn infants. The state bureau of public health is authorized to establish additional laboratories throughout the state to perform tests for the detection of phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the state public health commissioner.

§16-22-3. Tests for phenylketonuria, galactosemia and hypothyroidism and certain other diseases specified by the state public health commissioner; reports; assistance to afflicted children; public health commissioner to promulgate rules.

(a) The hospital or birthing center in which an infant is born, the parents or legal guardians, the physician attending a newborn child, or any person attending a newborn child not under the care of a physician shall require and ensure that each such child be tested for phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the state public health commissioner according to current recommendations of the state bureau of public health. Any test found positive for phenylketonuria, galactosemia, hypothyroidism, or certain other diseases specified by the state public health commissioner shall be promptly reported to the state bureau of public health by the director of the laboratory performing such test.
(b) The state bureau of public health, in cooperation with other state departments and agencies, and with attending physicians, is authorized to provide medical, dietary and related assistance to children determined to be afflicted with phenylketonuria, galactosemia, hypothyroidism and certain other diseases specified by the state public health commissioner.

(c) The state public health commissioner is authorized to promulgate rules pursuant to chapter twenty-nine of this code to implement the provisions of this section, with the approval of the secretary of the department of health and human resources.

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight and nine, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eleven, twelve and thirteen, all relating to the West Virginia natural death act; amending definitions; providing for the definition of life-prolonging intervention; procedures for executing a living will; providing additional circumstances for witnessing a living will and deleting the requirement that the witnesses must attest to the declarant's competency; providing for advising persons of the existence and availability of living will and medical power of attorney forms and giving assistance in completing such forms; providing for implementation of a living will when person is in a persistent vegetative state; revocation; physician's duty to communicate and document terminal condition or persistent vegetative state; capacity and intent of declarant; liability and inability of physician to comply with the living will; deleting penalties for willful fraud
in preparation, execution or concealment of a living will; insurance; preservation of existing rights; continuation of an existing living will; reciprocity; relation to existing law; and severability.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight and nine, article thirty, chapter sixteen 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 three new sections, designated sections eleven, twelve and thirteen, all to read as follows:

ARTICLE 30. WEST VIRGINIA NATURAL DEATH ACT.

§16-30-2. Definitions.
§16-30-3. Executing a living will.
§16-30-4. Revocation.
§16-30-5. Physician's duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.
§16-30-6. Competency and intent of declarant.
§16-30-7. Liability and protection of living will; transfer.
§16-30-8. Insurance.
§16-30-9. Preservation of existing rights; no presumption; living wills previously executed.
§16-30-11. Reciprocity.
§16-30-12. Relation to existing law.

§16-30-2. Definitions.

For the purposes of this article, the terms:

(1) "Attending physician" means the physician selected by, or assigned to, a person and who has primary responsibility for the treatment and care of the person;

(2) "Declarant" means a person who has executed a living will;

(3) "Health care provider" means a person, partnership, corporation, facility or institution licensed, certified or authorized by law to provide professional health care services in this state;

(4) "Health care representative" means a person eighteen years of age or older appointed by another person to make health care decisions pursuant to the
provisions of article thirty-a of this chapter or similar act of another state and recognized as valid under the laws of this state;

(5) "Incapacity", or words of like import, means 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 declarant. The declarant's attending physician shall be one of those who makes the determination required herein;

(6) "Life-prolonging intervention" means any medical procedure or intervention which, when applied to a person, would serve solely to artificially prolong the dying process or to maintain the person in a persistent vegetative state. The term "life-prolonging intervention" does not include the administration of medication or the performance of any other medical procedure deemed necessary to provide comfort or to alleviate pain;

(7) "Living will" means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of section three of this article;

(8) "Persistent vegetative state" means a permanent and irreversible state as diagnosed by the attending physician and a second physician in which the person has intact brain stem function but no higher cortical function and has neither self-awareness or awareness of the surroundings in a learned manner;

(9) "Physician" means a person licensed and authorized to practice medicine; and

(10) "Terminal condition" means an incurable condition caused by injury, disease or illness, which in the judgment of the attending physician and a second physician would result in death within a relatively short time.
§16-30-3. Executing a living will.

(a) Any mentally competent person eighteen years of age or older may execute at any time a living will governing the withholding or withdrawal of life-prolonging intervention from himself or herself. A living will made pursuant to this article shall be: (1) In writing; (2) executed by the declarant or by another person in the declarant's presence at the declarant's express direction if the declarant is physically unable to do so; (3) dated; (4) signed in the presence of two or more witnesses at least eighteen years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public as provided in subsection (d) of this section.

(b) In addition, a witness may not be:

(1) The person who signed the living will on behalf of and at the direction of the declarant;

(2) Related to the declarant by blood or marriage;

(3) Entitled to any portion of the estate of the declarant according to the laws of intestate succession of the state of the declarant's domicile or under any will of the declarant or codicil thereto: Provided, That the validity of the living will shall not be affected when a witness at the time of witnessing such living will was unaware of being a named beneficiary of the declarant's will;

(4) Directly financially responsible for declarant's medical care;

(5) The attending physician; or

(6) The declarant's health care representative, proxy or successor health care representative.

(c) It shall be the responsibility of the declarant to provide for notification to his or her attending physician and other health care providers of the existence of the living will. An attending physician, when presented with the living will, shall make the living will or a copy of the living will a part of the declarant's medical records.
(d) At the time of admission to any hospital or extended care facility, each person shall be advised of the existence and availability of living will and medical power of attorney forms and shall be given assistance in completing such forms if the person desires: Provided, That under no circumstances may admission to a hospital or extended care facility be predicated upon a person having completed either a medical power of attorney or living will.

(e) The living will may, but need not, be in the following form, and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the living will which can be given effect without the invalid direction and to this end the directions in the living will are severable.

"LIVING WILL"

"Living will made this ______________ day of __________________________ (month, year). I, ____________________________, being of sound mind, willfully and voluntarily declare that in the absence of my ability to give directions regarding the use of life-prolonging intervention, it is my desire that my dying shall not be artificially prolonged under the following circumstances:

"If at any time I should be certified by two physicians who have personally examined me, one of whom is my attending physician, to have a terminal condition or to be in a persistent vegetative state, I direct that life-prolonging intervention that would serve solely to artificially prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any other medical procedure deemed necessary to keep me comfortable and alleviate pain.

"SPECIAL DIRECTIVES OR LIMITATIONS ON THIS DECLARATION: (If none, write "none".)
"It is my intention that this living will be honored as
the final expression of my legal right to refuse medical
or surgical treatment and accept the consequences
resulting from such refusal.

"I understand the full import of this living will.

"Signed _______________________________

"Address _______________________________


"I did not sign the declarant's signature above for or
at the direction of the declarant. I am at least eighteen
years of age and am not related to the declarant by blood
or marriage, entitled to any portion of the estate of the
declarant according to the laws of intestate succession
of the state of the declarant's domicile or to the best of
my knowledge under any will of declarant or codicil
thereto, or directly financially responsible for declar-
ant's medical care. I am not the declarant's attending
physician or the declarant's health care representative,
proxy or successor health care representative under a
medical power of attorney.

"Witness _______________________________

"Address _______________________________


"Witness _______________________________

"Address _______________________________


"STATE OF _______________________________,

"COUNTY OF ____________________________,

"The foregoing instrument was acknowledged before
me this ________________________________ (date) by the
declarant and by the two witnesses whose signatures
appear above.

"My commission expires: ____________________

"
§16-30-4. Revocation.

(a) A living will may be revoked at any time only by the declarant or at the express direction of the declarant, without regard to the declarant's mental state by any of the following methods:

(1) By being destroyed by the declarant or by some person in the declarant's presence and at his direction;

(2) By a written revocation of the living will signed and dated by the declarant or person acting at the direction of the declarant. Such revocation shall become effective only upon delivery of the written revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the declarant's medical record the time and date when he or she receives notification of the written revocation; or

(3) By a verbal expression of the intent to revoke the living will in the presence of a witness eighteen years of age or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record, in the declarant's medical record, the time, date and place of when he or she receives notification of the revocation.

(b) There is no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

§16-30-5. Physician's duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.

(a) An attending physician who has been notified of the existence of a living will executed under this article, without delay after the diagnosis of a terminal condition
or persistent vegetative state of the declarant, shall take
the necessary steps to provide for confirmation, written
certification and documentation of the declarant's
terminal condition or persistent vegetative state in the
declarant's medical record.

(b) Once confirmation, written certification and
documentation of the declarant’s terminal condition is
made, the attending physician shall verbally or in
writing inform the declarant of his or her terminal
condition or the declarant’s health care representative,
next of kin or other responsible person, if the declarant
lacks capacity to comprehend such information and
shall document such communication in the declarant’s
medical record.

(c) All inpatient health care facilities shall develop a
system to visibly identify a person’s chart which
contains a living will as set forth in this article.

§16-30-6. Competency and intent of declarant.

(a) The desires of a capable declarant at all times
supersede the effect of the living will.

(b) If a person is incapacitated at the time of the
decision to withhold or withdraw life-prolonging
intervention, the person’s living will executed in
accordance with section three of this article is presumed
to be valid. For the purposes of this article, a physician
or health facility may presume in the absence of actual
notice to the contrary that a person who executed a
living will was of sound mind when it was executed. The
fact that a person executed a living will is not an
indication of the persons’s mental incapacity.

§16-30-7. Liability and protection of living will; transfer.

(a) No health care provider or employee thereof who
in good faith and pursuant to reasonable medical
standards causes or participates in the withholding or
withdrawing of life-prolonging intervention from a
person pursuant to a living will made in accordance
with this article shall, as a result thereof, be subject to
criminal or civil liability.
(b) An attending physician who cannot comply with the living will of a declarant pursuant to this article shall, in conjunction with the health care representative, next of kin of the declarant or other responsible person, effect the transfer of the declarant to another physician who will honor the living will of the declarant. Transfer under these circumstances does not constitute abandonment.

§16-30-8. Insurance.

(a) The withholding or withdrawal of life-prolonging intervention from a declarant in accordance with the provisions of this article does not, for any purpose, constitute a suicide and does not constitute the crime of assisting suicide.

(b) The making of a living will pursuant to section three of this article does not affect in any manner the sale, procurement or issuance of any insurance policy nor does it modify the terms of an existing policy. No insurance policy may be legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging intervention from an insured person, notwithstanding any term of the policy to the contrary.

(c) No health care provider or health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation or mutual nonprofit hospital service corporation shall require any person to execute a living will as a condition for being insured for or receiving health care services.

§16-30-9. Preservation of existing rights; no presumption; living wills previously executed.

(a) Nothing in this article impairs or supersedes any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-prolonging intervention in any lawful manner. In such respect the provisions of this article are cumulative.

(b) This article creates no presumption concerning the intention of a person who has not executed a living will to consent to the use or withholding of life-prolonging
intervention in the event of a terminal condition or
persistent vegetative state.

(c) A living will executed prior to the effective date
of this article and which expressly provides for the
withholding or withdrawal of life-prolonging interven-
tion or for the termination of life-sustaining procedures
in substantial compliance with the provisions of section
three of this article is hereby recognized as a valid living
will, as though it were executed in compliance with the
provisions of this article.

§16-30-11. Reciprocity.

A living will executed in another state is validly
executed for the purposes of this article if it is executed
in compliance with the laws of this state or with the laws
of the state where executed and expressly provides for
the withholding or withdrawal of life-prolonging
intervention or for the termination of life-sustaining
procedure.

§16-30-12. Relation to existing law.

Nothing in this article shall be construed to abrogate
the common law doctrine of medical necessity.


The provisions of this article are severable and if any
provision, section or part thereof shall be 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 86
(S. B. 384—By Senator Lucht)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article
twenty-three, chapter nineteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to establishing four stakes races including a West Virginia futurity race and a Frank Gall memorial stakes race; increasing sire owners share; decreasing purse supplements; and providing for administration and funding of restricted races.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; non-restricted purse supplements.

1 The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account — West Virginia Thoroughbred Development Fund”. Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The purpose of the fund is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners. A further objective of the fund is to aid in the rejuvenation and development of the present horse tracks now operating in West Virginia for capital improvements, operations or increased purses between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of October, one thousand nine hundred ninety-two: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the state treasury called the “administration and promotion account”. The racing commission is
authorized to expend the moneys deposited in the administration and promotion account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, however, That during any fiscal year in which the commission anticipates spending any money from such account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year's expenditures and projected expenditures for the next year.

The funds shall be established forthwith and operate on an annual basis.

(a) Funds will be expended for awards and purses in the following manner:

(i) Fifteen percent of the fund shall be available for distribution for events taking place between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of December, one thousand nine hundred eighty-five;

(ii) Fifty percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-six, and the thirty-first day of December, one thousand nine hundred eighty-six;

(iii) Seventy-five percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-seven, and the thirty-first day of December, one thousand nine hundred eighty-seven;
(iv) One hundred percent of the fund shall be available thereafter; and

(v) After the first day of July, one thousand nine hundred ninety-one, and after the thirty-first day of December, one thousand nine hundred ninety-one, and annually thereafter, the first one hundred thousand dollars of the fund shall be available for distribution for a maximum of four stakes races. One of these races shall be the West Virginia futurity and the second shall be the Frank Gall memorial stakes. The remaining races may be chosen by the committee set forth in subsection (b) of this section.

(b) Awards and purses will be distributed as follows:

(i) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in such races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. Of the funds available for distribution in any one year to breeders/raisers, neither the breeders as a group nor the raisers as a group shall, until the first day of January, one thousand nine hundred ninety-four, qualify for more than sixty and one-tenth percent of such funds.

(ii) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at
a West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners' awards shall be distributed according to the ratio purses earned by the progeny of accredited West Virginia stallions in such races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in such races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire.

(iii) The owner of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet will receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in such races of a particular race horse to the total amount earned by all accredited race horses in such races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse.

(iv) In no event shall purses earned at a meet held at a track which did not make a contribution to the thoroughbred development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this section.

(v) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall: (1) Be utilized to fund the races established in subsection (d) of this section; and (2) revert back into the general account of the fund for distribution in the next year.

Distribution shall be made on the fifteenth of each
February for the preceding year's achievements.

(c) The remainder, if any, of the fund that is not available for distribution in the above program in any one year is reserved for regular purses, marketing expenses and for capital improvements in the amounts and under the conditions provided hereinafter. Fifty percent of such remainder shall be reserved for payments into the regular purse fund established in subsection (b), section nine of this article. Up to five hundred thousand dollars per year shall be available for: (1) Capital improvements at the eligible licensed horse racing tracks in the state; and (2) marketing and advertising programs above and beyond two hundred fifty thousand dollars for the eligible licensed horse racing tracks in the state: Provided, That moneys shall be expended for capital improvements or marketing and advertising purposes as described above only in accord with a plan filed with and receiving the prior approval of the racing commission, and on a basis of fifty percent participation by the licensee and fifty percent participation by moneys from the fund, in the total cost of approved projects: Provided, however, That funds approved for one track may not be used at another track unless the first track ceases to operate or is viewed by the commission as unworthy of additional investment due to financial or ethical reasons.

(d) Each pari-mutuel thoroughbred horse track shall provide at least the following restricted races in accordance with the following time schedules:

(i) The first day of July, one thousand nine hundred eighty-four, to the thirty-first day of December, one thousand nine hundred eighty-four — one restricted race per eight racing days;

(ii) The first day of January, one thousand nine hundred eighty-five, to the thirty-first day of December, one thousand nine hundred eighty-five — one restricted race per seven racing days;

(iii) The first day of January, one thousand nine
hundred eighty-six, to the thirty-first day of December,
one thousand nine hundred eighty-six — one restricted
race per six racing days;

(iv) The first day of January, one thousand nine
hundred eighty-seven, to the thirty-first day of De-
cember, one thousand nine hundred eighty-seven — one
restricted race per five racing days;

(v) The first day of January, one thousand nine
hundred eighty-eight, to the thirty-first day of De-
cember, one thousand nine hundred eighty-eight — one
restricted race per four racing days;

(vi) The first day of January, one thousand nine
hundred eighty-nine, to the thirty-first day of December,
one thousand nine hundred eighty-nine — one restricted
race per three racing days; and thereafter.

The restricted races established in this subsection
shall be administered by a three-member committee
consisting of: (1) The racing secretary; (2) a member
appointed by the authorized representative of a majority
of the owners and trainers at the thoroughbred track;
and (3) a member appointed by a majority of the
thoroughbred breeders. The purses shall be twenty
percent larger than the purses for similar type races at
each track. Restricted races shall be funded by each
racing association from:

(1) Moneys placed in the general purse fund up to a
maximum of one hundred fifty thousand dollars per
year.

(2) Moneys as provided in subdivision (v), subsection
(b) of this section shall be placed in a special fund called
the “West Virginia accredited race fund”. The racing
schedules, purse amounts and types of races are subject
to the approval of the West Virginia racing commission.

(e) No association or licensee qualifying for the
alternate tax provision of subsection (b), section ten of
this article shall be eligible for participation in any of
the provisions of this section.
AN ACT to amend article two, chapter nine 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 requiring the commissioner of the division of human services to develop caseload standards; creating a caseload standards committee to make recommendations to the commissioner; allowing representatives of employee organizations to serve in an advisory role; allowing the caseload standards to be used as a basis of the department of health and human resources personal services budget request; and defining terms.

Be it enacted by the Legislature of West Virginia:

That article two, chapter 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 six-a, to read as follows:

ARTICLE 2. DIVISION OF HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-6a. Commissioner to develop caseload standards; committee; definitions.

1. The commissioner shall develop caseload standards based on the actual duties of employees in each program area of the department and may take into consideration existing professional caseload standards. Standards shall be reasonable and achievable.

2. A caseload standards committee shall be established and composed of two employees from each program area in each region. The members shall be elected by the employees from each program area from among all the employees in the program area. A subcommittee composed of the members from each program of

...
services provided shall meet with the appropriate office
director to develop caseload standards for each pro-
gram. The committee shall meet at least twice yearly
and shall report recommendations to the commissioner
through the personnel advisory committee representa-
tive under existing procedures.

Representatives of an employee organization may
serve in an advisory role.

The caseload standards which are developed establish-
ing minimum and maximum caseloads shall be advisory
for the department in the hiring of staff and in
individual caseload assignments, and may be used as a
basis of the department of health and human resources
personal services budget request to the governor and the
Legislature.

As used in this section:

"Caseload standards" means a measurable numerical
minimum and maximum workload which an employee
can reasonably be expected to perform in a normal
workday or workweek, based on the number, variety
and complexity of cases handled or number of different
job functions performed.

"Professional caseload standards" means standards
established by national standard setting authorities,
when they exist, or caseload standards used in other
states which have similar job titles.

CHAPTER 88
(H. B. 2257—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]
license fee; and providing for trout stamps for an additional fee.

_Be it enacted by the Legislature of West Virginia:_

That section forty-five, 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.**

§20-2-45. Class K nonresident three-day, statewide, fishing license.

1 A Class K license shall be a nonresident fishing license and shall entitle the licensee to fish for all fish except trout in all counties of the state for a period not to exceed three days. It shall be issued only to citizens of the United States or Canada and to unnaturalized persons possessing the permit required by section twenty-nine of this article who are not residents of this state. The fee therefor shall be five dollars.

2 Trout fishing is not permitted with a Class K license unless such license has affixed thereto an appropriate trout stamp as prescribed by the division of natural resources. The fee for a trout stamp shall be seven dollars and fifty cents. The trout stamp is in addition to a Class K license.

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**CHAPTER 89**

(Com. Sub. for H. B. 2462—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fifteen, article twenty-five; to amend and reenact sections two and nine, article two; to amend and reenact section five-b, article three; to amend and reenact sections fourteen, fifteen and sixteen, article four; to
further amend said article four by adding thereto a new section, designated section nineteen; to amend and reenact section one, article six; section twelve, article seven; sections five, seven and fifteen, article eight; section one, article ten; to amend article sixteen-b by adding thereto a new section, designated section four; to amend article twenty by adding thereto a new section, designated section twenty; to amend article twenty-b by adding thereto a new section, designated section nine; to amend and reenact section two, article twenty-two; section two, article twenty-three; sections four, five, six, ten, fourteen, sixteen, seventeen and nineteen, article twenty-four; to further amend said article twenty-four by adding thereto a new section, designated section forty-four; to amend and reenact sections two, six, seven and nine, article twenty-five; to further amend said article twenty-five by adding thereto a new section, designated section twenty-one; to amend and reenact sections two, four, nine, seventeen and twenty-four, article twenty-five-a; to further amend said article twenty-five-a by adding thereto a new section, designated section thirty-two; to amend and reenact sections three and eight, article twenty-six-a; section five, article twenty-seven; section eight, article thirty-one; section eight, article thirty-two; and section seven, article thirty-three, all of said chapter thirty-three; and to further amend chapter thirty-three by adding thereto a new article, designated article thirty-four-a, all relating to insurance; salary of the insurance commissioner; reimbursement for educational and training expenses of employees of insurance commissioner; examination of insurers, agents, brokers and solicitors; annual fee; special accounts; access to books, records, etc.; capital and surplus requirements; general provisions; annual statement by insurer; reinsurance; limit of risk, domestics to comply with reciprocal state laws; insurance policy; scope of article; assets and liabilities; valuation of real property; investments; limitation of investments in one person; government obligations; real property mortgages; rehabilitation and liquidation; definitions; accident and sickness rates, rates and rating organizations and rate making and authority of commissioner to
Be it enacted by the Legislature of West Virginia:

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

CHAPTER 33. INSURANCE.

Article
2. Insurance Commissioner.
3. Licensing, Fees and Taxation of Insurance.
6. The Insurance Policy.
8. Investments.
10. Rehabilitation and Liquidation.
16B. Accident and Sickness Rates.
20B. Rates and Malpractice Insurance Policies.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Organizations.
26A. West Virginia Life and Health Insurance Guaranty Association Act.
27. Insurance Holding Company Systems.
32. Risk Retention Act.
34A. Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

1 The commissioner shall receive an annual salary of forty-seven thousand eight hundred dollars and actual expenses incurred in the performance of official business, which compensation shall be in full for all services. The office of the commissioner shall be maintained in the capitol or other suitable place in Charleston. The commissioner may employ such persons and incur such expenses as may be necessary in the discharge of his duties and shall fix the compensation of such employees, but such compensation shall not exceed the appropriation therefor. The commissioner may reimburse employees for reasonable expenses incurred for job-related training and educational seminars and courses. All compensation for salaries and expenses of the commissioner and his employees shall be paid monthly out of the state treasury by requisition upon the auditor, properly certified by the commissioner.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

1 (a) The commissioner, his deputies, other employees or his accredited examiners shall, at such times as he deems necessary, but at least once every three years,
872 INSURANCE

visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner at such times as he deems necessary may cause an examination to be conducted of any foreign or alien insurer licensed to transact insurance in this state. The commissioner may examine the affairs of any insurer applying for a license to transact any insurance business in this state. Personnel conducting such examinations of either a domestic, foreign or alien insurer shall be compensated for each day worked at a rate set by the commissioner. Such personnel shall also be reimbursed for their travel and living expenses at the rate set by the commissioner. The commissioner may, at his sole discretion as he deems necessary, appoint other individuals who are not employees of the department of insurance to conduct or participate in such examinations. Such individuals shall include, but not be limited to, independent certified public accountants, independent actuaries, qualified insurance examiners or other individuals with particular skills or areas of expertise deemed competent by the insurance commissioner, or any combination of the foregoing. Such personnel who are not employees of the department of insurance shall all be compensated for their work, travel and living expenses at rates approved by the commissioner, or as otherwise provided by law. As used in this section the costs of an examination shall mean: (1) The entire compensation for each day worked by all personnel, including those who are not employees of the department of insurance, the conduct of such examination calculated as hereinbefore provided; (2) travel and living expenses of all personnel, including those who are not employees of the department of insurance, directly engaged in the conduct of such examination, calculated at the rates as hereinbefore provided for; (3) all other incidental expenses incurred by or on behalf of such personnel in the conduct of such authorized examination. All insurers subject to the provisions of this section of the code shall annually pay to the commissioner on or before the first day of July, one thousand nine hundred ninety-one, and every first
day of July thereafter, an examination assessment fee
of eight hundred dollars. Four hundred and fifty dollars
of this fee shall be paid to the treasurer of the state to
the credit of a special revolving fund to be known as the
"Commissioner’s Examination Revolving Fund" which
is hereby established and three hundred and fifty
dollars shall be paid to the treasurer of the state. The
commissioner may at his discretion, upon notice to the
insurers subject to this section, increase this examina-
tion assessment fee or levy an additional examination
assessment fee of two hundred fifty dollars. In no event
shall the total examination assessment fee including any
additional examination assessment fee levied exceed one
thousand five hundred dollars per insurer in any
calendar year. The moneys collected by the commis-
sioner from an increase or additional examination
assessment fee shall be paid to the treasurer of the state
to be credited to the "Commissioner’s Examination
Revolving Fund". Any funds expended or obligated by
the commissioner from the “Commissioner’s Examina-
tion Revolving Fund” shall be expended or obligated
solely for defrayment of the costs of examinations of the
financial affairs of insurance companies made by the
commissioner pursuant to this section or for the
purchase of equipment and supplies, travel, education
and training for his deputies, other employees and
accredited examiners necessary for the commissioner to
fulfill the statutory obligations created by this section.
The commissioner may at his discretion require other
individuals who are not employees of the department of
insurance who have been appointed by the commissioner
to conduct or participate in the examination of insurers
to bill and receive payments directly from insurers
being examined for their work, travel and living
expenses as previously provided for in this section. For
purposes of this section, “insurance company” includes
any domestic or foreign stock company, mutual com-
pany, mutual protective association, farmers’ mutual fire
companies, fraternal benefit society, reciprocal or inter-
insurance exchange, nonprofit medical care corporation,
nonprofit health care corporation, nonprofit hospital
service association, nonprofit dental care corporation,
health maintenance organization, captive insurance company, risk retention group or other insurer, regardless of the type of coverage written, benefits provided, or guarantees made by each. The commissioner shall make a full written report of each such examination of an insurer, certified to by the commissioner or the examiner in charge of such examination. The commissioner shall furnish a copy of the report to the insurer examined not less than ten days prior to filing the same in his office. If such insurer so requests in writing, within such ten-day period, the commissioner shall consider the objections of such insurer to the report as proposed, and shall not so file the report until after such modifications, if any, have been made therein as the commissioner deems proper. The report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against the insurer examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner or his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served or filed in the commissioner's office. The examination of an alien insurer shall be limited to its United States business. In lieu of making his own examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of the state of domicile of a foreign insurer or the state of entry into the United States of an alien insurer.

(b) The commissioner may also cause to be examined at such times as he deems necessary the books, records, papers, documents, correspondence and methods of doing business of any agent, broker or solicitor licensed by this state.

(c) For such purposes the commissioner, his deputies and employees shall have free access to all books, records, papers, documents and correspondence of all such insurers (whether domestic, foreign or alien),
agents, brokers and solicitors wherever such books, records, papers, documents and records are situate.

(d) The commissioner may revoke the license of any such insurer, agent, broker or solicitor who refuses to submit to such examination.

(e) The commissioner may withhold from public inspection any examination or investigation report for such time as he may deem prudent, but no such report shall be withheld from public inspection for longer than ninety days after the same has been filed.

(f) In addition to conducting an examination, the commissioner, his deputies, other employees or other individuals appointed by the commissioner who are not employees of the department of insurance, may as the commissioner deems necessary analyze or review any phase of the operations or methods of doing business of an insurer, agent, broker, solicitor or other individual or corporation transacting or attempting to transact an insurance business in the state of West Virginia. The commissioner may use the full resources provided by this section in carrying out these responsibilities, including such personnel and equipment provided by this section as the commissioner deems necessary.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURANCE.

§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. Such capital and surplus shall be unen- capped.
ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Annual statement by insurer.
§33-4-15. Reinsurance.
§33-4-16. Limit of risk.
§33-4-19. Domestics to comply with reciprocal state laws.

§33-4-14. Annual statement by insurer.

1 (a) Each licensed insurer shall annually on or before March first unless the time is extended by the commissioner for good cause shown, file with the commissioner a true statement of its financial condition, transactions and affairs as of the December thirty-first preceding; said statement shall be on the appropriate national association of insurance commissioners annual statement blank which should be prepared in accordance with the national association of insurance commissioners annual statement instructions handbook and follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual as amended. The commissioner may require that all or part of the information contained in the annual statement blank be submitted to the department in a computer-readable form compatible with the electronic data processing system of the department. The statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise.

2 (b) Each domestic, foreign and alien insurer, organization or corporation who is subject to the requirements of this section shall annually on or before the first day of March each year, file with the national association of insurance commissioners, and pay the fee established by the national association of insurance commissioners for filing, review or processing of the information, a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and any other required information. Any amend-
ments and addenda to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(c) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (a) of this section shall be deemed in compliance with this section.

(d) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this article and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder.

(e) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the national association of insurance commissioners insurance regulatory information system are confidential and may not be disclosed by the department.

(f) The commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due or within any extension of time which the commissioner, for good cause, may have granted.

(g) Any variance to the requirements of this section shall require the express authorization of the commissioner.

(h) The commissioner pursuant to chapter twenty-nine-a may promulgate rules and regulations to effectuate the requirements of this article.
§33-4-15. Reinsurance.

(a) An insurer shall reinsure its risks, or any part thereof, only in solvent insurers having surplus to policyholders not less in amount than the paid-in capital required under this chapter of a stock insurer licensed to transact like kinds of insurance.

(b) An insurer shall so reinsure in such alien insurers only as are authorized to transact insurance in at least one state of the United States or have in the United States a duly authorized attorney-in-fact to accept service of legal process against the insurer as to any liability which might arise on account of such reinsurance.

(c) No credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is in insurers either licensed in West Virginia to transact insurance of the kind being reinsured or which have been approved by the commissioner in writing; nor unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer nor unless under the reinsurance contract the liability for such reinsurance is assumed by the assuming insurer or insurers as of the same effective date.

(d) Any licensed insurer may accept reinsurance for the same kinds of insurance and within the same limits as it is authorized to transact direct insurance.

(e) No insurer shall reinsure all or substantially all of its risks on property or lives located in West Virginia, or substantially all of a major class thereof, unless the reinsurance agreement be filed with and approved by the commissioner.

§33-4-16. Limit of risk.

(a) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in West Virginia or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.
(b) A "subject of insurance" for the purpose of this section, as to insurance against fire and hazards other than windstorm or earthquake, includes all properties insured by the same insurer which are customarily considered by insurers to be subject to loss or damage from the same fire or other such hazard insured against.

(c) Reinsurance in licensed or approved insurers as authorized by section fifteen of this article shall be deducted in determining risk retained. As to surety risk, deduction shall also be made of the amount assumed by any established incorporated cosurety and the value and security deposited, pledged or held subject to the surety's consent and for the surety's protection.

(d) "Surplus to policyholders" for the purpose of this section shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination by the commissioner, whichever is the more recent at time of assumption of such risk.

(e) As to alien insurers this section shall apply only to risks and surplus to policyholders of the insurer's United States branch.

(f) This section shall not apply to life or accident and sickness insurance, title insurance, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not reasonably ascertainable on issuance of the policy.

§33-4-19. Domestics to comply with reciprocal state laws.

No domestic insurer shall transact insurance in any "reciprocal state" in which it is not then duly and properly licensed to transact insurance.

(a) A reciprocal state, as used herein, shall mean a state which has in effect a similar prohibition against insurers domiciled in that state.

(b) This section shall not apply to:

(1) Contracts entered into where the prospective insurant is personally present in the state in which the
the insurer is authorized to transact insurance when they sign the application.

(2) The issuance of certificates under a lawfully transacted group life or group disability policy, where the master policy was entered into in a state in which the insurer was then authorized to transact insurance.

(3) Insurance covering persons or risks located in a reciprocal state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocal state.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-1. Scope of article.

This article shall not apply to reinsurance.

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-12. Valuation of real property.

(a) In the event of a default real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal as prescribed in subsection (b) of this section twelve, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(b) The value of other real property acquired or held by an insurer shall be subject to the approval of the commissioner. The commissioner may, at his discretion at the time such investment is made, or at any time, cause any such real property to be appraised by a licensed real estate appraiser, subject to the Real Estate Appraiser Licensing and Certification Act pursuant to article fourteen, chapter thirty-seven, appointed or approved by the commissioner, and the reasonable
expense of such appraisal shall be paid by the insurer.

No insurer may hereafter make any increase in the valuation of any real properties unless and until such increased valuation shall be likewise approved by the commissioner.

ARTICLE 8. INVESTMENTS.

§33-8-5. Limitation of investments in one person.

An insurer shall not, except with the consent of the commissioner, have at one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person, institution or corporation, aggregating an amount exceeding five percent of the insurer's assets. This restriction shall not apply to investments in or loans upon the security of general obligations of the United States or fully guaranteed by the United States or the District of Columbia or any state of the United States or of political subdivisions of the state of West Virginia or other states of the United States, made pursuant to section seven of this article, or include policy loans made under section nineteen of this article or investments in foreign securities pursuant to section eight of this article. Pursuant to section 106(b) of the "Secondary Mortgage Market Enhancement Act of 1984," an act of the Congress of the United States, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a) (1) or (2) of that act.

§33-8-7. Government obligations.

An insurer may invest any of its funds in:

(a) Bonds or securities which are the direct obligation of or which are secured or guaranteed in whole or in part as to principal and interest by the United States, any state or territory of the United States or the District of Columbia, where there exists the power to levy taxes
for the prompt payment of the principal and interest of
such bonds or evidences of indebtedness, and in bonds
issued by the federal land banks or securities issued by
the federal home loan bank system. Pursuant to section
106(b) of the “Secondary Mortgage Market Enhance-
ment Act of 1984,” an act of the Congress of the United
States, this section prohibits domestic insurers from
exercising the investment authority granted any person,
trust, corporation, partnership, association, business
trust or business entity pursuant to section 106(a) (1) or
(2) of that act.

(b) Bonds or evidences of indebtedness which are
direct general obligations of any county, district, city,
town, village, school district, park district or other
political subdivision of this state or any other state or
territory of the United States or the District of
Columbia, which shall not be in default in the payment
of any of its general obligation bonds, either principal
or interest, at the date of such investment; where they
are payable from ad valorem taxes levied on all the
taxable property located therein and the total indebted-
ness after deducting sinking funds and all debts
incurred for self-sustaining public works does not
exceed ten per centum of the actual value of all taxable
property therein on the basis of which the last assess-
ment was made before the date of such investment.

§33-8-15. Real property mortgages.

(a) An insurer may invest in entire first mortgages on
improved unencumbered real estate or the entire issue
of bonds secured thereby located within any state worth
at least thirty-three and one third per centum more than
the amount loaned thereon, based on sound appraisal by
a competent appraiser and duly certified by him,
provided that the investment in any one mortgage or
any one issue of bonds or any one contract for deed does
not exceed twenty-five thousand dollars or two per
centum of the insurer's assets, whichever is the greater.

(b) “Improved real estate,” as used in this section,
means all farmland which has been reclaimed and is
used for the purpose of husbandry, whether for tillage
or pasture, and all real property on which permanent buildings suitable for residence or commercial use are situated.

(c) Real property shall not be deemed to be encumbered within the meaning of this section by reason of the existence of instruments reserving or excepting mineral rights and interests, rights-of-way, sewer rights and rights in walls or easements, nor by reason of building restrictions or other restrictive covenants, nor by reason of the fact that it is subject to lease under which rents or profits are reserved to the owners:

Provided, That the security for such investment is a full and unrestricted first lien upon such real property and that there is no condition nor right of reentry or forfeiture under which such investments can be cut off, subordinated or otherwise disturbed.

(d) Notwithstanding the restrictions set forth in this section any insurer may invest (1) in bonds or notes secured by mortgage or trust deed insured by the federal housing administration or in debentures issued by it under the terms of an act of Congress of the United States entitled the “National Housing Act,” as heretofore or hereafter amended and (2) in securities issued by national mortgage associations established by or under the authority of the National Housing Act, and (3) in bonds or notes secured by mortgage or trust deed guaranteed as to principal by the administrator of veterans’ affairs pursuant to the provisions of Title III of an act of Congress of the United States as of June twenty-two, one thousand nine hundred forty-four, entitled the “Servicemen’s Re-Adjustment Act of one thousand nine hundred forty-four,” as heretofore or hereafter amended. Pursuant to section 106(b) of the “Secondary Mortgage Market Enhancement Act of 1984,” an act of the Congress of the United States, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a) (1) or (2) of that act.

(e) Notwithstanding the restrictions herein set forth,
the amount of any first mortgage investment as limited
by subsection (a) of this section may be exceeded if and
to the extent that such excess shall be guaranteed by the
administrator of veterans' affairs pursuant to the
provisions of Title III of an act of Congress of the United
States of June twenty-two, one thousand nine hundred
forty-four, entitled the "Servicemen's Re-Adjustment
Act of one thousand nine hundred forty-four," as
heretofore or hereafter amended. Pursuant to section
106(b) of the "Secondary Mortgage Market Enhance-
ment Act of 1984," an act of the Congress of the United
States, this section prohibits domestic insurers from
exercising the investment authority granted any person,
trust, corporation, partnership, association, business
trust or business entity pursuant to section 106(a) (1) or
(2) of that act.

(f) No such insurer shall in any manner, either
directly or indirectly, by means of corporations, holding
companies, trustees or otherwise, invest in real estate
securities junior to first mortgages unless the first
mortgage in its entirety is owned by the insurer.

ARTICLE 10. REHABILITATION AND LIQUIDATION.
§33-10-1. Definitions.
For the purpose of this article the following defini-
tions shall apply:

(a) "Impairment" means a financial situation in which,
based upon the financial information which would be
required by this chapter for the preparation of the
insurer's annual statement, the assets of an insurer are
less than the sum of all of its liabilities and required
reserves including any minimum capital and surplus
required of that insurer by this chapter so as to
maintain its authority to transact the kinds of business
or insurance it is so authorized to transact.

(b) "Insolvency" means a financial situation in which,
based upon the financial information which would be
required by this chapter for the preparation of the
insurer's annual statement, the assets of the insurer are
less than the sum of all of its liabilities and required
reserves.
(c) "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.

(d) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this article for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(e) "State" means any state, district or territory of the United States.

(f) "Foreign country" means any other jurisdiction not in any state.

(g) "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.

(h) "Ancillary state" means any state other than a domiciliary state.

(i) "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.

(j) "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
good or 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.

(k) "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.

(l) "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.

(m) "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.

(n) "Receiver" means receiver, liquidator, rehabilita-
tor, or conservator as the context may require.

(o) "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
insurer.

(p) "Foreign guaranty association" means any similar
entities now in existence in or hereafter created by the
Legislature of any other state.

ARTICLE 16B. ACCIDENT AND SICKNESS RATES.
§33-16B-4. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1. The commissioner may as he deems necessary after notice and hearing promulgate rules and regulations in accordance with chapter twenty-nine-a of this code to define the commissioner's authority to consider the operating results of an insurer's affiliates and subsidiaries in the rate making and solvency determination of that insurer.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-20. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1. The commissioner may as he deems necessary after notice and hearing promulgate rules and regulations in accordance with chapter twenty-nine-a of this code to define the commissioner's authority to consider the operating results of an insurer's affiliates and subsidiaries in the rate making and solvency determination of that insurer.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-9. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1. The commissioner may as he deems necessary after notice and hearing promulgate rules and regulations in accordance with chapter twenty-nine-a of this code to define the commissioner's authority to consider the operating results of an insurer's affiliates and subsidiaries in the rate making and solvency determination of that insurer.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


1. 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 seven (assets and liabilities), 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), article thirty-four (administrative supervision), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition) and article thirty-five (criminal sanctions for failure to report impairment), 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 seven (assets and liabilities), 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 twenty-seven (insurance holding company systems), article thirty-three (annual audited financial report), article thirty-four (administrative supervision), article thirty-four-a (standards and commissioner's
authority for companies deemed to be in hazardous
financial condition) and article thirty-five (criminal
sanctions for failure to report impairment).

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.
§33-24-5. Licenses; name of corporation.
§33-24-6. Commissioner to enforce article; approval of contracts, forms,
rates and fees.
§33-24-10. Investments; bonds of corporate officers and employees, minimum
statutory surplus.
§33-24-17. Ex parte orders, injunctions and other orders.
§33-24-44. Authority of commissioner to promulgate rules and regulations
regarding affiliate and subsidiary operating results.

*§33-24-4. Exemptions; applicability of insurance laws.

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner), article four (general provisions) except that
11 section sixteen of article four shall not be applicable
12 thereto, article six, section thirty-four (fee for form and
13 rate filing), article six-c (guaranteed loss ratio), article
14 seven (assets and liabilities), article ten (rehabilitation
15 and liquidation), article eleven (unfair practices and
16 frauds), article twelve (agents, brokers and solicitors),
17 section fourteen, article fifteen (individual policies),
18 article fifteen-a (long-term care insurance), section
19 three-a, article sixteen (mental illness), section three-c,
20 article sixteen (group accident and sickness insurance),
21 section three-d, article sixteen (medicare supplement),
22 section three-f, article sixteen (treatment of temporo-

*Clerk's Note: This section was also amended by S. B. 535 (Chapter 93),
which passed prior to this act.
mandibular joint disorder and craniomandibular disorder), article sixteen-c (small employer group policies),
article sixteen-d (marketing and rate practices for small employers), article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one, article twenty-seven (insurance holding company systems), article twenty-eight (individual accident and sickness insurance minimum standards), article thirty-three (annual audited financial report), article thirty-four (administrative supervision), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition) and article thirty-five (criminal sanctions for failure to report impairment); 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.

§33-24-5. Licenses; name of corporation.

(a) No such corporation shall enter into any contract with a subscriber until it has obtained from the commissioner a license as provided in this section. Application for a license shall be made on forms to be prescribed and furnished by the commissioner.

(b) The application shall be accompanied by a copy of the following documents: (1) Certificate of incorporation; (2) bylaws; (3) contracts between the corporation and participating hospitals, physicians, dentists or other health agencies; (4) proposed contracts to be issued to subscribers, setting forth the hospital, medical or dental service to which subscribers are entitled, and the table of rates to be charged for such service; and (5) financial statement showing the amount of contributions paid, or agreed to be paid, to the corporation for working capital, the name or names of each contributor and the terms of each contribution.
The commissioner shall, upon payment to him of a license fee of two hundred dollars, issue a license authorizing the corporation to transact business in this state in the area to be served by it, if he is satisfied (1) that the applicant is incorporated in this state under the provisions of article one, chapter thirty-one of this code, as a bona fide nonprofit corporation, (2) that the contracts between the corporation and participating hospitals, physicians, dentists and other health agencies contain all the terms required by section seven of this article, (3) that the working capital available to the corporation will be sufficient to pay all operating expenses, other than payment for hospital, medical or dental services, for a reasonable period after the issuance of the license, and (4) that the proposed plan will serve the best interests of all of the people of the area in which the corporation intends to operate, regardless of their race, color or economic status. Any license so issued may be renewed annually upon payment to the commissioner of a renewal fee of two hundred dollars.

The term of such license, renewal, refusal to license, revocation, suspension or penalty in lieu thereof shall be governed by the provisions of sections eight, nine, ten and eleven, article three of this chapter, in the same manner that these sections are applicable to insurers generally.

No such corporation shall include in its name the words "insurance," "casualty," "surety," "health and accident," "accident and sickness," "mutual," or any other words descriptive of the insurance business; nor shall its name be so similar to that of any insurer which was licensed to transact insurance in this state when such corporation was formed, as to tend, in the opinion of the commissioner, to confuse the public.

§33-24-6. Commissioner to enforce article; approval of contracts, forms, rates and fees.

It shall be the duty of the commissioner to enforce the provisions of this article. If the commissioner finds that a corporation is impaired, he may issue such orders
and otherwise require that the corporation take all
actions that in his judgment are necessary for the
corporation to cure the impairment. Failure of the
corporation to follow such orders and directions is
evidence that the management is incompetent and
grounds for an order of rehabilitation or liquidation, as
the commissioner deems appropriate.

(b) No such corporation shall deliver or issue for
delivery any subscriber's contract, changes in the terms
of such contract, application, rider or endorsement, until
a copy thereof and the rates pertaining thereto have
been filed with and approved by the commissioner. All
such forms filed with the commissioner shall be deemed
approved after the expiration of sixty days from the date
of such filing unless the commissioner shall have
disapproved the same, stating his reasons for such
disapproval in writing. Such forms may be used prior
to the expiration of such periods if written approval
thereof has been received from the commissioner.

(c) No rates to be charged subscribers shall be used
or established by any such corporation unless and until
the same have been filed with the commissioner and
approved by him. The procedure for such filing and
approval shall be the same as that prescribed in
subsection (b) of this section for the approval of forms.
The commissioner shall approve all such rates which are
not excessive, inadequate or unfairly discriminatory.

(d) The commissioner shall pass upon the actuarial
soundness of the schedule of fees to be paid hospitals,
physicians, dentists and other health agencies.

§33-24-10. Investments; bonds of corporate officers and
employees, minimum statutory surplus.

(a) The funds of any such corporation shall be invested
only as follows:

(1) Fifty percent of such funds shall be in cash or
government securities of the type described in section
seven of article eight of this chapter.

(2) The balance of such funds may be in cash or
invested in the classes of investments described in the
following sections of article eight of this chapter: Section nine (certificates of deposit of federally insured institu-
tions), section eleven (corporate obligations), section
twelve (building and savings and loan shares, interna-
tional bank), section thirteen (preferred or guaranteed
stock), section fourteen (common stock), section sixteen
(real property) and section eighteen (revenue bonds). All
such investments shall be subject to all the restrictions
and conditions contained in said article eight as
applying to similar investments of insurers generally.

(b) Every officer or employee of any such corporation,
who is entrusted with the handling of its funds, shall
furnish, in such amount as may with the approval of the
commissioner be fixed by the board of directors of the
corporation, a bond with corporate surety, conditioned
upon the faithful performance of all his duties.

(c) A corporation shall have and maintain statutory
surplus funds of at least two million dollars: Provided,
That any such corporation duly licensed under this
article in West Virginia prior to the effective date of this
section whose surplus requirements are increased by
virtue of this section shall be required to maintain
statutory surplus funds of at least five hundred thousand
dollars after the effective date of this section, and any
such corporation shall then be subject to the full two
million dollar statutory surplus requirement after the
first day of October, one thousand nine hundred ninety-
one.


For the purpose of sections fourteen through forty-six
of this article:

(a) "Impairment" means a financial situation in which,
based upon the financial information which would be
required by this chapter for the preparation of the
corporation's annual statement, the assets of a corpora-
tion are less than the sum of all of its liabilities and
required reserves including any minimum surplus
required of that insurer by this chapter so as to
maintain its authority to transact the kinds of business
or insurance it is so authorized to transact.
(b) "Insolvency" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the corporation's annual statement, the assets of the corporation are less than the sum of all of its liabilities and required reserves.

(c) "Corporation" shall be defined in section two of this article.

(d) "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.

(e) "State" means any state, district or territory of the United States.

(f) "Foreign country" means any other jurisdiction not in any state.

(g) "Domiciliary state" means the state of West Virginia for any corporation.

(h) "Ancillary state" means any state other than West Virginia.

(i) "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.

(j) "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.

(k) "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.

(l) "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.

(m) "Secured claim" means any claim secured in a
manner consistent with article nine of the uniform
commercial code as codified in article nine, chapter
forty-six of this code, whether 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.

(n) "Receiver" means receiver, liquidator, rehabilita-
tor, supervisor or conservator as the context may
require.

(o) "Statutory surplus" means the minimum amount
of unencumbered surplus which an association or
corporation must maintain pursuant to the require-
ments of this article.

(p) "Surplus" means the amount by which an associ-
ation's or corporation's assets exceeds its liabilities and
required reserves based upon the financial information
which would be required by this chapter for the
preparation of the association's or corporation's annual
statement.


(a) The commissioner may file in the appropriate
circuit court of this state, as provided in section fifteen
of this article, a petition alleging, with respect to a
domestic corporation:

(1) That there exist any grounds that would justify a
court order for a delinquency proceeding against a
(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 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 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 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 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 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 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.

§33-24-17. Ex parte orders, injunctions and 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 corporation, its officers, directors,
stockholders, members, subscribers, agents and all other
persons from the transaction of its business or the waste
or disposition of its property until 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 prefer-
ences, judgments, attachments or other liens, or the
making of any levy against the corporation, 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 a
corporation against whom a seizure order has been
issued by the commissioner shall be guilty of a misde-
meanor 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 sixteen, 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.


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 section eighteen of 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.

§33-24-44. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.

The commissioner may as he deems necessary after
notice and hearing promulgate rules and regulations in
accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 25. HEALTH CARE CORPORATIONS.


§ 33-25-6. Supervision and regulation by insurance commissioner; exemption
from insurance laws.


§ 33-25-21. Authority of commissioner to promulgate rules and regulations
regarding affiliate and subsidiary operating results.


For the purpose of this article, unless the context
otherwise indicates:

(a) "Health care corporation" or "corporation" shall
mean a corporation organized and licensed under the
provisions of this article.

(b) "Direct health care services" shall, subject to the
limitations contained in this article, include all such
services as are designed to preserve or restore a person's
health.

(c) "Subscriber" shall mean a person (including, as the
case may be, the members of his family) who subscribes
to the direct health care plan of a corporation.

(d) "Commissioner" means the insurance commis-
ioner of the state of West Virginia.

(e) "Statutory surplus" means the minimum amount
of unencumbered surplus which an association or
corporation must maintain pursuant to the require-
ments of this article.

(f) "Surplus" means the amount by which an associ-
ation's or corporation's assets exceeds its liabilities and
required reserves based upon the financial information
which would be required by this chapter for the
preparation of the association's or corporation's annual
statement.

*§ 33-25-6. Supervision and regulation by insurance com-
missioner; exemption from insurance laws.

*Clerk's Note: This section was also amended by S. B. 535 (Chapter 93),
which passed prior to this act.
Corporations organized under this article shall be subject to supervision and regulation by the insurance commissioner. Such corporations organized under this article, 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 six-c (guaranteed loss ratio), article seven (assets and liabilities), article eight (investments), article ten (rehabilitation and liquidation), section fourteen, article fifteen (individual policies), article sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-seven (insurance holding company systems), article thirty-three (annual audited financial report), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition) and article thirty-five (criminal sanctions for failure to report impairment); and no other provision of this chapter shall apply to such corporations unless specifically made applicable by the provisions of this article.

§33-25-7. Licenses.

(a) Before it may issue any contract to a subscriber, a corporation desiring to establish, maintain and operate a direct health care plan must first obtain from the commissioner a license as provided in this section.

(b) Applications for an original license shall be made on forms prescribed and furnished by the commissioner and shall be accompanied by the following documents and information: (1) Certificate of incorporation; (2) bylaws; (3) list of names and residence addresses of all officers and board of directors of the corporation; (4) contracts between the corporation and persons, firms, corporations or associations to render direct health care services; (5) proposed contracts to be issued to subscribers setting forth in detail the direct health care services to which subscribers are entitled and the table of rates to be charged for such services; (6) financial statement showing the assets and liabilities of the corporation, the
amount of contributions paid, or agreed to be paid, to
the corporation for working capital, the names or name
of each contributor and the terms of each contribution;
and (7) any additional information as the commissioner
may require.

(c) Within thirty days after receipt of an application,
the commissioner shall, upon payment to him of a
license fee of two hundred dollars, issue a license
authorizing the corporation to transact business in this
state in the area to be served by it, if he is satisfied (1)
that the applicant is incorporated in this state under the
provisions of article one, chapter thirty-one of the code
of West Virginia as a bona fide, nonprofit corporation,
(2) that the health care plan which the corporation
proposes to operate, as well as the forms of all contracts
which it proposes to issue under such health care plan,
are based upon sound business principles and will be in
every respect equitable, just and fair to the subscriber,
(3) that the working capital available to the corporation
will be sufficient to pay all operating expenses during
the subscription period, (4) that the proposed plan will
adequately serve the best interests of all the people of
the area in which the corporation intends to operate,
regardless of their race, color or religion, and (5) that
the corporation shall have and maintain statutory
surplus funds of at least two million dollars: Provided,
That corporations duly licensed under this article in
West Virginia prior to the effective date of this section
whose surplus requirements are increased by virtue of
this section shall have until the first day of January, one
thousand nine hundred ninety-four, to meet such
increased requirements.

(d) The commissioner may refuse to license a corpo-
ration when he determines that such corporation has not
complied with the laws of this state, or that it is not in
the best interest of the people of the state that such
corporation be licensed, or that such corporation would
transact business in this state in an improper, illegal or
unjust manner. In such event, the commissioner shall
enter an order refusing such license and the applicant
therefor may have a hearing and judicial review in
accordance with the applicable provisions of article two
of this chapter relating to hearings before and judicial
review of orders entered by the commissioner.

(e) All licenses issued under the provisions of this
article shall expire at midnight on the thirty-first day
of March next following the date of issuance. The
commissioner shall renew annually the license of all
corporations which qualify and make applications
therefor upon a form prescribed by the commissioner
upon payment to the commissioner of a renewal fee of
two hundred dollars.

(f) The commissioner shall, after notice and hearing,
refuse to renew or shall revoke or suspend the license
of a corporation, if the corporation: (1) Violates any
provision of this article; (2) fails to comply with any
lawful rule, regulation or order of the commissioner; (3)
is transacting its business in an illegal, improper or
unjust manner, or is operating in contravention of its
articles of incorporation or any amendments thereto, of
its bylaws, or of its health care plan; (4) is found by the
commissioner to be in an unsound condition or in such
condition as to jeopardize its obligations to subscribers
and those with whom it has contracted; (5) compels
subscribers to its health care program to accept less
than the obligation due them under their contracts or
agreements with the corporation; (6) refuses to be
examined or to produce its accounts, records and files
for examination by the commissioner when required; (7)
fails to pay any final judgment rendered against it in
West Virginia within thirty days after the judgment
became final or time for appeal expired, whichever is
later; (8) fails to pay when due to the state of West
Virginia any fees, charges or penalties required by this
chapter.

In those cases where the commissioner has the right
to revoke, suspend or terminate the license or any
renewal thereof of said corporation, the commissioner
shall, by order, require the corporation to pay to the
state of West Virginia a penalty in the sum not
exceeding one thousand dollars, and on the failure of the
corporation to pay the penalty within thirty days after
notice thereof, the commissioner shall revoke or suspend
the license of the corporation.

When any license has been revoked, suspended or
terminated, the commissioner may reinstate the license
when he is satisfied that the conditions causing the
revocation, suspension or termination have ceased to
exist and are unlikely to recur.

In the event the commissioner revokes, suspends or
terminates a license, the corporation may demand a
hearing in the manner provided in article two of this
chapter.


Every corporation shall annually on or before the first
day of March, file, with its application for renewal
license, a report, verified by an officer of the corpora-
tion, with the commissioner, showing its condition on the
last day of the preceding calendar year, on forms
required by section fourteen, article four of this chapter,
which report shall include:

(a) A financial statement of such corporation, includ-
ing its balance sheet and its receipts and disbursements
for the preceding calendar year;

(b) A list of the names and residence addresses of all
its officers and directors, and the total amount of
expense reimbursement to all officers and directors
during the preceding calendar year;

(c) The number of subscribers’ contracts issued by
such corporation and outstanding;

(d) The names of those persons (other than subscrib-
ers), corporations, associations, and institutions with
which such corporation has agreements;

(e) Number and type of services currently covered
under the health care plan of the corporation.

§33-25-21. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.

The commissioner may as he deems necessary after
notice and hearing promulgate rules and regulations in accordance with chapter twenty-nine-a of this code to define the commissioner's authority to consider the operating results of an insurer's affiliates and subsidiaries in the rate making and solvency determination of that insurer.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


§33-25A-17. Examinations.


§33-25A-32. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.


(1) "Basic health care services" means physician, hospital, out-of-area, podiatric, laboratory, X ray, emergency, short-term mental health services not exceeding twenty outpatient visits in any twelve-month period, and cost-effective preventive services including immunizations, well-child care, periodic health evaluations for adults, voluntary family planning services, infertility services and children's eye and ear examinations conducted to determine the need for vision and hearing corrections.

(2) "Commissioner" means the commissioner of insurance.

(3) "Consumer" means any person who is not a provider of care or an employee, officer, director or stockholder of any provider of care.

(4) "Copayment" means a nominal payment required of enrollees as a condition of the receipt of specific health services.

(5) "Employee" means a person in some official employment or position working for a salary or wage continuously for no less than one calendar quarter and who is in such a relation to another person that the latter may control the work of the former and direct the manner in which the work shall be done.
(6) "Employer" means any individual, corporation, partnership, other private association, or state or local government that employs the equivalent of at least twenty-five full-time employees during any four consecutive calendar quarters.

(7) "Enrollee" means an individual who has been voluntarily enrolled in a health maintenance organization, including individuals on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(8) "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.

(9) "Health care services" means any services or goods included in the furnishing to any individual of medical, mental or dental care, or hospitalization or incident to the furnishing of such care of hospitalization, osteopathic services, home health, health education, rehabilitation, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing or healing human illness or injury.

(10) "Health maintenance organization" means a public or private organization which provides, or otherwise makes available to enrollees, health care services, including at a minimum basic health care services:

(a) Is compensated except for copayments for the provision of basic health care services to enrollees solely on a predetermined periodic rate basis;

(b) 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, or (iii) through some combination of (i) and (ii) above;

(c) Assures the availability, accessibility and quality
including effective utilization of the health care services which it provides or makes available through clearly identifiable focal points of legal and administrative responsibility.

(11) "Individual practice basis" means any agreement or arrangement to provide medical services on behalf of a health maintenance organization among or between physicians or between a health maintenance organization and individual physicians or groups of physicians, where the physicians are not employees or partners of such health maintenance organization and are not members of or affiliated with a medical group.

(12) "Medical group" means (a) a professional corporation, partnership, association, or other organization which is composed solely of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals, including podiatrists, dentists and optometrists, as are necessary for the provision of health services for which the group is responsible; (b) a majority of the members of which are licensed to practice medicine or osteopathy; (c) as their principal professional activity engage in the coordinated practice of their profession; (d) pool their income for practice as members of the group and distribute it among themselves according to a prearranged salary, drawing account or other plan; and (e) share medical and other records and substantial portions of major equipment and professional, technical and administrative staff.

(13) "Premium" means a predetermined periodic rate unrelated to the actual or potential utilization of services of any particular person which is charged by the health maintenance organization for health services provided to an enrollee.

(14) "Provider" means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to furnish health care services.

(15) "Service area" means the area identified by a health maintenance organization as the area within which health care services will be provided by the
health maintenance organization.

"Statutory surplus" means the minimum amount of unencumbered surplus which an association or corporation must maintain pursuant to the requirements of this article.

(17) "Surplus" means the amount by which an association's or corporation's assets exceeds its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the association's or corporation's annual statement.


(1) Upon receipt of an application for a certificate of authority, the commissioner shall determine whether the application for a certificate of authority, with respect to health care services to be furnished has demonstrated:

(a) The willingness and potential ability to assure that basic health services will be provided in such a manner as to enhance and assure both the availability and accessibility of adequate personnel and facilities;

(b) Arrangements for an ongoing evaluation of the quality of health care;

(c) A procedure to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the quality, availability and accessibility of its services, and such other matters as may be reasonably required by regulation.

(2) The commissioner shall issue or deny a certificate of authority to any person filing an application within one hundred twenty days after receipt of the application. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed, if the commissioner is satisfied that the following conditions are met:

(a) The health maintenance organization's proposed plan of operation meets the requirements of subsection (1) of this section;
(b) The health maintenance organization will effectively provide or arrange for the provision of at least basic health care services on a prepaid basis except for copayments: Provided, That nothing herein shall be construed to relieve a health maintenance organization from the obligations to provide health care services because of the nonpayment of copayments unless the enrollee fails to make payment in at least three instances over any twelve-month period: Provided, however, That nothing herein shall permit a health maintenance organization to charge copayments to medicare beneficiaries or medicaid recipients in excess of the copayments permitted under those programs, nor shall a health maintenance organization be required to provide services to such medicare beneficiaries or medicaid recipients in excess of the benefits compensated under such programs;

(c) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(i) The financial soundness of the health maintenance organization's arrangements for health care services and proposed schedule of charges used in connection therewith;

(ii) That the health maintenance organization shall have and maintain fully paid-in capital stock, if a for-profit stock corporation, or statutory surplus funds, if a nonprofit corporation, of at least one million dollars. In addition, each such health maintenance organization shall have and maintain additional surplus funds of at least one million dollars: Provided, That health maintenance organizations duly licensed under this article prior to the effective date of this section whose fully paid-in capital stock and surplus requirements are increased by virtue of this section shall be required to maintain fully paid-in capital stock, if a for-profit stock corporation, or statutory surplus funds, if a nonprofit corporation, be at least two hundred fifty thousand
dollars and additional surplus funds of two hundred fifty thousand dollars after the first day of January, one thousand nine hundred ninety-two. Any such corporation shall then be subject to the full paid-in capital and surplus requirements of this section after the first day of January, one thousand nine hundred ninety-four; (iii) Any arrangements which will guarantee for a reasonable period of time the continued availability or payment of the cost of health care services in the event of discontinuance of the plan; (iv) Any agreement with providers for the provision of health care services; (d) Reasonable provisions have been made for emergency and out-of-area health care services; (e) The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section six of this article; (f) The health maintenance organization has demonstrated that it will assume full financial risk on a prospective basis for the provision of health care services, including hospital care. Provided, That the requirement of this subdivision shall not prohibit a health maintenance organization from obtaining insurance or making other arrangements (i) for the cost of providing to any enrollee comprehensive health maintenance services, the aggregate value of which exceeds four thousand dollars in any year, (ii) for the cost of providing comprehensive health care services to its members on a nonelective emergency basis, or while they are outside the area served by the organization, or (iii) for not more than ninety-five percent of the amount by which the health maintenance organization's costs for any of its fiscal years exceed one hundred five percent of its income for such fiscal years. (3) A certificate of authority shall be denied only after compliance with the requirements of section twenty-one of this article. (4) Except as provided in subsection (2), section three of this article, no person who has not been issued a
certificate of authority shall use the words “health maintenance organization” or the initials “HMO” in its name, contracts or literature: Provided, That persons who are operating under a contract with, operating in association with, enrolling enrollees for, or otherwise authorized by a health maintenance organization licensed under this article to act on its behalf may use the terms “health maintenance organization” or “HMO” for the limited purpose of denoting or explaining their association or relationship with the authorized health maintenance organization. No health maintenance organization which has a minority of board members who are consumers shall use the words “consumer controlled” in its name or in any way represent to the public that it is controlled by consumers.


(1) Every health maintenance organization shall annually, on or before the first day of March, file a report verified by at least two principal officers with the commissioner, covering the preceding calendar year.

(2) Such report shall be required by section fourteen, article four of this chapter and shall include:

(a) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent certified public accountant, reflecting at least (i) all prepayment and other payments received for health care services rendered, (ii) expenditures to all providers, by classes or groups of providers, and insurance companies or nonprofit health service plan corporations engaged to fulfill obligations arising out of the health maintenance contract, and (iii) expenditures for capital improvements, or additions thereto, including, but not limited to, construction, renovation or purchase of facilities and capital equipment;

(b) The number of new enrollees enrolled during the year, the number of enrollees as of the end of the year and the number of enrollees terminated during the year;

(c) A summary of information compiled pursuant to
subdivision (c), subsection (1), section four of this article
in such form as may be required by the department of
health;

(d) A report of the names and residence addresses of
all persons set forth in subdivision (c), subsection (4),
section three of this article who were associated with the
health maintenance organization during the preceding
year, and the amount of wages, expense reimburse-
ments, or other payments to such individuals for
services to the health maintenance organization, includ-
ing a full disclosure of all financial arrangements
during the preceding year required to be disclosed
pursuant to subdivision (c), subsection (4), section three
of this article; and

(e) Such other information relating to the performance
of the health maintenance organization as is reasonably
necessary to enable the commissioner to carry out his
duties under this article.

§33-25A-17. Examinations.

(1) The commissioner may make an examination of the
affairs of any health maintenance organization and
providers with whom such organization has contracts,
agreements or other arrangements as often as he deems
it necessary for the protection of the interests of the
people of this state but not less frequently than once
every three years.

(2) The commissioner shall contract with the depart-
ment of health to make examinations concerning the
quality of health care services of any health mainte-
nance organization and providers with whom such
organization has contracts, agreements or other ar-
rangements as often as it deems necessary for the
protection of the interests of the people of this state but
not less frequently than once every three years: Pro-
vided, That in making the foregoing examination, the
department of health shall utilize the services of persons
or organizations with demonstrable expertise in assess-
ing quality of health care.

(3) Every health maintenance organization and
affiliated provider shall submit its books and records to
such examinations and in every way facilitate them. For
the purpose of examinations, the commissioner and the
department of health shall have all powers necessary to
conduct such examinations, including, but not limited
to, the power to issue subpoenas, the power to admin-
ister oaths to, and examine the officers and agents of the
health maintenance organization and the principles of
such providers concerning their business.

(4) The health maintenance organization shall be
subject to the provisions of section nine, article two of
this chapter in regard to the expense and conduct of
examinations.

(5) In lieu of such examination, the commissioner may
accept the report of an examination made by other
states.

§33-25A-24. Statutory construction and relationship to
other laws.

(1) Except as otherwise provided in this article,
provisions of the insurance law and provisions of
hospital or medical service corporation laws shall not be
applicable to any health maintenance organization
granted a certificate of authority under this article. This
provision shall not apply to an insurer or hospital or
medical service corporation licensed and regulated
pursuant to the insurance laws or the hospital or
medical service corporation laws of this state except
with respect to its health maintenance corporation
activities authorized and regulated pursuant to this
article.

(2) Factually accurate advertising or solicitation
regarding the range of services provided, the premiums
and copayments charged, the sites of services and hours
of operation, and any other quantifiable, nonprofessional
aspects of its operation by a health maintenance
organization granted a certificate of authority, or its
representative shall not be construed to violate any
provision of law relating to solicitation or advertising by
health professions: Provided, That nothing contained

*Clerk's Note: This section was also amended by S. B. 535 (Chapter 93),
which passed prior to this act.
herein shall be construed as authorizing any solicitation
or advertising which identifies or refers to any individ-
ual provider, or makes any qualitative judgment
concerning any provider.

(3) Any health maintenance organization authorized
under this article shall not be deemed to be practicing
medicine and shall be exempt from the provision of
chapter thirty of this code, relating to the practice of
medicine.

(4) The provisions of article six-c (guaranteed loss
ratio), article seven (assets and liabilities); article eight
(investments); section fourteen, article fifteen (individ-
ual policies), section three-f of article sixteen of this
chapter concerning treatment of temporomandibular
disorder and craniomandibular disorder; article sixteen-
c (small employer group policies), article sixteen-d
(marketing and rate practices for small employers),
article twenty-seven (insurance holding company sys-
tems), article thirty-four-a (standards and commission-
er's authority for companies deemed to be in hazardous
financial condition) and article thirty-five (criminal
sanctions for failure to report impairment) shall be
applicable to any health maintenance organization
granted a certificate of authority under this article.

(5) Any long-term care insurance policy delivered or
issued for delivery in this state by a health maintenance
organization shall comply with the provisions of article
fifteen-a of this chapter.

§33-25A-32. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.

The commissioner may as he deems necessary after
notice and hearing promulgate rules and regulations in
accordance with chapter twenty-nine-a of this code to
define the commissioner's authority to consider the
operating results of an insurer's affiliates and subsidiar-
ies in the rate making and solvency determination of
that insurer.

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSUR-
ANCE GUARANTY ASSOCIATION ACT.
§33-26A-3. Scope of article.

(a) This article shall provide coverage for those policies and contracts specified in subsection (b) of this section to:

(1) Persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under paragraph (2) below;

(2) Persons who are owners of or certificate holders under such policies or contracts and who are residents of the state; and

(3) Persons who are owners of or certificate holders under such policies or contracts who are not residents of the state, but only under the following conditions:

(A) The insurer which issued any such policy or contract is domiciled in this state;

(B) The insurer never held a license or certificate of authority in the state where the person resides;

(C) The state where the person resides has an association similar to the association created by this article; and

(D) The person residing in another state is not eligible for coverage by the association in that state.

(b) This article shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons licensed to transact insurance in this state at any time.

(c) This article shall not apply to:

(1) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(2) Any such policy or contract or part thereof
assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.


1 In addition to the powers and duties enumerated in other sections of this article:

2 (a) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

3 (1) Guarantee or reinsure, or cause to be guaranteed, assumed or reinsured, all the covered policies of residents of the impaired insurer;

4 (2) Provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate subdivision (1), subsection (a) of this section, and assure payment of the contractual obligations of the impaired insurer pending action under said subdivision (1), subsection (a); and

5 (3) Lend money to the impaired insurer.

6 (b) If a foreign or alien insurer is an impaired insurer, the association may, prior to an order of liquidation, rehabilitation or conservation, with respect to the covered policies of residents and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

7 (1) Guarantee or reinsure, or cause to be guaranteed, assumed or reinsured, the impaired insurer's covered policies of residents;

8 (2) Provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate subdivision (1), subsection (b) of this section, and assure payment of the impaired insurer's contractual obligations to residents pending action under subdivision (1), subsection (b); and
(3) Lend money to the impaired insurer.

(c) If a domestic insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner, (1) guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured the covered policies of the impaired insurer which cover residents, (2) assure payment of the contractual obligations of the impaired insurer to residents, and (3) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties. If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this article with respect to such domestic impaired insurer.

(d) If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation or conservation, the association shall, subject to the approval of the commissioner:

(1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the covered policies of residents;

(2) Assure payment of the contractual obligations of the impaired insurer to residents; and

(3) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties. If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this article with respect to such foreign or alien impaired insurer.

(e) In carrying out its duties under subsections (c) and (d) of this section, the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the commissioner:

(1) Finds that the amounts which can be assessed under this article are less than the amounts needed to
assure full and prompt performance of the impaired insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(2) Approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

Before being obligated under subsections (c) and (d) of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(f) The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides, by statute or regulation, for residents of this state protection substantially similar to that provided by this article for residents of other states.

(g) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(h) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this article. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

(i) Any person receiving benefits under this article shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this article whether the benefits are payments of contractual obligations or
continuation of coverage. The association may require
an assignment to it of such rights by any payee, policy
or contract owner, beneficiary, insured or annuitant as
a condition precedent to the receipt of any rights or
benefits conferred by this article upon such person. The
association shall be subrogated to these rights against
the assets of any impaired insurer.

The subrogation rights of the association under this
subsection shall have the same priority against the
assets of the impaired insurer as that possessed by the
person entitled to receive benefits under this article.

(j) The contractual obligations of the impaired insurer
for which the association becomes or may become liable
shall be as great as but no greater than the contractual
obligations of the impaired insurer would have been in
the absence of an impairment unless such obligations
are reduced as permitted by subsection (e) of this
section, but the association shall have no liability with
respect to any portion of a covered policy to the extent
that the death benefit coverage on any one life exceeds
an aggregate of three hundred thousand dollars.

(k) The association may:

(1) Enter into such contracts as are necessary or
proper to carry out the provisions and purposes of this
article.

(2) Sue or be sued, including taking any legal actions
necessary or proper for recovery of any unpaid assess-
ments under section nine.

(3) Borrow money to effect the purposes of this article.
Any notes or other evidence of indebtedness of the
association not in default shall be legal investments for
domestic insurers and may be carried as admitted
assets.

(4) Employ or retain such persons as are necessary to
handle the financial transactions of the association, and
to perform such other functions as become necessary or
proper under this article.

(5) Negotiate and contract with any liquidator,
rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

(6) Take such legal action as may be necessary to avoid payment of improper claims.

(7) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-5. Standards.

(a) Transactions with affiliates. — Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions; and

(3) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Adequacy of surplus. — For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line
of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other comparable insurers; and

(9) The adequacy of the insurer's reserves.

(c) Dividends and other distributions. — No insurer subject to registration under section four of this article shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of (i) ten percent of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commission-
er's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the commissioner has approved the payment of such dividend or distribution or (ii) the commissioner has not disapproved such payment within the thirty-day period referred to above.

(d) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such period:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments provided such transactions are equal to or exceed: The lesser of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders; each as of the thirty-first day of December next preceding;

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: The lesser of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders; each as of the thirty-first day of December next preceding;

(3) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets
will be transferred to one or more affiliates of the insurer;

(4) All management agreements, service contracts and all cost-sharing arrangements not within the ordinary course of business; and

(5) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-8. Examinations and investigations.

At least once in three years, and whenever the commissioner determines it to be prudent, he shall personally, or by some competent person appointed by him, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this chapter. The commissioner upon application, in his discretion, may extend the aforesaid three-year period to five years, provided said captive insurance company is subject to a comprehensive annual audit during such period of a scope satisfactory to the commissioner by independent auditors approved by him. The captive insurance company shall be subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of the examination.

ARTICLE 32. RISK RETENTION ACT.


Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this
state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner. The risk retention group shall be subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of the examination.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-7. Consolidated or combined audits.

(a) The commissioner may, upon written application, permit any insurer that is a member of an insurance holding company system to file audited, consolidated or combined financial statements in lieu of separate annual audited financial statements if the commissioner, in his discretion, deems such method of filing reasonable and appropriate. Consolidated or combined filings will be considered reasonable and appropriate if the commissioner determines that the audit work performed under a consolidated filing is adequate to ascertain the financial condition of the insurer. If such approval is granted, a columnar consolidating or combining worksheet shall be filed with the report incorporating the following:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

(b) The commissioner shall require any insurer to file separate annual audited financial statements although permission had previously been given to file on a
consolidated basis or combined basis if the commissioner
determines the reasons or circumstances given for
approval of the consolidated audit, pursuant to subsec-
tion (a) of this section, no longer exist.

(c) An insurer who does not receive approval from the
commissioner to file an audited financial report cover-
ing combined or consolidated audited financial state-
ments for the insurer and any of its subsidiaries or
affiliates must file pursuant to all the requirements of
this article a separate audited financial report for the
insurer and each subsidiary or affiliate.

(d) Notwithstanding any provision of this section, the
commissioner may require an insurer to file a separate
audited financial report for the insurer and each
subsidiary or affiliate.

ARTICLE 34A. STANDARDS AND COMMISSIONER'S AUTHO-
RITY FOR COMPANIES DEEMED TO BE IN
HAZARDOUS FINANCIAL CONDITION.

§33-34A-1. Definitions.
§33-34A-2. Purpose.
§33-34A-4. Commissioner's authority.
§33-34A-5. Election of proceedings.
§33-34A-6. Immunity from liability.

§33-34A-1. Definitions.

For the purposes of this article the following defini-
tions shall apply:

(a) "Insurer" means and includes every person
engaged as indemnitor, 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
deefined in section six, article one of this chapter and any
foreign insurer as defined in section seven, article one
of this chapter, 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) A "noninvestment grade bond" shall mean a bond
that has been rated by the securities valuation office of
the national association of insurance commissioners of
having a designation of class four equals low quality,
class five equals lower quality and class six equals in
or near default.

§33-34A-2. Purpose.

The purpose of this article is to set forth the standards
which the insurance commissioner may use for identi-
fying insurers found to be in such condition as to render
the continuance of their business hazardous to the public
or to holders of their policies or certificates of insurance.
This article shall not be interpreted to limit the powers
granted the commissioner by any laws or parts of laws
of this state, nor shall this article be interpreted to
supersede any laws or parts of laws of this state.


The following standards, either singularly or a
combination of two or more, may be considered by the
commissioner to determine whether the continued
operation of any insurer transacting an insurance
business in this state might be deemed to be hazardous
to the policyholders, creditors or the general public. The
commissioner may consider:

(a) Adverse findings reported in financial condition
and market conduct examination reports;

(b) The national association of insurance commission-
ers insurance regulatory information system and its
related reports;

(c) A company which is under suspension, revocation
or rehabilitation in another state;

(d) The insurer's asset portfolio when viewed in light
of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

(e) The total of the noninvestment grade bonds equals twenty percent of the total bond portfolio;

(f) The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(g) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(h) The insurer's operating loss in the last twelve-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

(i) Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;

(j) Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(k) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

(l) The age and collectibility of receivables;

(m) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such
(n) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(o) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(p) A ratio of gross premiums written to surplus as to policyholders exceeds ten to one and net premium written to surplus as to policyholders exceeds four to one:

1. Projected annual net or gross premiums shall be based on the actual writings to date for the insurer’s current calendar year or the insurer’s writings for the previous calendar year or both. Ratios shall be computed on an annualized basis;

2. For the purposes of this subsection, “gross premiums written” means direct premiums written and reinsurance assumed, and “net premiums written” means direct premiums written and reinsurance assumed less reinsurance ceded;

3. This ratio shall not apply to life insurance written by life or life and health insurers;

(q) A ratio of current assets to current liabilities which is below one;

(r) The total investments in parent, subsidiaries and affiliates exceeds one hundred percent of surplus as regards policyholders in excess of the minimum required by statute or order of the commissioner;

(s) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and
§33-34A-4. Commissioner's authority.

(a) For the purposes of making a determination of an insurer's financial condition under this regulation, the commissioner may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

(2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(b) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may, upon his determination, issue an order requiring the insurer to:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend or limit the volume of business being accepted or renewed;

(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of
(6) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured; or

(9) File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on such format as promulgated by the commissioner. If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

(c) An order issued pursuant to the provisions of this article shall be subject to review pursuant to applicable state administrative proceedings under article two of this chapter.

§33-34A-5. 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 issued an order pursuant to the provisions of this article.

§33-34A-6. Immunity from liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner or the division or its employees or agents thereof for any action taken by them in the performance of their powers and duties under this article.


The commissioner may after notice and hearing promulgate reasonable rules in accordance with chapter
twenty-nine-a of this code, as are necessary and proper
to effectuate the purposes of this article.


In the event 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.

CHAPTER 90
(Com. Sub. for H. B. 2801—By Delegates J. Martin and Michael)


AN ACT to amend article two, chapter thirty-three of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto three new sections,
designated sections sixteen, seventeen and eighteen, all
relating to the creation of the office of consumer
advocacy concerning health care and insurance costs;
the powers and duties of the office and its director; and
funding for the office.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-three of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto three new sections, designated
sections sixteen, seventeen and eighteen, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-16. Office of consumer advocacy established; appointed by insurance
commissioner; director of consumer advocacy; promulgation of
rules and regulations.

§33-2-17. Authority of office of consumer advocacy; retroactive effect of
authority prohibited.

§33-2-18. Funding.

§33-2-16. Office of consumer advocacy established;
appointed by insurance commissioner; di­
tector of consumer advocacy; promul­
gation of rules and regulations.
There is hereby created within the agency of the insurance commissioner the office of consumer advocacy. The director of the office of consumer advocacy shall be a full-time position and shall be appointed by the commissioner for a term of four years and may be discharged only for failure to carry out the duties of the office or for other good and sufficient cause.

The insurance commissioner shall provide office space, equipment and supplies for the office.

The director shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code in order to effect the purposes of this section, section seventeen, and section eighteen of this article.

On or before the first day of each regular session of the Legislature, the director shall file with the governor, the clerk of the Senate and the clerk of the House of Delegates a report detailing the actions taken by the division in the preceding calendar year.

§33-2-17. Authority of office of consumer advocacy; retroactive effect of authority prohibited.

(a) In addition to the authority established under the rules promulgated by the director, the office of consumer advocacy is authorized to:

(1) Institute, intervene in, or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings in state and federal courts, before administrative agencies, or before the health care cost review authority, concerning applications or proceedings before the health care cost review authority or the review of any act, failure to act, or order of the health care cost review authority;

(2) At the request of one or more policyholders, or whenever the public interest is served, to advocate the interests of those policyholders in proceedings arising out of any filing made with the insurance commissioner by any insurance company or relating to any complaint alleging an unfair or deceptive act or practice in the business of insurance;
(3) Institute, intervene in, or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings in state and federal courts, before administrative agencies, or before the insurance commissioner, concerning applications or proceedings before the commissioner or the review of any act, failure to act, or order of the insurance commissioner;

(4) Review and compile information, data and studies of the reasonable and customary rate schedules of health care providers and health insurers, for the purposes of reviewing, establishing, investigating, or supporting any policy regarding health care insurance rates;

(5) Exercise all the same rights and powers regarding examination and cross-examination of witnesses, presentation of evidence, rights of appeal and other matters as any party in interest appearing before the insurance commissioner or the health care cost review authority;

(6) Hire consultants, experts, lawyers, actuaries, economists, statisticians, accountants, clerks, stenographers, support staff, assistants, and other personnel necessary to carry out the provisions of this section and sections sixteen and eighteen of this article, which personnel shall be paid from special revenue funds appropriated for the use of the office;

(7) Contract for the services of technically qualified persons in the area of insurance matters to assist in the preparation and presentation of matters before the courts, the insurance commissioner, administrative agencies, or the health care cost review authority, which persons shall be paid from special revenue funds appropriated for the use of the office;

(8) Make recommendations to the Legislature concerning legislation to assist the office in the performance of its duties;

(9) Communicate and exchange data and information with other federal or state agencies, divisions, departments, or officers, and with other interested parties including, but not limited to, health care providers,
insurance companies, consumers or other interested
parties; and
(10) Perform other duties to effect the purposes of the
office.

(b) The provisions of this section do not apply to any
filing made by an insurance company, or act or order
performed or issued by the commissioner, or complaint
filed by a policyholder with the commissioner prior to
the thirtieth day of June, one thousand nine hundred
ninety-one. All proceedings and orders in connection
with these prior matters shall be governed by the law
in effect at the time of the filing, or performance or
issuance of the act or order.

(c) The scope of authority granted under this section
and section sixteen of this article is restricted to matters
related to health care costs and health insurance
policies, subscriber contracts issued by organizations
under article twenty-four of this chapter, health care
corporations under article twenty-five of this chapter,
health maintenance organizations under article twenty-
five-a of this chapter, contracts supplemental to health
insurance policies, and other matters related to health
insurance issues identified by rules of the commissioner
promulgated under section one of this article and
chapter twenty-nine-a of this code.

§33-2-18. Funding.

1 The office of consumer advocacy shall be funded in an
2 amount to be appropriated by the Legislature from
3 special revenue funds.

CHAPTER 91
(Com. Sub. for S. B. 143—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

(Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article six, 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-a and eleven-b, relating to insurance; requiring certain signatures on life or accident and sickness insurance applications; exemptions; and policy provisions providing the insured a ten-day free examination of policy.

Be it enacted by the Legislature of West Virginia:

That article six, 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-a and eleven-b, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-5a. Application for life or accident and sickness insurance; signatures required; exemptions; right of insured to return policy.

§33-2-11b. Right to return life or accident and sickness insurance policy, certificate or contract.

§33-6-5a. Application for life or accident and sickness insurance; signatures required; exemptions; right of insured to return policy.

(a) All applications for life or accident and sickness insurance, as defined in section ten, article one of this chapter, to be issued in this state shall:

(1) If application is made by the proposed insured, include the signature of both the proposed insured and the agent;

(2) If application is made by the proposed insured, be completed by a licensed and appointed agent in the presence of the proposed insured;

(3) If application is made by a spouse upon the other spouse, include the signature of the spouse procuring the insurance and the agent; or

(4) If application is made by any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, include the signature of the person procuring the insurance and the agent.

(b) Upon the hand delivery of a policy of life or
accident and sickness insurance, a delivery receipt must be signed and dated by the insured and returned to the insurer for filing.

If the delivery of a policy of life or accident and sickness insurance is by mail, it shall either: (1) Be sent by certified mail from the insurer, return receipt requested, and the date of receipt noted thereon shall be considered the date of receipt for the purposes of section eleven-b of this article, or (2) the insurer shall prepare a certificate of mailing. For the purposes of this section, a certificate of mailing means a record prepared and retained in accordance with general business practices indicating the date that the policy was mailed to the insured, and it shall be presumed that the policy was received by the insured twenty days from the date of mailing.

(c) Any amendments to the application after it is originally signed by the proposed insured shall be expressly disclosed in writing to the proposed insured and his or her signature is obtained to verify agreement with the changes: Provided, That the failure of the insurer to notify the insured of any change, or the failure of the insured to execute such signature, shall not invalidate the existence of insurance coverage.

(d) The following shall be exempt from the requirements of subdivisions (1), (2), (3) and (4) of subsection (a) herein:

(1) Group life or group accident and sickness insurance applications if the insurer will accept all prospective principal insureds with no underwriting restrictions on the individual proposed insureds;

(2) Group life or group accident and sickness insurance applications if there is underwriting as to the individual proposed insureds and the applications are completed without a licensed and appointed agent present, but the insurer verifies the information on the application by telephone with the proposed insured;

(3) Applications for life or accident and sickness insurance if the insurance is solely mass marketed and
the only contact with the insured is by mail, mass media
or telephone; and

(4) Applications for life or accident and sickness
insurance if the insurer is an underwriter for supplemental retirement plans and additional retirement
plans provided to eligible employees of the governing
boards of state institutions of higher education pursuant
to the provisions of section four-a, article twenty-three,
chapter eighteen of this code.

§33-6-11b. Right to return life or accident and sickness
insurance policy, certificate or contract.

All life or sickness and accident insurance policies,
certificates or contracts issued to persons in this state
shall have a notice prominently printed on the first page
of the policy, certificate or contract stating in substance
that the insured person or person obtaining the policy
shall have the right to return the policy within ten days
of its receipt and to have the premium refunded if, after
examination of the policy, certificate or contract, the
person obtaining the insurance is not satisfied for any
reason.

CHAPTER 92

(S. B. 616—By Senators Craigo, Dittmar, Sharpe, Hawse, Bailey,
Minard, Wooton and Pritt)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article six,
chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to collision, comprehensive, property or bodily injury
coverage for insureds operating loaned motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section twenty-nine, article six, 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 6. THE INSURANCE POLICY.

§33-6-29. Motor vehicle policy; injuries to guest passengers; coverage for loaned motor vehicles.

No insurer shall issue any policy of bodily injury or property damage liability insurance which excludes coverage to the owner or operator of a motor vehicle on account of bodily injury or property damage to any guest or invitee who is a passenger in such motor vehicle.

Every policy or contract of liability insurance which insures a motor vehicle licensed in this state with collision, comprehensive, property or bodily injury coverage shall extend these coverages to cover the insured individual while operating a motor vehicle which is loaned to the insured by a person, firm or corporation engaged in the business of selling, repairing or servicing motor vehicles, without consideration, as a replacement vehicle while the insured's vehicle is out of use because of breakdown, repair or servicing. The extension of property damage coverage shall include coverage for damage to or loss of the loaned vehicle as a result of the negligence of the insured.

CHAPTER 93

(Com. Sub. for S. B. 535—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect July 1, 1991. 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 three new articles, designated articles six-c, sixteen-c and sixteen-d; to amend article fifteen of said chapter by adding thereto a new section, designated section fifteen; to amend and reenact section four, article twenty-four; section six, article twenty-five; and section twenty-four, article twenty-five-a of said chapter, all relating to individual and employer group accident and sickness insurance policies; establishing a guaranteed loss ratio for insurers of individual
policies; definition of terms; establishment of guaranteed loss ratio by insurance commissioner; calculation of ratios; minimum rates; participation and review; duties of insurance commissioner; allowing the insurance commissioner to promulgate rules; form of guarantees; provisions of guarantee; refunds of premiums; disclosure; rejection of guarantees, notice and hearing; establishment of minimum benefits and coverages for individual accident and sickness insurance policies by insurance commissioner; basic benefits; exemptions; regulating employer group accident and sickness insurance policies; declaration of findings and purpose; defining terms; exempting insurance policies issued pursuant to this article from including certain benefits otherwise mandated by law; designating minimum benefits and coverages required in such policies; permitting insurers to offer optional or other benefits; permitting deductibles and copayments; insurance commissioner establishing minimum benefits and coverages; basic policy benefits; requiring certain policy provisions; prohibiting discrimination; requiring an insurer to disclose specified information to an eligible employee upon offering coverage pursuant to this article; requiring certain written acknowledgments by eligible employee members who apply for such coverage; requiring certification by employer; permitting insurance commissioner to promulgate rules; creating exemptions from premium tax; authorizing the insurance commissioner to review and approve all marketing communication used to market insurance policies issued to small employers; defining applicable terms; plans subject to this article and exceptions; application of article; prohibiting discrimination in marketing; requiring insurers issuing such policies to maintain records and file annual reports with the insurance commissioner; establishing premium rates, classes of employers, maximum rates and eligibility for rate increases; authorizing the insurance commissioner to promulgate rules; regarding renewability of coverage and exceptions; disclosure requirements; suspension of requirements; effective date; equality of terms; pre-existing conditions; restrictions; benefits upon conver-
sion; obligations of employers; and applying said provisions to certain health care insurers or providers.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new articles, designated articles six-c, sixteen-c and sixteen-d; that article fifteen of said chapter be amended by adding thereto a new section, designated section fifteen; and that section four, article twenty-four; section six, article twenty-five; and section twenty-four, article twenty-five-a of said chapter, be amended and reenacted, all to read as follows:

Article

6C. Guaranteed Loss Ratios as Applied to Individual Sickness and Accident Insurance Policies.
15. Accident and Sickness Insurance.
16C. Employer Group Accident and Sickness Insurance Policies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 6C. GUARANTEED LOSS RATIOS AS APPLIED TO INDIVIDUAL SICKNESS AND ACCIDENT INSURANCE POLICIES.

§33-6C-1. Loss ratio guarantees; definitions.
§33-6C-2. Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.
§33-6C-3. Duties of insurance commissioner; promulgation of rules.
§33-6C-4. Form of guarantee; requirements.
§33-6C-5. Premium refunds; calculation of the same; payments.
§33-6C-6. Disclosure of rating practices; renewability provisions.
§33-6C-7. Rejection of guarantees; notice; hearing.

§3-6C-1. Loss ratio guarantees; definitions.
1 As used in this article:
2 (a) "Commissioner" means the insurance commissioner of West Virginia;
3 (b) "Experience period" means, for any given rate
§33-6C-2. Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.  

(a) The insurance commissioner shall establish a guaranteed loss ratio which may be implemented by any insurer offering individual sickness and accident insurance policies. The loss ratios shall be calculated by the commissioner and each individual insurer and shall be based upon studies and relevant information collected from various sources, including, but not limited to, the health care cost review authority and the national association of insurance commissioner’s rate filing guidelines: Provided, That the guaranteed loss ratio shall not be less than fifty-five percent. The guaranteed loss ratio for each insurer shall be published by the insurance commissioner in the register maintained by the secretary of state.

(b) The guaranteed loss ratio shall be based upon experience periods during which the insurer earns one million dollars in premium in West Virginia: Provided, that if the annual earned premium volume in West Virginia is less than one million dollars, the loss ratio guarantee shall be based on such other actuarially sound
methods as the commissioner may determine are appropriate, including, but not limited to, the actual nationwide loss ratios: Provided, however, That if the aggregate earned premium for all states is less than one million dollars, the experience period will be extended until the end of the calendar year in which one million dollars of earned premium is attained.

(c) Any insurer may apply to the commissioner to operate on a guaranteed loss ratio basis. The insurance commissioner shall review each application and, in his or her discretion, approve or reject the same. Any insurer approved by the commissioner shall be exempt from filing rate increase applications as required by the commissioner and other provisions of this chapter.

§33-6C-3. Duties of insurance commissioner; promulgation of rules.

(a) The insurance commissioner shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code establishing procedures for implementing the provisions of this article.

(b) The commissioner shall have the authority to examine the records and files of any insurer to determine compliance with the provisions of this article, the costs of which such examination shall be borne by the insurer.

(c) The insurance commissioner shall develop all forms, contracts or other documents to be used for the purposes outlined in this article.

§33-6C-4. Form of guarantee; requirements.

(a) Individual sickness and accident policy benefits under a policy form shall be deemed reasonable in relation to the premium charged, as required by paragraph (e), section nine, article six of this chapter, if the premium rates are filed pursuant to a loss ratio guarantee which meets the requirements of this article. The insurance commissioner shall not withdraw approval of a form on the grounds that benefits are unreasonable in relation to premiums charged so long as the
insurer complies with the terms of the loss ratio guarantee.

(b) Each insurer of individual sickness and accident policy benefits shall execute and deliver to the insurance commissioner a loss ratio guarantee, to be provided by the commissioner, which guarantee shall be signed by an officer of the insurer.

(c) Each loss ratio guarantee shall contain, at a minimum, the following:

(1) A recitation of the anticipated lifetime and durational target loss ratios contained in the original actuarial memorandum filed with the policy form when it was originally approved;

(2) A guarantee that the actual West Virginia loss ratios for the experience period in which the new rates take effect, and for each experience period thereafter until new rates are filed, will meet or exceed the anticipated lifetime and durational target loss ratios contained in the original actuarial memorandum noted above;

(3) A guarantee that the actual West Virginia, or, if applicable, national, loss ratio results for the experience period at issue will be independently audited at the insurer's expense; that such audit will be completed in the second quarter of the year following the end of the experience period; and that the results of such audit will be reported to the insurance commissioner not later than the thirtieth day of June following the end of the experience period;

(4) A guarantee that if the actual loss ratio during an experience period is less than the anticipated loss ratio for that period, then West Virginia policyholders will receive a proportional refund based on premium earned, which refunds shall be calculated and paid pursuant to section thirty-nine of this article; and

(5) A guarantee that the insurer does not engage in any discriminatory practices prohibited by section four, article eleven of this chapter or any such practice which discriminates against any individual on the basis of his or her legal occupation, race, religion or residence.
§33-6C-5. Premium refunds; calculation of the same; payments.

(a) Refunds to West Virginia policyholders made pursuant to section four of this article and based upon annual earned premium volume in West Virginia shall be calculated by multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period.

(b) Refunds to West Virginia policyholders made pursuant to section four of this article and based upon national annual earned premium volume shall be calculated by:

(1) Multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period; and

(2) Multiplying the results of subsection (1) by the total earned premium during the experience period from all West Virginia policyholders eligible for refunds; and

(3) Dividing the results of subsection (2) by the total earned premium during that period in all states on the policy form.

(c) Refunds must be made to all West Virginia policyholders who are insured under the applicable policy form as of the last day of the experience period. Such refund shall include interest, at the current accident and health reserve interest rate established by the national association of insurance commissioners, from the end of the experience period until the date of payment. Payment shall be made during the third quarter of the year following the experience period for which a refund is determined to be due.

(d) Refunds of less than ten dollars shall be aggregated and held by the insurer in a policyholder's liability fund and shall be used to offset any future rate increases.
§33-6C-6. Disclosure of rating practices; renewability provisions.

Each insurer providing individual sickness and accident policy benefits shall make reasonable disclosure in solicitation and sales materials provided to individuals of the following:

(a) The extent to which premium rates for individuals are established or adjusted according to the claim experience, health status or duration of coverage of the individual or his or her dependents;

(b) Provisions concerning the insurer's right to change premium rates and factors, including case characteristics, which affect changes in premium rates;

(c) A description of the class of insureds to which the individual is or will be included; and

(d) Provisions relating to renewability of coverage.

§33-6C-7. Rejection of guarantees; notice; hearing.

(a) The insurance commissioner may reject any loss ratio guarantee filed by an insurer within sixty days from the date on which it was filed for any of the following reasons:

(1) The insurer has demonstrated an inability to adequately monitor its loss ratios;

(2) The insurer has failed to take timely rate increases in accordance with sound actuarial principles during the three-year period prior to filing the loss ratio guarantee;

(3) The insurer has not complied with the terms of a previously filed loss ratio guarantee;

(4) The insurer has submitted false, misleading or fraudulent material or information to the commissioner;

(5) The insurer is impaired, insolvent or such other similar financial condition as defined in article ten or any other article of this chapter; or

(6) Such other criteria as the commissioner, by legislative rule or regulation, may determine is appropriate.
(b) The insurance commissioner may reject or cancel any loss ratio guarantee filed by an insurer which had been previously approved if, upon review and investigation, the commissioner determines that the insurer has not complied with the provisions of the guarantee or this article.

(c) In the event a newly submitted loss ratio guarantee is rejected, the commissioner shall, within sixty days after the date the loss ratio guarantee was filed, mail notice of the rejection to the insurer. In the event an existing or previously approved loss ratio guarantee is cancelled, the commissioner shall mail notice of the rejection or cancellation to the insurer within fifteen days of the decision to cancel. In either situation, the insurer may, within ten days of being notified of its rejection or cancellation, request a hearing before the commissioner, which hearing shall be held within forty-five days from the date the request is made.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-15. Insurance commissioner to establish minimum benefits and coverages for an individual policy design; basic policy benefits; exemptions.

(a) The insurance commissioner shall establish minimum benefits which may be included in any individual accident and sickness insurance policy issued pursuant to this article. The commissioner may accept bids on designs for such minimum plans and shall compile a final basic benefit plan for use by insurers within six months after the effective date of this article.

(b) The basic policy plan established by the insurance commissioner may include coverage for the services of medical physicians or surgeons, podiatrists, physician assistants, osteopathic physicians or surgeons, chiropractors, midwives, advanced nurse practitioners, or any other professional health care provider as deemed appropriate by the insurance commissioner.

(c) The following shall serve as a guide to the
commissioner in the design of a basic policy issued pursuant to this article:

(1) Inpatient hospital care up to twenty days per year;

(2) Outpatient hospital care including, but not limited to, surgery and anesthesia, pre-admission testing, radiation therapy and chemotherapy;

(3) Accident or emergency care through emergency room care and emergency admissions to a hospital;

(4) Physician office visits for primary, preventive, well, acute or sick care, up to four visits per year, and laboratory fees, surgery and anesthesia, diagnostic X rays, physician care in a hospital inpatient or outpatient setting;

(5) Prenatal care, including a minimum of one prenatal office visit per month during the first two trimesters of pregnancy, two office visits per month during the seventh and eighth months of pregnancy, and one office visit per week during the ninth month and until term. Coverage for each such visit shall include necessary appropriate screening, including history, physical examination, and such laboratory and diagnostic procedures as may be deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member. Coverage for each office visit shall also include such prenatal counseling as the physician deems appropriate;

(6) Obstetrical care, including physician's services, delivery room and other medically necessary hospital services; and

(7) X-ray and laboratory services in connection with mammograms or pap smears when performed for cancer screening or diagnostic purposes, at the direction of a physician, including, but not limited to, the following:

(A) Baseline or other recommended mammograms for women age thirty-five to thirty-nine, inclusive;

(B) Mammograms recommended or required for women age forty to forty-nine, inclusive, every two years or as needed;
55 (C) A mammogram every year for women age fifty and over; or
56
57 (D) A pap smear annually or more frequently based on the woman's physician's recommendation for women age eighteen or over. A basic policy issued pursuant to this article may apply to mammograms or pap smears the same deductibles or copayments as apply to other covered services.
58
59 (d) Notwithstanding any other provision of this code to the contrary, any basic policy issued pursuant to this section shall be exempt from all statutorily and regulatorily mandated benefits and coverages except for the minimum benefits and coverages as established by the commissioner pursuant to subsection (a) of this section.
60
61 (e) Nothing in this section shall preclude an insurer from offering any other benefit or coverage under a basic policy issued pursuant to this article, for an appropriate additional premium.
62
63 (f) A basic policy issued pursuant to this section may include deductibles, copayments and maximum benefits.
64
65 (g) The insurance commissioner shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code to implement the provisions of this section, including, but not limited to, rules regarding bids, forms and rates.
66
67 (h) The premiums paid for insurance provided pursuant to this article shall be exempt from the premium tax required to be paid pursuant to sections fourteen and fourteen-a, article three of this chapter.
68
ARTICLE 16C. EMPLOYER GROUP ACCIDENT AND SICKNESS INSURANCE POLICIES.
69
§33-16C-1. Findings and purpose.
§33-16C-2. Definitions.
§33-16C-3. Exemption from mandatory benefits and coverages; optional benefits and coverages; deductibles and copayments.
§33-16C-4. Insurance commissioner to establish minimum benefits and coverages; basic policy benefits.
§33-16C-1. Findings and purpose.

(a) The Legislature finds that the cost of group accident and sickness insurance is becoming unaffordable to many employers and their employees. Further, because of the unaffordability of this type of insurance, in some cases due to the cost of mandated benefits, a significant segment of the state's working population is unable to pay for many health care services.

(b) It is the purpose and intent of this article to authorize a program whereby employers may obtain affordable group accident and sickness insurance for currently uninsured employees that will increase access to health care, assist in the reduction of the amount of uncompensated care, and reduce the number of uninsured persons in this state.

§33-16C-2. Definitions.

As used in this article:

(a) "Basic policy" means a group accident and sickness insurance contract for medical, surgical or hospital care that is required to contain only those minimum benefits and coverages mandated by this article, but which may contain other benefits and coverages.

(b) "Commissioner" means the insurance commissioner of West Virginia.

(c) "Department" means the department of insurance.

(d) "Eligible employee" means an employee who is employed by the employer for an average of at least twenty hours per week; includes individuals who are sole proprietors, general partners and limited partners; and includes individuals who either work or reside in this state.
Ch. 93] INSURANCE 949

16 (e) "Eligible employer" means a corporation, partneship or proprietorship which has done business in this state for at least one year.

19 (f) "Family member" means an eligible employee's spouse and any dependent child or stepchild under the age of eighteen or under age twenty-three if a full-time student at an accredited school: Provided, That the spouse, child or stepchild is not eligible for medicare, medicaid or state medical assistance.

25 (g) "Insurer" means any of the following entities that holds a valid certificate of authority from the commiss- sioner: An insurance company authorized to transact accident and sickness insurance; a hospital service corporation, medical service corporation or health service corporation organized pursuant to article twenty-four of this chapter; a health care corporation organized pursuant to article twenty-five of this chapter; or a health maintenance organization organized pursuant to article twenty-five-a of this chapter.

35 (h) "Premium" means the consideration for insurance, by whatever name called.

§33-16C-3. Exemption from mandatory benefits and coverages; optional benefits and coverages; deductibles and copayments.

1 (a) Notwithstanding any other provision of this code to the contrary, any basic policy issued pursuant to this article shall be exempt from all statutorily and regula- torily mandated benefits and coverages except for the minimum benefits and coverages provided for in section four of this article.

7 (b) Nothing in this article shall preclude an insurer from offering any other benefit or coverage under a basic policy issued pursuant to this article, for an appropriate additional premium.

11 (c) A basic policy issued pursuant to this article may include deductibles, copayments and maximum benefits.

§33-16C-4. Insurance commissioner to establish minimum benefits and coverages; basic policy benefits.
(a) The insurance commissioner shall establish minimum benefits which shall be included in every insurance policy issued pursuant to this article. The commissioner may accept bids on designs for such minimum plans and shall compile a final basic benefit plan for use by insurers within six months after the effective date of this article.

(b) The basic policy plan established by the insurance commissioner may include coverage for the services of medical physicians or surgeons, podiatrists, physician assistants, osteopathic physicians or surgeons, chiropractors, midwives, advanced nurse practitioners, or any other professional health care provider as deemed appropriate by the insurance commissioner.

(c) The following shall serve as a guide to the commissioner in the design of a basic policy issued pursuant to this article:

1. Inpatient hospital care up to twenty days per year;
2. Outpatient hospital care including, but not limited to, surgery and anesthesia, pre-admission testing, radiation therapy and chemotherapy;
3. Accident or emergency care through emergency room care and emergency admissions to a hospital;
4. Physician office visits for primary, preventive, well, acute or sick care, up to four visits per year, and laboratory fees, surgery and anesthesia, diagnostic X rays, physician care in a hospital inpatient or outpatient setting;
5. Prenatal care, including a minimum of one prenatal office visit per month during the first two trimesters of pregnancy, two office visits per month during the seventh and eighth months of pregnancy, and one office visit per week during the ninth month and until term. Coverage for each such visit shall include necessary appropriate screening, including history, physical examination, and such laboratory and diagnostic procedures as may be deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member. Coverage
for each office visit shall also include such prenatal counseling as the physician deems appropriate;

(6) Obstetrical care, including physician's services, delivery room and other medically necessary hospital services; and

(7) X-ray and laboratory services in connection with mammograms or pap smears when performed for cancer screening or diagnostic purposes, at the direction of a physician, including, but not limited to, the following:

(A) Baseline or other recommended mammograms for women age thirty-five to thirty-nine, inclusive;

(B) Mammograms recommended or required for women age forty to forty-nine, inclusive, every two years or as needed;

(C) A mammogram every year for women age fifty and over; or

(D) A pap smear annually or more frequently based on the woman's physician's recommendation for women age eighteen or over. A basic policy issued pursuant to this article may apply to mammograms or pap smears the same deductibles or copayments as apply to other covered services.

§33-16C-5. Required policy provisions.

(a) Each basic policy issued pursuant to this article shall contain in substance the following:

(1) A provision that the entire contract between the parties shall consist of the policy; the application of an eligible employer for such a policy, a copy of which shall be attached to such policy; and the individual applications, if any, submitted in connection with such policy by eligible employees or family members; and further that all statements made by any applicant shall be deemed representations and not warranties, and that no such statements shall void the insurance or reduce benefits thereunder unless contained in a written application;
(2) A provision that the insurer will furnish to the eligible employer, for delivery to each eligible employee of the insured group, an individual certificate setting forth in substance the essential features of the insurance coverage of such eligible employee and, if applicable, his or her family members, and to whom benefits thereunder are payable. If family members are included in the coverage, only one certificate need be issued for each family; and

(3) A provision that all new eligible employees in the groups or classes eligible for insurance shall from time to time be added to such groups or classes eligible to obtain such insurance in accordance with the terms of the policy.

(b) No provision relative to notice, proof of loss, the time for paying benefits, or the time within which suit may be brought upon a basic policy issued pursuant to this article shall be less favorable to an eligible employee than would be permitted in the case of an individual policy by the provisions set forth in article fifteen of this chapter.

§33-16C-6. Prohibitions against discrimination in establishing rates, terms or conditions.

Discrimination between individuals of the same class of risk in the issuance of basic policies, in the amount of premiums or rates charged for any insurance covered by this article, in benefits payable thereon, in any of the terms or conditions of the basic policy issued pursuant to this article, or in any other manner whatsoever, is prohibited. Nothing in this section shall prohibit an insurer from providing incentives for eligible employees or family members to utilize the services of a particular hospital or other health care provider.

§33-16C-7. Disclosures to eligible employees.

(a) Upon offering coverage under a basic policy issued pursuant to this article, the insurer shall provide the eligible employee with a written disclosure statement containing at least the following:

(1) An explanation of benefits otherwise mandated by
state law and not covered by the basic policy;

(2) An explanation of cost control features of the basic policy, along with all appropriate mailing addresses and telephone numbers to be utilized by eligible employee or family members in seeking information or authorization; and

(3) An explanation that, if applicable, the insurance policy is a minimum benefit policy.

(b) This disclosure statement shall be presented in clear and understandable form and format and shall be separate from the basic policy or certificate or evidence of coverage provided to an eligible employee or family member.

(c) Before any insurer issues a basic policy pursuant to this article, it shall obtain from the eligible employer applying for such policy a signed written statement in which each eligible employee:

(1) Certifies as to eligibility for coverage under the basic policy; and

(2) Acknowledges the limited nature of the coverage provided under the basic policy.

(d) All marketing communication intended to be utilized in the marketing of a basic policy issued pursuant to this article shall be filed with and approved by the commissioner prior to use and shall contain the disclosures required by this section.

§33-16C-8. Certification by employer.

Every employer applying for insurance coverage pursuant to this article shall certify to the insurer, on a form prescribed by the insurance commissioner, that the employer has not had health insurance benefits for the twelve months preceding application.


The insurance commissioner shall promulgate rules and regulations, pursuant to chapter twenty-nine-a of this code, establishing procedures for implementing the provisions of this article.
§33-16C-10. Exemption from insurance premiums tax.

1 The premiums paid for insurance provided pursuant
to this article shall be exempt from the premium tax
required to be paid pursuant to sections fourteen and
fourteen-a, article three of this chapter.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR
SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-1. Purpose of article.
§33-16D-2. Definitions.
§33-16D-3. Health insurance plans subject to this article.
§33-16D-4. Discrimination in marketing prohibited; annual filing with
commissioner, violations and penalties.
§33-16D-5. Premium rates for small employers; classes; maximum rates;
eligibility for rate increases.
§33-16D-6. Insurance commissioner to promulgate rules.
§33-16D-7. Renewability of coverage; exceptions.
§33-16D-10. Suspension of requirements.
§33-16D-11. Effective date.
§33-16D-12. Equality of terms; pre-existing conditions; continuous coverage
restrictions.
§33-16D-13. Obligations of employer; discrimination as to benefits paid.

§33-16D-1. Purpose of article.

1 The purpose of this article is to promote the availa-
bility of health insurance coverage to small employers,
to prevent abusive rating practices, to require disclosure
of rating practices to purchasers, to establish rules for
continuity of coverage for employers and covered
individuals, and to improve the efficiency and fairness
of the small group health insurance marketplace.

§33-16D-2. Definitions.

1 As used in this article:

(a) "Actuarial certification" means a written state-
ment by an actuary, or other individual acceptable to
the commissioner, that a small employer insurer is in
compliance with the provisions of this article, based
upon that person's examination, including a review of
the appropriate records and of the actuarial assump-
tions and methods utilized by the insurer in establishing
premium rates for applicable health benefit plans.

(b) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer insurer to small employers with similar case characteristics for health benefit plans within the same or similar coverage.

(c) "Case characteristics" mean demographic or other relevant characteristics of a small employer, as determined by a small employer insurer, which are considered by the insurer in the determination of premium rates for the small employer. Claim experience, health status and duration of coverage since issue shall not be case characteristics for the purposes of this article.

(d) "Class of business" means all or any distinct grouping of small employers as shown on the records of the small employer insurer.

(e) "Commissioner" means the insurance commissioner of West Virginia.

(f) "Department" means the department of insurance.

(g) "Duration rating" means the practice of rating a policy or a group of policies by the length of time they have been in force.

(h) "Health benefit plan" means any hospital or medical expense incurred policy; health, hospital or medical service corporation contract; plan provided by a multiple-employer trust or a multiple-employer welfare arrangement; health maintenance organization contract offered by an employer; or any other policy or plan issued by an insurer which provides health related benefits to small employers: Provided, That for purposes of this article, a health benefit plan shall not include accident only, credit, dental, disability income insurance; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required
to be contained in any liability insurance policy or equivalent self-insurance.

(i) "Index rate" means for each class of business for small employers with similar case characteristics the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(j) "Insurer" or "carrier" means any entity which holds a valid certificate of authority from the commissioner and which offers or sells health benefit plans to small employers situate in the state of West Virginia, regardless of where the policy or plan is drafted, issued or mailed, including, but not limited to, any insurance company authorized to transact accident and sickness insurance; a hospital service corporation, medical service corporation or health service corporation organized pursuant to article twenty-four of this chapter; a health care corporation organized pursuant to article twenty-five of this chapter; a health maintenance organization organized pursuant to article twenty-five-a of this chapter; or any multiple-employer trust or multiple-employer welfare arrangement.

(k) "Multiple-employer trust" means an insured health benefit plan organized as a trust which offers benefits to small employers and is partially or fully insured by an insurer, which such underwriting insurer shall be deemed to be transacting insurance as defined in section four, article one of this chapter, and is subject to this article regardless of where the policy or plan is delivered, issued for delivery, renewed or continued.

(l) "Multiple-employer welfare arrangement" means an employee welfare benefit plan, or any other arrangement which is not fully insured and which is established or maintained for the purpose of offering or providing any insurance or other benefit to employees of two or more employers, and may include multiple employer trusts as defined in subsection (k) herein: Provided, That such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements found, under federal law, to be collective bargaining agreements, or
by a rural electric cooperative, and is subject to this article regardless of where the policy or plan is delivered, issued for delivery, renewed or continued.

(m) "New business premium rate" means, for each class of business as to a rating period, the premium rate charged or offered by the small employer insurer to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(n) "Rating period" means the calendar period of at least twelve months for which premium rates established by a small employer insurer are assumed to be in effect, as determined by the small employer insurer.

(o) "Small employer" means any person, firm, corporation, partnership or association actively engaged in business in the state of West Virginia for at least one year who, on at least fifty percent of its working days during the preceding year, employed no more than forty-nine or not less than two eligible employees: Provided, That companies which are affiliated companies or which are eligible to file a combined tax return for state tax purposes shall be considered one employer.

(p) "Small employer insurer" means any insurer which offers health benefit plans covering the employees of a small employer situate within the state of West Virginia.

(q) "Tier rating" means the division of insureds to reflect risk and the subsequent selection by the insurer of only those groups which are financially attractive.

§33-16D-3. Health insurance plans subject to this article.

The provisions of this article apply to any health benefit plan which provides coverage to two or more eligible employees of a small employer situate in the state of West Virginia: Provided, That the provisions of this article shall not apply to individual health insurance policies which are subject to policy form and premium rate approval as required by article sixteen-b of this chapter.
§33-16D-4. Discrimination in marketing prohibited; annual filing with commissioner; violations and penalties.

(a) All insurers subject to this article are strictly prohibited from marketing their product to a specific group, legal occupation, locale, zip code, neighborhood, race, religion, or any discriminatory group.

(b) All insurers subject to this article shall file any marketing information upon request of the commissioner. The commissioner shall review said information and shall have the authority to take appropriate action to eliminate discriminatory marketing practices, including imposing fines on violators of this section of not more than ten thousand dollars. Upon a second violation of this section, the commissioner shall have the authority to revoke the violator's license to transact insurance.

§33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.

(a) Premium rates for health benefit plans subject to this article shall be subject to the following provisions:

(1) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent; Provided, That this subdivision shall not apply to a class of business if all of the following apply:

(A) The class of business is one for which the carrier does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status;

(B) The carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefits plan into or out of the class of business; and

(C) The class of business is currently available for purchase.

(2) For a class of business, the premium rates charged
during a rating period to small employers with similar
case characteristics for the same or similar coverage, or
the rates which could be charged to such employers
under the rating system for that class of business, shall
not vary from the index rate by more than twenty-five
percent of the index rate.

(3) The percentage increase, in the premium rate
charged to a small employer for a new rating period
may not exceed the sum of the following:

(A) The percentage change in the new business
premium rate measured from the first day of the prior
rating period to the first day of the new rating period.
In the case of a class of business for which the small
employer carrier is not issuing new policies, the carrier
shall use the percentage change in the base premium
rate;

(B) An adjustment, not to exceed fifteen percent
annually and adjusted pro rata for rating periods of less
than one year, due to the claim experience, health status
or duration of coverage of the employees or dependents
of the small employer as determined from the carrier's
rate manual for the class of business; and

(C) Any adjustment due to change in coverage or
change in the case characteristics of the small employer
as determined from the carrier's rate manual for the
class of business.

(4) In the case of health benefit plans issued prior to
the effective date of this article, a premium rate for a
rating period may exceed the ranges described in
subdivision (1) or (2), subsection (a) of this section for
a period of five years following the effective date of this
article. In that case, the percentage increase in the
premium rate charged to a small employer in such a
class of business for a new rating period may not exceed
the sum of the following:

(A) The percentage change in the new business
premium rate measured from the first day of the prior
rating period to the first day of the new rating period.
In the case of a class of business for which the small
employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate; and

(B) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(b) Nothing in this section is intended to affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

(c) A small employer carrier shall not involuntarily transfer a small employer into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration since issue.

(d) To be eligible to make a rate increase request after the first day of July, one thousand nine hundred ninety-one, an insurer must have a minimum anticipated loss ratio of sixty-five percent.

(e) All insurers subject to this article, effective the first day of July, one thousand nine hundred ninety-three, shall be prohibited from distinguishing more than four classes of businesses within its small group insurance coverage.

(f) Prior to any increase of the anticipated loss ratio, the insurance commissioner must conduct a public hearing as required by section thirteen, article two of this chapter.

(g) If any health benefit plan is provided by an insurer through an association of small employers not in the business of selling insurance and with not less than two hundred cumulative employees, and if such association
is rated on the basis of the number of employees and not on the basis of the individual small employers, such association or group is exempt from the provisions of this article.

§ 33-16D-6. Insurance commissioner to promulgate rules.

(a) Pursuant to chapter twenty-nine-a of this code, the insurance commissioner shall promulgate rules and regulations necessary to implement the provisions of this article.

(b) The rules and regulations promulgated by the commissioner shall include, but not be limited to, the following:

(1) Rules and regulations regarding the regulation of administrative costs incurred by the insurers;

(2) Rules and regulations regarding the commissioner's authority to increase the anticipated loss ratio and for the collection of data on which to base said increase, including, but not limited to, information obtained from the health care cost review authority and the national insurance commissioners association;

(3) Rules and regulations setting forth the procedures for filing rate applications; and

(4) Rules and regulations eliminating tier and duration ratings of small group insurers which are used to create artificial rates or unfair trade practices.

§ 33-16D-7. Renewability of coverage; exceptions.

(a) A health benefit plan subject to this article shall be renewable to all eligible employees at the option of the small employer: Provided, That an insurer may refuse to renew a health benefit plan for any of the following reasons:

(1) Nonpayment of required premiums;

(2) Fraud or misrepresentation by the small employer or by the insured individual;

(3) Noncompliance with plan provisions;

(4) The number of individuals covered under the plan.
is less than the number or percentage of eligible
individuals necessary pursuant to the percentage
requirements under the plan; or

(5) The small employer is no longer actively engaged
in the business in which it was engaged on the effective
date of the plan.

(b) A small employer insurer may cease to renew all
plans under a class of business. Upon the small
employer's election of nonrenewal, the insurer shall
provide notice of such election not to renew to all
affected health benefit plans and to the commissioner in
each state in which an affected insured individual is
known to reside at least ninety days prior to termination
of coverage.

(c) An insurer which exercises its right to cease to
renew all plans in a class of business shall not:

(1) Establish a new class of business for a period of
five years after the nonrenewal of the plans without
prior approval of the commissioner; or

(2) Transfer or otherwise provide coverage to any of
the employers from the nonrenewed class of business
unless the insurer offers to transfer or provide coverage
to all affected employers and eligible employees without
regard to case characteristics, claim experience, health
status or duration of coverage.

§33-16D-8. Disclosure of rating practices and renewabil-
ity provisions.

(a) Each small employer insurer shall make reasona-
ble disclosure in solicitation and sales materials
provided to small employers of the following:

(1) The extent to which premium rates for a specific
small employer are established or adjusted due to the
claim experience, health status or duration of coverage
of the employees of the small employer;

(2) The provisions concerning the insurer's right to
change premium rates and the factors, including case
characteristics, which affect changes in premium rates;
(3) A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans;

(4) The provisions relating to renewability of coverage; and

(5) An explanation, if applicable, that the small employer is purchasing a minimum benefits plan.

(b) All disclosure statements shall be presented in clear and understandable form and format and shall be separate from any policy, certificate or evidence of coverage otherwise provided.


(a) Each small employer insurer shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation which demonstrate that its rating methods and practices are based upon commonly accepted actuarial principles.

(b) Each small employer insurer shall file each first day of March with the commissioner an actuarial certification that the insurer is in compliance with the provisions of this article and that the rating methods of the insurer are actuarially sound. A copy of such certification shall be retained by the insurer at its principal place of business.

(c) A small employer insurer shall make the information and documentation described in subsection (a) of this section available to the commissioner upon request.

§33-16D-10. Suspension of requirements.

The insurance commissioner may suspend all or part of the requirements of this article applicable to one or more health benefit plans for one or more rating periods upon a filing by the small employer insurer and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the insurer or that the suspension would enhance the efficiency and fairness of the marketplace for small
§33-16D-11. Effective date.

The provisions of this article shall apply to each health benefit plan for a small employer situate in the state of West Virginia that is delivered, issued for delivery, renewed or continued after the effective date of this article. For purposes of this section, the date a plan is continued is the first rating period which commences after the effective date of this article.

§33-16D-12. Equality of terms; pre-existing conditions; continuous coverage restrictions.

Health benefit plans and, to the extent permitted by ERISA, other benefit arrangements covering small employers shall be subject to the following provisions:

(a) Pre-existing conditions provisions shall not exclude coverage for a period beyond twelve months following an individual's effective date of coverage and may only relate to conditions which had, during the twelve months immediately preceding the effective date of coverage, manifested themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care or treatment or for which medical advice, diagnosis, care or treatment was recommended or received, or as to a pregnancy existing on the effective date of coverage.

(b) In determining whether a pre-existing condition limitation provision applies to an eligible employee or dependent, all health benefit plans shall credit the time such person was covered under a previous employer-based health benefit plan, a comparable individual health benefit plan, or a self-insured plan if the previous coverage was continuous to a date not more than thirty days prior to the effective date of the new coverage, exclusive of any applicable waiting period under such plan.

(c) Subject to subsections (a) and (b) of this section, when a small group employer converts its health insurance plan from one health insurance plan to another health insurance plan or from one insurer to another insurer, all eligible employees who at the time
of conversion are covered by the health benefit plan must be offered health benefits coverage under the subsequent plan, and no employee who at the time of conversion is covered by a health benefit plan offered by said employer may be treated any differently relative to other covered employees under the new health benefit plan than he is treated under the current health benefit plan.

§33-16D-13. Obligations of employer; discrimination as to benefits paid.

1 Any employer subscribing to a health care benefit plan for or on behalf of its employees pursuant to this chapter shall not discriminate against any eligible employee on the basis of such employee's status with the employer by paying for all or part of the health care benefit plan premiums in a manner different from that provided any other eligible employee: Provided, That any participating small employer must pay at least twenty-five percent of each eligible employee's health care benefit plan premiums.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§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), 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 six-c (guaranteed loss ratio), article seven (assets and liabilities), article ten (rehabilitation and liquidation), article eleven (unfair practices and

*Clerk's Note: This section was also amended by H. B. 2462 (Chapter 89), which passed subsequent to this act.
frauds), article twelve (agents, brokers and solicitors), section fourteen, article fifteen (individual policies), 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 sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-seven (insurance holding company systems), article twenty-eight (individual accident and sickness insurance minimum standards), article thirty-three (annual audited financial report), article thirty-four (administrative supervision), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition) and article thirty-five (criminal sanctions for failure to report impairment); 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.

ARTICLE 25. HEALTH CARE CORPORATIONS.

*§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

Corporations organized under this article shall be subject to supervision and regulation by the insurance commissioner. Any provisions of this chapter or of any other law to the contrary notwithstanding, such corporation shall not be subject to the insurance laws of this state now in force nor to any law hereafter enacted relating to insurance and corporations engaged in the business of insurance unless otherwise provided in this article or unless such other law specifically and in exact terms applies to such voluntary, nonprofit health care corporations as are organized under this article. Such

*Clerk's Note: This section was also amended by H. B. 2462 (Chapter 89), which passed subsequent to this act.
corporations organized under this article, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsis-
tent 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 six-c (guaranteed loss ratio), article seven (assets and liabilities), article eight (investments), article ten (rehabilitation and liquidation), section fourteen, article fifteen (individual policies), article sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-seven (insurance holding company systems), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition) and article thirty-five (criminal sanctions for failure to report impairment); and no other provision of this chapter shall apply to such corporations unless specifically made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(1) Except as otherwise provided in this article, provisions of the insurance law and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this article. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article.

(2) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional

*Clerk's Note: This section was also amended by H. B. 2462 (Chapter 89), which passed subsequent to this act.
aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained herein shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider, or makes any qualitative judgment concerning any provider.

(3) Any health maintenance organization authorized under this article shall not be deemed to be practicing medicine and shall be exempt from the provision of chapter thirty of this code, relating to the practice of medicine.

(4) The provisions of article article six-c (guaranteed loss ratio), article seven (assets and liabilities), article eight (investments), section fourteen, article fifteen (individual policies), section three-f, article sixteen (concerning treatment of temporomandibular disorder and craniomandibular disorder), article sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-seven (insurance holding company systems), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition) and article thirty-five (criminal sanctions for failure to report impairment) shall be applicable to any health maintenance organization granted a certificate of authority under this article.

(5) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

CHAPTER 94
(H. B. 2901—By Delegates Gallagher and Beane)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections four-d and fourteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three-h and ten, article sixteen of said chapter; to amend and reenact sections seven-c and forty-three, article twenty-four of said chapter; to amend and reenact sections eight-b and twenty, article twenty-five of said chapter; and to amend and reenact sections eight-b and thirty-one, article twenty-five-a of said chapter, all relating to accident and sickness insurance; third party reimbursement for rehabilitation services; policies discriminating among health care providers; group accident and sickness insurance; third party reimbursement for rehabilitation services; policies discriminating among health care providers; hospital service corporations, medical service corporations, dental service corporations and health service corporations; third party reimbursement for rehabilitation services; policies discriminating among health care providers; health care corporations; third party reimbursement for rehabilitation services; policies discriminating among health care providers; health maintenance organization act; third party reimbursement for rehabilitation services; and policies discriminating among health care providers.

Be it enacted by the Legislature of West Virginia:

That sections four-d and fourteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three-h and ten, article sixteen of said chapter be amended and reenacted; that sections seven-c and forty-three, article twenty-four of said chapter be amended and reenacted; that sections eight-b and twenty, article twenty-five of said chapter be amended and reenacted; and that sections eight-b and thirty-one, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
§33-15-4d. 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-one, provide as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth, unless rejected by the insured.

(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.

(c) Rehabilitation 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) Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(e) 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.


Notwithstanding any other provisions of law, when any health insurance policy, health care services plan or other contract provides for the payment of medical expenses, benefits or procedures, such policy, plan or contract shall be construed to include payment to all health care providers including medical physicians,
osteopathic physicians, podiatric physicians, chiropractic physicians, midwives and nurse practitioners who provide medical services, benefits or procedures which are within the scope of each respective provider’s license. Any limitation or condition placed upon services, diagnoses or treatment by, or payment to any particular type of licensed provider shall apply equally to all types of licensed providers without unfair discrimination as to the usual and customary treatment procedures of any of the aforesaid providers.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3h. Third party reimbursement for rehabilitation services.

§33-16-10. Policies discriminating among health care providers.

§33-16-3h. 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-one, provide as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth, unless rejected by the insured.

(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;
(23) Brain injury;

(24) Polyarthritis, including rheumatoid arthritis;

(25) Neurological disorders, including, but not limited to, multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy and Parkinson's disease;

(26) 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;

(27) Burns.

(28) Rehabilitative services includes care rendered by any of the following:

(29) 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;

(30) 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;

(31) 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.

(32) Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(33) 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.

§33-16-10. Policies discriminating among health care providers.
Notwithstanding any other provisions of law, when any health insurance policy, health care services plan or other contract provides for the payment of medical expenses, benefits or procedures, such policy, plan or contract shall be construed to include payment to all health care providers including medical physicians, osteopathic physicians, podiatric physicians, chiropractic physicians, midwives and nurse practitioners who provide medical services, benefits or procedures which are within the scope of each respective provider's license. Any limitation or condition placed upon services, diagnoses or treatment by, or payment to any particular type of licensed provider shall apply equally to all types of licensed providers without unfair discrimination as to the usual and customary treatment procedures of any of the aforesaid providers.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7c. Third party reimbursement for rehabilitation services.

§33-24-43. Policies discriminating among health care providers.

§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-one, provide as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth, unless rejected by the insured.

(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.

(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) Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(e) 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.

§33-24-43. Policies discriminating among health care providers.

Notwithstanding any other provisions of law, when any health insurance policy, health care services plan or other contract provides for the payment of medical expenses, benefits or procedures, such policy, plan or contract shall be construed to include payment to all health care providers including medical physicians, osteopathic physicians, podiatric physicians, chiropractic physicians, midwives and nurse practitioners who provide medical services, benefits or procedures which are within the scope of each respective provider's license. Any limitation or condition placed upon services, diagnoses or treatment by, or payment to any particular type of licensed provider shall apply equally to all types of licensed providers without unfair discrimination as to the usual and customary treatment procedures of any of the aforesaid providers.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8b. Third party reimbursement for rehabilitation services.


§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-one, provide as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth, unless rejected by the insured.
(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.

(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
(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) Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(e) 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.


Notwithstanding any other provisions of law, when any health insurance policy, health care services plan or other contract provides for the payment of medical expenses, benefits or procedures, such policy, plan or contract shall be construed to include payment to all health care providers including medical physicians, osteopathic physicians, podiatric physicians, chiropractic physicians, midwives and nurse practitioners who provide medical services, benefits or procedures which are within the scope of each respective provider’s license. Any limitation or condition placed upon services, diagnoses or treatment by, or payment to any particular type of licensed provider shall apply equally to all types of licensed providers without unfair discrimination as to the usual and customary treatment procedures of any of the aforesaid providers.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8b. Third party reimbursement for rehabilitation services.


§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-one, provide as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth, unless rejected by the insured.

(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.

(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) Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(e) 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.


Notwithstanding any other provisions of law, when any health insurance policy, health care services plan or other contract provides for the payment of medical expenses, benefits or procedures, such policy, plan or contract shall be construed to include payment to all health care providers including medical physicians, osteopathic physicians, podiatric physicians, chiropractic physicians, midwives and nurse practitioners who provide medical services, benefits or procedures which are within the scope of each respective provider's license. Any limitation or condition placed upon services, diagnoses or treatment by, or payment to any particular type of licensed provider shall apply equally to all types of licensed providers without unfair discrimination as to the usual and customary treatment procedures of any of the aforesaid providers.
AN ACT to amend article twenty-b, 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 eight; and to amend chapter thirty-three of said code by adding thereto a new article, designated article twenty-d, all relating to professional insurance coverage; reporting to the insurance commissioner; and providing tail coverage.

Be it enacted by the Legislature of West Virginia:

That article twenty-b, 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 eight; and that chapter thirty-three of said code be amended by adding thereto a new article, designated article twenty-d, all to read as follows:

Article
20B. Rates and Malpractice Insurance Policies.
20D. Tail Insurance.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-8. Insurers required to report results of civil actions against physicians or podiatrists; penalties for failure to report; notice and hearing.

1 (a) Every insurer providing professional liability insurance to a physician, osteopathic physician or surgeon, podiatrist, or chiropractor in this state shall submit to the commissioner, within thirty days from any judgment, dismissal, or settlement of a civil action or any claim involving the insured, the following information:

8 (1) The date of any judgment, dismissal, or settlement;

9 (2) Whether any appeal has been taken on the judgment and, if so, by which party;
(3) The amount of any settlement or judgment against the insured; and

(4) Any such other information as the commissioner may require.

(b) Any insurer that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty to be imposed by the insurance commissioner. Upon a determination of the commissioner that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this section, the commissioner shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(c) If, after notice and hearing as provided in subsection (b) herein, the commissioner determines that a violation of this section has occurred, the commissioner shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against such violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment.

(d) If an insurer who has been found to have violated the provisions of this section fails to pay the amount of the penalty assessment to the commissioner within thirty days after issuance of notice of the same, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the commissioner's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(e) No person or entity shall be held liable in any civil action with respect to any report made pursuant to this section if such report was made without knowledge of
51 any falsity of the information contained therein.

ARTICLE 20D. TAIL INSURANCE.

§33-20D-1. Scope of article.

§33-20D-2. Definitions.

§33-20D-3. Tail insurance to be offered upon cancellation; availability of amortization; minimum premium rates; penalties for noncompliance.

§33-20D-4. Insurance commissioner to promulgate rules; establish amortization rates.

§33-20D-1. Scope of article.

This article applies to malpractice insurance as defined in subdivision (9), subsection (e), section ten, article one of this chapter insuring a medical physician, osteopathic physician, podiatric physician, chiropractic physician, dentist, midwife or nurse practitioner which has been in effect for at least sixty days.

§33-20D-2. Definitions.

As used in this article:

(a) "Tail insurance" means insurance which covers a professional insured once a claims made malpractice insurance policy is cancelled, not renewed or terminated and covers claims made after such cancellation or termination for acts occurring during the period the prior malpractice insurance was in effect.

(b) "Claims made malpractice insurance policy" means a policy which covers claims which are reported during the policy period, meet the provisions specified by the policy, and are for an incident which occurred during the policy period, or occurred prior to the policy period, as is specified by the policy.

§33-20D-3. Tail insurance to be offered upon cancellation; availability of amortization; minimum premium rates; penalties for noncompliance.

(a) Upon cancellation, nonrenewal or termination of any claims made professional malpractice insurance policy, the insurer shall offer to the insured tail insurance coverage.
Upon cancellation, nonrenewal or termination of any claims made professional malpractice insurance policy, the insurer shall offer to any professional licensed and practicing in the state of West Virginia, or who, upon retirement, last practiced in the state of West Virginia, the opportunity to amortize the payment of premiums for tail insurance over a period of not more than thirty-six months, in quarterly payments, at a rate to be established by the insurance commissioner:

Provided, That quarterly premiums paid pursuant to this subsection shall not be less than seven hundred fifty dollars.

(b) The first quarterly payment shall be payable contemporaneous with the issuance of the tail coverage policy. Subsequent payments shall be due and payable quarterly thereafter. Upon default in making a payment when due, tail coverage shall terminate, and the unpaid portion of the amortized premium shall be immediately due and payable in full.

(d) Any insurer who fails to offer tail insurance or in any other way violates the provisions of this article shall be assessed a penalty equal to the amount of the premium due.

(e) The offer of tail insurance coverage required by this section shall expire forty-five days after the cancellation, termination or other expiration of the claims made professional malpractice insurance policy, unless sooner accepted, in writing, by the insured.

§33-20D-4. Insurance commissioner to promulgate rules; establish amortization rates.

(a) Pursuant to article three, chapter twenty-nine-a of this code, the insurance commissioner shall promulgate legislative rules establishing procedures necessary to effectuate the provisions of this article. The first set of rules shall be promulgated as emergency rules within forty-five days of the effective date of this article.

(b) The insurance commissioner shall promulgate rules and regulations providing for the amortization of premium payments for tail insurance, which rules shall include, but not be limited to:
(1) Amortization schedules for various periods, but not to exceed a period of thirty-six months;

(2) Reasonable annual amortization rates;

(3) Reasonable annual interest rates;

(4) Such other schedules and rates as the commissioner deems necessary to effect the provisions of this article.

CHAPTER 96
(H. B. 2953—By Delegates Roop and Ashley)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation and mileage of grand jurors; permitting payment to grand jurors for the number of days served.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GRAND JURIES.


Any person who serves upon a grand jury shall be compensated for the number of days served. Grand jurors shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses incurred in traveling from the grand juror's residence to the place of the holding of the grand jury and return, and shall be compensated at a rate of between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance at sessions of the court.
AN ACT to amend and reenact section two, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum wage to three dollars and eighty cents after the thirty-first day of March, one thousand nine hundred ninety-one, and to four dollars and twenty-five cents after the thirty-first day of March, one thousand nine hundred ninety-two, and establishing a training wage.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.


1 (a) Minimum wage.

2 (1) After the thirty-first day of December, one thousand nine hundred eighty-six, every employer shall pay to each of his employees wages at a rate not less than three dollars and thirty-five cents per hour.

3 (2) After the thirty-first day of March, one thousand nine hundred ninety-one, every employer shall pay to each of his employees wages at a rate not less than three dollars and eighty cents per hour.

4 (3) After the thirty-first day of March, one thousand nine hundred ninety-two, every employer shall pay to each of his employees wages at a rate not less than four dollars and twenty-five cents per hour.

5 (b) Training wage.

6 (1) Notwithstanding the provisions set forth in paragraph (a) of this section, after the thirty-first day
of March, one thousand nine hundred ninety-one, any employer may pay an employee a subminimum training wage not less than the wage set forth in paragraph (a) (2) of section 6 of the Fair Labor Standards Amendments of 1989, as amended, as in effect on the effective date of this section.

(2) An employer shall not pay the subminimum training wage set forth in paragraph (b) (1) of this section to any individual:

(i) Who has attained nineteen years of age; or

(ii) For a cumulative period of not more than ninety days per employee: Provided, That if any business has not been in operation for more than ninety days at the time the employer hired the employee, the employer may pay the employee the subminimum training wage set forth in paragraph (b) (1) of this section for an additional period not to exceed ninety days.

CHAPTER 98
(H. B. 2205—By Delegates Cerra and Proudfoot)

[Passed March 6, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter two 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 requiring the governor to declare a Native American Indian Heritage Week.

Be it enacted by the Legislature of West Virginia:

That article two, chapter 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 one-a, to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1a. Special memorial days.

1 The governor shall, by proclamation, declare the week beginning with the Sunday before Thanksgiving as a special memorial week to be known as Native American Indian Heritage Week.
AN ACT to amend and reenact sections two and three, article two, chapter sixty-four 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 seven; to amend and reenact sections one, four, eight and ten, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections twelve and thirteen; to amend article four of said chapter by adding thereto a new section, designated section three; to amend and reenact sections two, three and four, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections seven and eight; to amend and reenact sections two and four, article six of said chapter; to further amend said article by adding thereto a new section, designated section five; to amend and reenact sections one, two, four, five and six, article seven of said chapter; to further amend said article by adding thereto a new section, designated section seven; to amend and reenact section one, article eight of said chapter; to amend and reenact sections one, three, five, ten, twelve, fifteen, sixteen, eighteen, twenty, twenty-four and twenty-six, article nine of said chapter; and to further amend said article adding thereto a new section, designated section twenty-eight, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various
modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred ninety-one; authorizing the division of purchasing to promulgate legislative rules relating to the availability of state surplus buildings and equipment to charity food banks, as modified; authorizing the division of purchasing to promulgate legislative rules relating to purchasing, as modified; authorizing the division of personnel to promulgate legislative rules relating to the civil service system, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to a plan of operation for the information and communication services division, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to parking, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to leasing space on behalf of state spending units, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds from bulk gasoline terminals; authorizing the air pollution control commission to promulgate legislative rules relating to the air quality management fee program, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds from the storage of petroleum liquids in fixed roof tanks; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds from petroleum refinery sources; authorizing the division of energy to promulgate legislative rules relating to miscellaneous water pollution control, as modified; authorizing the division of energy to promulgate legislative rules relating to West Virginia surface
mining and reclamation regulations, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to the assessment of civil administrative penalties, as modified; authorizing the division of natural resources to promulgate legislative rules relating to water pollution control permit fee schedules; authorizing the division of natural resources to promulgate legislative rules relating to the underground storage tank insurance trust fund, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to underground storage tanks, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to dam safety; authorizing the division of natural resources to promulgate legislative rules relating to hazardous waste management, as modified; authorizing the water resources board to promulgate legislative rules relating to requirements governing water quality standards; authorizing the solid waste management board to promulgate legislative rules relating to the development of comprehensive litter and solid waste control plans, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the establishment of a fee schedule and cost allocation applicable to the issuance of bonds by the board, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the development of commercial solid waste facility siting plans, as modified; authorizing the board of manufactured housing construction and safety to promulgate legislative rules relating to licensing, fees, standards, complaint handling, sanctions, the recovery fund and designation of the board as the state administrative agency under the national manufactured housing construction and safety standards act of 1974, as modified; authorizing the division of culture and history to promulgate legislative rules relating to the
standards and procedures for granting permits to excavate archaeological sites and unmarked graves, as modified; authorizing the board of health to promulgate legislative rules relating to fees for permits, as modified and amended; authorizing the board of health to promulgate legislative rules relating to public water systems, bottled water and laboratory certification, as modified; authorizing the board of health to promulgate legislative rules relating to vital statistics, as modified; authorizing the division of health to promulgate legislative rules relating to fees for services, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for shared services, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to health services offered by health professionals, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the conversion of acute care beds to one hundred skilled nursing care beds, as modified; authorizing the West Virginia hospital finance authority to promulgate legislative rules relating to the establishment of a fee schedule and cost allocations applicable to the issuance of bonds by the authority, as modified; authorizing the division of employment security to promulgate legislative rules relating to regulations of the commissioner of the division of employment security, as modified; authorizing the human rights commission to promulgate legislative rules relating to discrimination against the handicapped, as modified; authorizing the state fire commission to promulgate legislative rules relating to the state building code, as modified and amended; authorizing the state fire commission to promulgate legislative rules relating to the state fire code, as modified; authorizing the division of public safety to promulgate legislative rules relating to the West Virginia state police career progression system, as modified; authorizing and directing the division of public safety to promulgate legislative rules relating to the requirements and qualifications for official inspection stations and the issuance of permits for the stations; authorizing the
legislative rules relating to public hearings and site selection for private prisons, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to retail licensee operations, as modified and amended; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to licensing of retail liquor stores, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to private club licenses, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to bailment policies and procedures, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to farm wineries, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to the retail sale of wine in grocery stores, wine specialty shops and private wine restaurants, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to accident and sickness rate filing, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to the group coordination of benefits, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to AIDS, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to health insurance benefits for temporomandibular and craniomandibular disorders; authorizing the state lottery commission to promulgate legislative rules relating to the state lottery, as modified; authorizing the racing commission to promulgate legislative rules relating to thoroughbred racing, as modified; authorizing the racing commission to promulgate legislative rules relating to greyhound racing, as modified and amended; authorizing the state tax commissioner to promulgate legislative rules relating to the business investment and jobs expansion tax credit, corporations headquarters relocation tax credit, and small business tax credit; authorizing the nonintoxicating beer commissioner to promulgate legislative rules relating to nonintoxicating beer
licensing and operations procedures, as modified and as amended; authorizing the division of highways to promulgate legislative rules relating to traffic and safety, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to meat inspection, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to agricultural liming materials, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to public markets, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the attorney general to promulgate legislative rules relating to requiring persons upon whom subpoenas are served to answer written questions under oath; authorizing the attorney general to promulgate legislative rules relating to obtaining the assistance of public officials in investigations and the commencement of proceedings to compel compliance; authorizing the attorney general to promulgate legislative rules relating to the limitation of action and the recovery of investigative costs and a reasonable attorney's fee by the attorney general in an enforcement action, as modified; authorizing the attorney general to promulgate legislative rules relating to the regulated business exemption under the West Virginia antitrust act, as modified; authorizing the attorney general to promulgate legislative rules relating to defining the term "federal antitrust laws" and prohibiting tying and reciprocity, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the licensing of schools of barbering and beauty culture, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the qualifications, training, examination and registration of instructors in barbering and beauty culture, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the minimum curriculum for schools of barbering, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the curriculum
and minimum requirements, subjects and hour schedule for schools of beauty culture operation in West Virginia and a joint barbers and beauticians license, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the operation of barber and beauty shops and schools of barbering and beauty culture, as modified and amended; authorizing the West Virginia board of dental examiners to promulgate legislative rules relating to the board, as modified; authorizing the West Virginia board of registration for registered professional engineers to promulgate legislative rules relating to the board, as modified; authorizing the state board of examiners of land surveyors to promulgate legislative rules relating to the practice of land surveying in West Virginia, as modified; authorizing the board of medicine to promulgate legislative rules relating to fees for services rendered by the board, as modified; authorizing the board of medicine to promulgate legislative rules relating to licensing and disciplinary and complaint procedures for physicians and podiatrists, as modified; authorizing the board of medicine to promulgate legislative rules relating to certification and disciplinary and complaint procedures for physician assistants, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to the announcement of advanced nursing practice, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to continuing education for the licensure of pharmacists, as modified; authorizing the secretary of state to promulgate legislative rules relating to the use of nicknames and other designations on the ballot; authorizing the state treasurer to promulgate legislative rules relating to the uniform disposition of unclaimed property act, as modified; authorizing the West Virginia cable television advisory board to promulgate legislative rules relating to franchising procedures, as modified; and authorizing the West Virginia cable television advisory board to promulgate legislative rules relating to implementing the West Virginia cable television systems act, as modified.
Be it enacted by the Legislature of West Virginia:

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

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 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-2. Division of purchasing.

§64-2-3. Division of personnel.

§64-2-7. Secretary of the department of administration.

§64-2-2. Division of purchasing.

(a) 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.

(b) The legislative rules filed in the state register on the seventh day of August, one thousand nine hundred ninety, modified by the division of purchasing 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 ninety, relating to the division of purchasing (availability of state surplus buildings and equipment to charity food banks), are authorized.

(c) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred ninety, modified by the purchasing division 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-one, relating to the purchasing division (purchasing), 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.”

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”.

(c) The legislative rules filed in the state register on the fourteenth day of May, one thousand nine hundred ninety, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety, relating to the division of personnel (civil service system), are authorized.

§64-2-7. Secretary of the department of administration.

(a) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred ninety, modified by the secretary of the
department of administration 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-one, relating
to the secretary of the department of administration
(plan of operation for the information and communica-
tion services division), are authorized.

(b) The legislative rules filed in the state register on
the twenty-sixth day of September, one thousand nine
hundred ninety, modified by the secretary of the
department of administration 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-one, relating
to the secretary of the department of administration
(parking), are authorized.

(c) The legislative rules filed in the state register on
the twenty-sixth day of September, one thousand nine
hundred ninety, modified by the secretary of the
department of administration 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-one, relating
to the secretary of the department of administration
(leasing space on behalf of state spending units), are
authorized.

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COM-
MERCE, LABOR AND ENVIRONMENTAL RE-
SOURCES TO PROMULGATE LEGISLATIVE
RULES.

§64-3-1. Air pollution control commission.
§64-3-4. Division of energy.
§64-3-8. Division of natural resources.
§64-3-10. Water resources board.
§64-3-11. Solid waste management board.
§64-3-12. Board of manufactured housing construction and safety.

§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 commis-
sion (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 commis-
sion (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.

(p) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of air pollution from the emission of volatile organic compounds from bulk gasoline terminals), are authorized.

(q) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, 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 fifteenth day of November, one thousand nine hundred ninety, relating to the air pollution control commission (air quality management fee program), are authorized.

(r) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of air pollution from the emission of volatile organic compounds from the storage of petroleum liquids in fixed roof tanks), are authorized.

(s) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of air pollution from the emission of volatile organic compounds from petroleum refinery sources), are authorized.

§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 amendment 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 regulations, 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 autho-
ized 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'" and a colon.

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 depart-
ment 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 department of energy (solid waste management), are authorized.

(m) 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.

(n) 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.

(o) 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.
(p) 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.

(q) 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.

(r) 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.”

(x) The legislative rules filed in the state register on
the twenty-fifth day of May, one thousand nine hundred
ninety, modified by the division of energy to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the seventeenth
day of July, one thousand nine hundred ninety, relating
to the division of energy (miscellaneous water pollution
control), are authorized.

(y) The legislative rules filed in the state register on
the first day of November, one thousand nine hundred
ninety, modified by the division of energy to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the twenty-second
day of January, one thousand nine hundred ninety-one,
relating to the division of energy (West Virginia surface
mining and reclamation regulations), are authorized
with the amendment set forth below:

On page one hundred fifty-three, section 12.2(c)(4),
after the number “(4)”, by inserting the words “For
permits issued after the effective date of these
regulations,”.

§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 fur-bearing 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 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 (commercial 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 renumbering the remaining
subsections.

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 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>
349  1000 to 1499  $ 500
350  1500 to 1999  $ 750
351  2000 to 2499  $ 1000
352  2500 to 2999  $ 1250
353  3000 to 3499  $ 1500
354  3500 to 3999  $ 1750
355  4000 to 4499  $ 2000
356  4500 to 4999  $ 2250
357  greater than 5000  $ 2500

358  INDUSTRIAL OR OTHER WASTE FACILITIES

359  Average Discharge Volume  Annual Permit Fee
360  (gallons per day)

361  less than 1,000  $ 50
362  1,001 to 10,000  $ 500
363  10,001 to 50,000  $ 1000
364  greater than 50,000  $ 2500

(ii) The legislative rules filed in the state register on
365  the twenty-fifth day of July, one thousand nine hundred
366  eighty-nine, modified by the director of the department
367  of natural resources to meet the objections of the
368  legislative rule-making review committee and refiled in
369  the state register on the fifteenth day of September, one
370  thousand nine hundred eighty-nine, relating to the
371  director of the department of natural resources (revocation
372  of hunting and fishing licenses), are authorized.

(jj) The legislative rules filed in the state register on
374  the twentieth day of December, one thousand nine
375  hundred eighty-nine, modified by the division of natural
376  resources to meet the objections of the legislative rule-
377  making review committee and refiled in the state
378  register on the twenty-fourth day of January, one
379  thousand nine hundred ninety, relating to the division
380  of natural resources (state water pollution control
381  revolving fund program), are authorized.

(kk) The legislative rules filed in the state register on
383  the twenty-ninth day of March, one thousand nine
384  hundred ninety, modified by the division of natural
385  resources to meet the objections of the legislative rule-
387  making review committee and refiled in the state
register on the thirtieth day of August, one thousand ninety, relating to the division of natural resources (assessment of civil administrative penalties), are authorized.

(l) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred ninety, relating to the division of natural resources (water pollution control permit fee schedules), are authorized.

(mm) The legislative rules filed in the state register on the fifteenth day of June, one thousand nine hundred ninety, 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-second day of August, one thousand nine hundred ninety, relating to the division of natural resources (underground storage tank insurance trust fund), are authorized with the amendments set forth below:

On page four, after subsection 5.1, by inserting a new subdivision 5.1.1 to read as follows:

"5.1.1 The fee shall be one hundred dollars per tank per year ($100/tank/year) for a period of not less than one (1) year and not more than three (3) years. Second and third year capitalization fees may be levied if there is an inadequate surplus of funds, as determined by the Board of Risk and Insurance Management, the Division of Natural Resources and the Underground Storage Tank Advisory Committee pursuant to W. Va. Code, §20-5H-7."

(nn) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, 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 second day of October, one thousand nine hundred ninety, relating to the division of natural resources (underground storage tanks), are authorized with the amendment set forth below:
On page four, section five, subsection 5.1, after the word "requirements" by striking out the remainder of the subsection and inserting in lieu thereof, the following:

"of Title 47, Series 37 (Underground Storage Tank Fee Assessments); Title 47, Series 36, Section 4 (Notification Requirements); and Title 47, Series 37A, Section 5 (Capitalization Fees) of the Code of State Regulations and the owner or operator presents proof of the certification to the carrier."

The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, relating to the division of natural resources (dam safety), are authorized.

The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, 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-eighth day of November, one thousand nine hundred ninety, relating to the division of natural resources (hazardous waste management), 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,
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.

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.

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.

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.
the fourteenth day of October, one thousand nine hundred eighty-eight, relating to the water resources board (water quality standards), are authorized.

(n) The legislative rules filed in the state register on the twenty-seventh day of August, one thousand nine hundred ninety, relating to the water resources board (requirements governing water quality standards), are authorized.

§64-3-12. Solid waste management board.

(a) The legislative rules filed in the state register on the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (development of comprehensive litter and solid waste control plans), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (disbursement of loans and grants to governmental agencies for the acquisition or construction of solid waste disposal projects), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (establishment of fee schedule and cost allocation applicable to the issuance of bonds by the board), are authorized.

(d) The legislative rules filed in the state register on
the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (development of commercial solid waste facility siting plans), are authorized.

§64-3-13. Board of manufactured housing construction and safety.

The legislative rules filed in the state register on the twenty-third day of May, one thousand nine hundred ninety, modified by the board of manufactured housing construction and safety to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety, relating to the board of manufactured housing construction and safety (licensing, fees, standards, complaint handling, sanctions, recovery fund, designation of board as state administrative agency under the national manufactured housing construction and safety standards act of 1974), are authorized.

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-3. Division of culture and history.

The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety, modified by the division of culture and history 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-one, relating to the division of culture and history (standards and procedures for granting permits to excavate archaeological sites and unmarked graves), are authorized.

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.
§64-5-2. State board of health; division of health.
§64-5-3. Health care cost review authority.
§64-5-4. West Virginia hospital finance authority.
§64-5-7. Division of employment security.

§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, unsatisfac-
tory 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, §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
register on the twenty-seventh day of December, one thousand nine hundred eighty-five, relating to the state board of health (licensure of hospice care programs), are authorized.

(w) The legislative rules filed in the state register on the thirty-first day of October, 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 twenty-seventh day of December, one thousand nine hundred eighty-five, relating to the director of health (rules governing emergency medical services), are authorized with the amendments set forth below:

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 ground water 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 third day of November, one thousand nine hundred eighty-eight, relating to the state board of health (water wells), are authorized.
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.

(ll) 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 confidentiality), 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.

(rr) The legislative rules filed in the state register on the twenty-third day of July, one thousand nine hundred ninety, modified by the board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of September, one thousand nine hundred ninety, relating to the board of health (fees for permits), are authorized with the amendments set forth below:

On page two, subsection 3.6, by striking out all of the subsection and renumbering the subsequent subsections.

On page four, subsection 5.4, by striking out all of the subsection and renumbering the subsequent subsections.

And,

On page six, Table 64-30c, by striking out Table 64-30c and inserting in lieu thereof a new table, to read as follows:

<table>
<thead>
<tr>
<th>TABLE 64-30C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual On-Site and Innovative Alternative Type Sewage System Permit Fees</td>
</tr>
<tr>
<td>Type of System</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Class I (New or Modified)</td>
</tr>
<tr>
<td>Class II (New or Modified)</td>
</tr>
<tr>
<td>Home Aeration Unit</td>
</tr>
</tbody>
</table>

(ss) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred ninety, modified by the board of health 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 ninety-one, relating to the board of health (public water systems, bottled water and laboratory certification), are authorized.

(tt) The legislative rules filed in the state register on the thirteenth day of December, one thousand nine hundred ninety, modified by the board of health 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 ninety-one, relating to the board of health (vital statistics), are authorized.

(uu) The legislative rules filed in the state register on the seventh day of January, one thousand nine hundred ninety-one, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-one, relating to the division of health (fees for services), are authorized.

§64-5-3. 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.
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.

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.

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.

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.

(j) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred ninety, 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-fifth day of September, one thousand nine hundred ninety, relating to the health care cost review authority (exemption for shared services), are authorized.

(k) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety, 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-fifth day of September, one thousand nine hundred ninety, relating to the health care cost review
chapter 99] LEGISLATIVE RULES 1039

authority (health services offered by health professionals), are authorized.

(1) The legislative rules filed in the state register on the eleventh day of September, one thousand nine hundred ninety, 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-fourth day of January, one thousand nine hundred ninety-one, relating to the West Virginia health care cost review authority (conversion of acute care beds to one hundred skilled nursing care beds), are authorized.

§64-5-4. West Virginia hospital finance authority.

(a) 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.

(b) The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred ninety, 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 seventeenth day of January, one thousand nine hundred ninety-one, relating to the West Virginia hospital finance authority (establishment of fee schedule and cost allocations applicable to the issuance of bonds by the West Virginia hospital finance authority), are authorized.

§64-5-7. Division of employment security.

The legislative rules filed in the state register on the sixth day of October, one thousand nine hundred eighty-nine, modified by the commissioner of the division of employment security to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the thirteenth day of June, one
thousand nine hundred ninety, relating to the commis-
sioner of the division of employment security (regula-
tions of the commissioner of the division of employment
security), are authorized.


The legislative rules filed in the state register on the
tenth day of August, one thousand nine hundred ninety,
modified by the human rights commission to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the twelfth day
of December, one thousand nine hundred ninety,
relating to the human rights commission (discrimination
against the handicapped), are authorized.

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC
SAFETY TO PROMULGATE LEGISLATIVE
RULES.

§64-6-2. Fire commission.
§64-6-4. Division of public safety.
§64-6-5. Regional jail and correctional facility authority.

§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”;

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.”

(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."

(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 amend-
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.

(g) The legislative rules filed in the state register on the sixteenth day of July, one thousand nine hundred ninety, 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 November, one thousand nine hundred ninety, relating to the state fire commission (state building code), are authorized with the amendments set forth below:

On page two, subsection 4.1 after the words “The BOCA National Property Maintenance Code, Third Edition, 1990” insert the following: “: Provided, That section PM-104.4 Right of Entry may be adopted or rejected at the option of the local jurisdiction.”

And,

On page two, subsection 4.1 by adding thereto a new subdivision, designated subdivision 4.1.1 to read as follows:

“4.1.1 The following structures shall not be subject to inspection by local jurisdictions:

4.1.1.a Group U utility structures and storage sheds comprising an area of not more than 150 square feet which have no plumbing or electrical connections and are utilized only for residential storage purposes. (Examples include storage sheds that are for the residential storage of lawnmowers, tools, bicycles or furniture) Group U utility structures do not include
those utility structures and storage sheds which have plumbing or electrical connections or are used for the storage of explosives or other hazardous or explosive-type materials.”

(h) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, 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-one, relating to the state fire commission (state fire code), are authorized.

§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.

(c) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety, modified by the division of public safety to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, one thousand nine hundred ninety, relating to the division of public safety (West Virginia state police career progression system), are authorized.

(d) The Legislature hereby authorizes and directs the
division of public safety to promulgate legislative rules
relating to the requirements and qualifications for
official inspection stations and the issuance of permits
for the stations. Such legislative rules, in establishing
requirements and qualifications for official inspection
stations shall not require bay doors at such stations to
be greater than eight feet in height.

§64-6-5. Regional jail and correctional facility authority.

The legislative rules filed in the state register on the
twentieth day of December, one thousand nine hundred
ninety, modified by the regional jail and correctional
facility authority 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-one, relating to the regional jail
and correctional facility authority (public hearings and
site selection for private prisons), are authorized.

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND
REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Office of alcohol beverage control commissioner.
§64-7-2. Agency of insurance commissioner.
§64-7-4. Lottery commission.
§64-7-5. Racing commission.
§64-7-6. Tax department.
§64-7-7. Office of nonintoxicating beer commissioner.

§64-7-1. Office of alcohol beverage control commissioner.

(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 beverages to excess, or is addicted to the use of narcotics; or

(5) Has misrepresented a material fact in applying to the commissioner for a license.

(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.”

(e) The legislative rules filed in the state register on the first day of August, one thousand nine hundred ninety, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state
Ch. 99] LEGISLATIVE RULES 1047

89 register on the eighteenth day of October, one thousand nine hundred ninety, relating to the alcohol beverage control commissioner (retail licensee operations), are authorized with the amendment set forth below:

93 "On page twelve, section four, subsection 4.8.1, after the word 'stored' by changing the period to a colon and adding 'Provided, that the commissioner may, for good cause shown, permit a retail licensee holding three or more private club licenses to receive and store alcoholic liquors at warehouses or sites off premises.'"

99 (f) The legislative rules filed in the state register on the first day of August, one thousand nine hundred ninety, modified by the alcohol beverage control commission 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 ninety, relating to the alcohol beverage control commissioner (licensing of retail liquor stores), are authorized.

108 (g) The legislative rules filed in the state register on the first day of August, one thousand nine hundred ninety, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of October, one thousand nine hundred ninety, relating to the alcohol beverage control commissioner (private club licenses), are authorized.

117 (h) The legislative rules filed in the state register on the first day of August, one thousand nine hundred ninety, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of October, one thousand nine hundred ninety, relating to the alcohol beverage control commissioner (bailment policies and procedures), are authorized.

126 (i) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the alcohol beverage control
commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of October, one thousand nine hundred ninety, relating to the alcohol beverage control commissioner (farm wineries), are authorized.

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, one thousand nine hundred ninety, relating to the alcohol beverage control commissioner (retail sale of wine in grocery stores, wine specialty shops and private wine restaurants), are authorized.

§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.

(h) The legislative rules filed in the state register on the second day of February, one thousand nine hundred ninety, 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-ninth day of May, one thousand nine hundred ninety, relating to the insurance commissioner (accident and sickness rate filing), are authorized.

(i) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the insurance commissioner 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 ninety, relating to the insurance commissioner (group coordination of benefits), are authorized.

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the insurance commissioner 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-one, relating to the insurance commissioner (AIDS regulations), are authorized.

(k) The legislative rules filed in the state register on the third day of December, one thousand nine hundred ninety, relating to the insurance commissioner (health insurance benefits for temporomandibular and cranio-mandibular disorders), are authorized.

§64-7-4. Lottery commission.

(a) 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.

(b) The legislative rules filed in the state register on the twenty-seventh day of June, one thousand nine hundred ninety, 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 fifth day of September, one thousand nine hundred ninety, 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 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.

(y) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 fourteenth day of January, one thousand nine hundred ninety-one, relating to the West Virginia racing commission (thoroughbred racing), are authorized.

(z) The legislative rules filed in the state register on the twenty-ninth day of October, one thousand nine hundred ninety, 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 fourteenth day of January, one thousand nine hundred ninety-one, relating to the West Virginia racing commission (greyhound racing), are authorized with the amendment set forth below:

On pages seventy-four-a through seventy-eight, section forty-five, by striking out all of subsection 45.38.

§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 farmland."

(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 commissioner (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 commissioner 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 i, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page i, 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, with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situate, if rented."

Page 10.18, 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
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. Both of these determinations shall be made in accordance with the tax department's real property appraisal manual 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."

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 commis-
sioner 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 commis-
sioner 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 commis-
sioner 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 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-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
(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 commis-
sioner 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 commis-
sioner 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 depart-
ment (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 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 (soft drinks tax), are authorized.

(gg) The legislative rules filed in the state register on the twenty-first day of February, one thousand nine hundred ninety-one, relating to the state tax commissioner (business investment and jobs expansion tax credit, corporations headquarters relocation tax credit, and small business tax credit), are authorized.

§64-7-7. Office of nonintoxicating beer commissioner.

1 The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the office of nonintoxicating beer commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of October, one thousand nine hundred ninety, relating to the office of nonintoxicating beer commissioner (nonintoxicating beer licensing and operations procedures), are authorized with the amendment set forth below:

11 On page fifteen, section 6.2.3.1, by striking the words "at least fifty percent of the members of the team are employees of such brewer or distributor and".

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§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:

7 Pages 3 and 7, after "40 CFR part 262" add the words
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:

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."

Page 16, Sec. 8.08, line 22, (unnumbered), after the word "the" by striking the words "Railroad's Chief."

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."
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."

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."

Page 19, Sec. 8.08, subdivision (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, amend §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.

(l) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred ninety, 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 eighteenth day of January, one thousand nine hundred
ninety-one, relating to the division of highways (traffic and safety rules and regulations), 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.
§64-9-10. West Virginia board of dental examiners.
§64-9-12. West Virginia state board of registration for professional engineers.
§64-9-16. Board of medicine.
§64-9-18. Board of examiners for registered professional nurses.
§64-9-20. Board of pharmacy.

§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 agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth 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 fertilizer), 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 agriculture 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 agriculture 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.

(t) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 October, one thousand nine hundred ninety, relating to the commissioner of agriculture (meat inspection), are authorized.

(u) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 third day of October, one thousand nine hundred ninety, relating to the commissioner of agriculture (agricultural liming materials), are authorized.

(v) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 third day of October, one thousand nine hundred ninety, relating to the commissioner of agriculture (public markets), are authorized.
(w) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred ninety, 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 ninth day of November, one thousand nine hundred ninety, relating to the commissioner of agriculture (animal disease control), 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:

‘unless: (a) it appears in printed or typed face larger
than the largest type used in the written contract,
apart’.

On page 2, section 2.4, by striking all of section 2.4
and inserting in lieu thereof a new section 2.4, to read
as follows:

“2.4 ‘Home Construction’ means, for the purpose of
this Rule, the repair, remodeling or the building of
additions to existing single-family dwelling units,
including single-family homes, condominium units or
any other dwelling unit to be used by any person
primarily for personal or family use, but shall not
include new single-family home construction or the
rebuilding of all or substantially all of an existing or
preexisting single-family dwelling.”

Page 3, section 2.6, on line two thereof, after the
second comma by inserting the word “replacement.”

Page 3, section 3, by striking the words “and home
construction” from the section heading.

Page 3, section 3.1, lines one and two, by striking the
words “or home construction.”

Page 4, section 3.1.4, on lines one and two thereof, by
striking the words “or home construction.”

Page 4, section 3.1.8, on line two thereof, by striking
the words “or home construction.”

Page 4, section 3.1.9, on lines two and three thereof,
by striking the words “or home construction.”

Page 5, section 3.1.12, on lines one and two thereof,
by striking the words “or home construction.”

Page 6, section 3.1.26, by striking all of section 3.1.26
and renumbering the subsequent subsections.

Page 7, section 3.1.29, on lines one and two thereof, by striking the words "or home construction."

Page 7, section 3.1.29, on line six thereof, following the word "contract" by inserting a period and striking the 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.
(h) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the attorney general (authorizing the attorney general to require persons upon whom subpoenas are served to answer written questions under oath), are authorized.

(i) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the attorney general (obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance), are authorized.

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the attorney general 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 ninety, relating to the attorney general (limitation of action and recovery of investigative costs and a reasonable attorney's fee by the attorney general in an enforcement action), are authorized.

(k) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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-third day of January, one thousand nine hundred ninety-one, relating to the attorney general (regulated business exemption under the West Virginia antitrust act), are authorized.

(l) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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-second day of January, one thousand nine hundred ninety-one, relating to the attorney general (defining the term “federal antitrust laws” and prohibiting tying and reciprocity), 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 amend-
ment 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 automat-
ically 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 automat-
ically 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 automat-
On page 4, by inserting a new subsection, designated subsection 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.

And,

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."

(g) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 seventh day of December, one thousand nine hundred ninety, relating to the board of barbers and beauticians (licensing of schools of barbering and beauty culture), are authorized with the amendment set forth below:

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 automa-
(h) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 seventh day of December, one thousand nine hundred ninety, 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, 1992, unless extended prior to that date by an act of the Legislature."

(i) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 seventh day of December, one thousand nine hundred ninety, relating to the board of barbers and beauticians (minimum curriculum for schools of barbering), are authorized with the amendment set forth below:

On page 7, 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, 1992, unless extended prior to that date by an act of the Legislature."

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 seventh day of December, one thousand nine hundred ninety, 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
amendment 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, 1992, unless extended prior
to that date by an act of the Legislature."

(k) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
ninety, 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
seventh day of December, one thousand nine hundred
ninety, relating to the board of barbers and beauticians
(operation of barber and beauty shops and schools of
barbering and beauty culture), are authorized with the
amendment set forth below:

On page 4, 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, 1992, unless extended prior to
that date by an act of the Legislature."

§64-9-10. West Virginia board of dental examiners.

(a) 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 (rules and regula-
tions of the West Virginia board of dental examiners),
are authorized.

(b) The legislative rules filed in the state register on
the twenty-seventh day of July, one thousand nine
hundred ninety, 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-seventh day of August, one thousand nine hundred ninety, relating to the West Virginia board of dental examiners (rules and regulations of the West Virginia board of dental examiners), are authorized.

§64-9-12. West Virginia state board of registration for professional engineers.

(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 (legislative 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 professional engineers), are authorized.

(c) The legislative rules filed in the state register on the first day of October, one thousand nine hundred ninety, modified by the West Virginia board of registered professional engineers 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-one, relating to the West Virginia board of registered professional engineers (regulations governing the board of registration for

(a) 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 legislative 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.

(b) The legislative rules filed in the state register on the third day of May, one thousand nine hundred ninety, modified by the state board of examiners of land surveyors 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 ninety, 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 modifications 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; physicians 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 dispens-
ing physicians may not dispense legend drugs. However, the following activities by a physician or podiatrist shall be exempt from the requirements of sections 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 8 shall be applicable except the requirements of section 8.3 (a)."

(f) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 first day of October, one thousand nine hundred ninety, relating to the board of medicine (fees for services rendered by the board of medicine), are authorized.

(g) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, 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 eleventh day of January, one thousand nine hundred ninety-one, relating to the board of medicine (licensing, and disciplinary and complaint procedures: physicians; podiatrists), are authorized.

(h) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the board of medicine to meet the
§64-9-18. Board of examiners for registered professional nurses.

(a) 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.

(b) The legislative rules filed in the state register on the third day of August, one thousand nine hundred ninety, modified by the board of examiners for registered professional nurses 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 ninety, relating to the board of examiners for registered professional nurses (announcement of advanced nursing practice), 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.

(c) The legislative rules filed in the state register on the sixth day of May, one thousand nine hundred ninety, 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 fifth day of June, one thousand nine hundred ninety, relating to the board of pharmacy (continuing education for the licensure of pharmacists), 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 eighty-nine, relating to the secretary of state (West Virginia farm product lien central filing system), are authorized.
(d) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, relating to the secretary of state (guidelines for the use of nicknames and other designations on the ballot), are authorized.


(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 treasurer (establishment of imprest funds), are authorized.

(b) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the state treasurer 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 ninety, relating to the state treasurer (enforcement of the uniform disposition of unclaimed property act), are authorized.


(a) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred ninety, modified by the West Virginia cable television advisory board 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 ninety-one, relating to the West Virginia cable television advisory board (franchising procedures), are authorized.

(b) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred ninety, modified by the West Virginia cable television advisory board 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 ninety-one, relating to the West Virginia cable television advisory board (implementing regulations), are authorized.
AN ACT to amend and reenact sections one, two, five, six and sixteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section six-a, relating to adding architects, engineers and landscape architects to those persons entitled to a mechanics' lien for services performed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS' LIENS.

§38-2-1. Lien of contractor.

§38-2-2. Lien of subcontractor.

§38-2-5. Lien of mechanic or laborer working for owner.

§38-2-6. Lien of mechanic or laborer working for contractor or subcontractor.

§38-2-6a. Lien of architect, engineer or landscape architect.

§38-2-16 What deemed included in one contract.

§38-2-1. Lien of contractor.

1 Every person, firm or corporation who erects, builds, constructs, alters, removes or repairs any building or other structure, or other improvement appurtenant to any such building or other structure, or who alters or improves the real property whereon the same stands, or to which it may have been removed, or who provides services for any of the foregoing, under and by virtue of a contract with the owner for such erection, building, construction, alteration, removal or repair, either for an agreed lump sum or upon any other basis of settlement and payment, shall have a lien upon such building or other structure or improvement appurtenant thereto,
and upon the interest of the owner thereof in the real
property whereon the same stands, or to which it may
have been removed, to secure the payment of such
contract price or other compensation therefor.

§38-2-2. Lien of subcontractor.

Every person, firm or corporation who, under and by
virtue of a contract with such general contractor as is
mentioned in section one of this article, or with a
subcontractor for a part of such work, either for an
agreed contract price or by day or by piece, or other
basis of payment, shall furnish any part of the materials,
machinery or other necessary supplies or equipment, or
shall perform any labor, do any work or provide any
services necessary to the completion of any general
contract, such as is mentioned in section one of this
article, shall have such a lien for his or her compensa-
tion, as is provided for in section one of this article.

§38-2-5. Lien of mechanic or laborer working for owner.

Every workman, artisan, mechanic, laborer or other
person who performs any work or labor or provides any
service in the erection, construction, repair or removal
of any building or other structure or improvement
appurtenant thereto, or who alters or improves the real
property whereon the same stands, or to which it may
have been removed, by virtue of a contract for such
work and labor directly with the owner thereof, shall
have such a lien for his or her compensation as is
mentioned in section one of this article.

§38-2-6. Lien of mechanic or laborer working for con-
tractor or subcontractor.

Every workman, artisan, mechanic, laborer or other
person who performs any work or labor or provides any
service under the employment of any general contractor
or of any subcontractor in the erection, construction,
repair or removal of any building or other structure, or
improvement appurtenant thereto, or who alters or
improves the real property whereon the same stands, or
to which it may have been removed, necessary to the
completion of such general contract, shall have such a
lien for his or her compensation as is mentioned in
section one of this article.
§38-2-6a. Lien of architect, engineer or landscape architect.

1. An architect, engineer or landscape architect shall have a lien for his or her compensation as provided for in sections one through six, inclusive, of this article for all materials furnished and all work done, or all services provided by such architect, engineer and landscape architect as a contractor, subcontractor, materialman, mechanic or laborer, as the case may be.

§38-2-16. What deemed included in one contract.

1. For the purposes of this article, all materials furnished, all work done, and all services provided by any one person, firm or corporation, upon any one building or the improvements appurtenant thereto, or upon the real property whereon the same stands, or to which it may have been removed, shall be deemed and considered one contract, whether or not all of such material was bought at one time, or under one general agreement or otherwise, and whether or not all of such work, labor or services provided, was contracted for at one time or otherwise.

CHAPTER 101

(Com. Sub. for H. B. 2251—By Delegates P. White and Gallagher)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nine 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 establishing within the state treasury a new revolving fund entitled the medicaid uncompensated care fund to receive money from all sources both public and private; setting forth legislative findings; allowing such moneys to be used as a portion of state revenue in order to receive federal financial participation for the medicaid program so that eligible disproportionate share hospitals receive reimbursement for services
rendered to medicaid beneficiaries; restricting uses of such funds; administration of the fund; establishing criteria for disproportionate share hospitals; and requiring certain reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

That chapter nine 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. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-1. Legislative findings.

The Legislature finds and declares the following:

(a) Federal medicaid laws encourage special recognition of disproportionate share hospitals for medicaid reimbursement purposes.

(b) These same federal laws permit and encourage the state to fund the medicaid program through flexible means, including public and private contributions to serve as the state share for purposes of federal financial participation.

(c) Because of state budget constraints, moneys paid to disproportionate share hospitals under the medicaid program have not been sufficient to allow the hospitals to recover adequate reimbursement for the costs associated with providing appropriate services to medicaid clients of this state.

(d) The policy of this state is to encourage disproportionate share hospitals to continue providing health care services to the needy citizens of West Virginia; such encouragement and support are increasingly important when combined with federal financial participation.

(e) Cost shifting is a serious problem and it is the intent of the Legislature to reduce cost shifting.

(a) There is hereby created in the state treasury a special revolving fund known as the medicaid uncompensated care fund. All moneys deposited or accrued in this fund shall be used exclusively:

1. To provide the state's share of the federal medicaid program funds in order to improve inpatient payments to disproportionate share hospitals; and

2. To cover administrative cost incurred by the department of health and human services and associated with the medicaid program and this fund: Provided, That no expenditures may be made to cover said administrative costs for any fiscal year after one thousand nine hundred ninety-two, except as appropriated by the Legislature.

(b) Moneys from the following sources may be placed into the fund:

1. All public funds transferred by any public agency to the department of health and human resources medicaid program for deposit in the fund as contemplated or permitted by applicable federal medicaid laws;

2. All private funds contributed, donated or bequeathed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal medicaid laws;

3. Interest which accrued on amounts in the fund from sources identified in subdivisions (1) and (2) of this subsection; and

4. Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3) of this subsection, in accordance with section 1902 (a) (2) of the Social Security Act.

(c) Any balance remaining in the medicaid uncompensated care fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and shall be used only in a manner consistent with this article.
(d) Moneys received into the fund shall not be counted or credited as part of the legislative general appropriation to the state medicaid program.

(e) The fund shall be administered by the department of health and human resources. Moneys shall be disbursed from the fund on a quarterly basis. The secretary of the department shall implement the provisions of this article prior to the receipt of any transfer, contribution, donation or bequest from any public or private source.

(f) All moneys expended from the fund after receipt of federal financial participation shall be allocated to reimbursement of inpatient charges and fees of eligible disproportionate share hospitals. Except for the payment of administrative costs as provided for in section two of this article, appropriation from this fund for any other purposes is void.

(g) In the event that the fund does not contain a balance, after receiving federal financial participation, in amounts which are sufficient to reimburse each hospital the maximum amount of moneys to which it would otherwise be entitled, the secretary of the department may cause all eligible disproportionate share hospitals to be reimbursed for past services rendered on a pro rata basis.

§9-4A-3. Disproportionate share hospitals.

(a) Unless otherwise noted, all disproportionate share hospitals must meet the following criteria:

(1) The hospital must be licensed by the department of health and human resources and participate in the medicaid program; and

(2) The hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services by the approved state medicaid plan. In the case of a hospital located in a rural area, the term "obstetrician" includes any physician with staff privileges at the hospital who performs nonemergency obstetric
procedures. The requirements of this subsection do not apply to hospitals who did not offer routine obstetrical services to the general public as of the twenty-first day of December, one thousand nine hundred eighty-seven. Notwithstanding the provisions of this section, should federal requirements outlined in this subsection change, the department is to comply with federal law.

(b) Additionally, all disproportionate share hospitals must meet one of the following criteria:

(1) The hospital provided in excess of three thousand medicaid inpatient days of service during the most recent fiscal year of the hospital; or

(2) For the same time period, the sum of the following factors must exceed fifteen percent:
   (i) Total medicaid inpatient days divided by total inpatient days; and
   (ii) Total medicare supplemental security insurance inpatient days divided by total medicare inpatient days; and
   (iii) Total days of care provided to eligible medicaid patients whose care was not paid by West Virginia medicaid divided by total inpatient medicaid days.

(c) The dollar value of contributions, bequests or donations made by any hospital to the fund shall not be included as a reimbursable cost in the medicaid cost report of that hospital.

§9-4A-4. Legislative reports.

(a) The secretary of the department of health and human resources shall make an annual report to the Legislature on the use of the medicaid uncompensated care fund.

(b) The health care cost review authority shall make an annual report to the Legislature on the impact of improved medicaid inpatient payments resulting from the fund on nongovernmental payor health care costs.
AN ACT to amend and reenact section fifty-five, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the protective equipment and clothing required to be worn by miners.

Be it enacted by the Legislature of West Virginia:

That section fifty-five, article two, chapter twenty-two-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. UNDERGROUND MINES.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: Provided, That metatarsal guards shall not be required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings.
(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f) A self-rescue device approved by the director shall be worn by each person underground or kept within his immediate reach, and such device shall be provided by the operator. The self-rescue device shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device, and refresher training courses for all underground employees shall be held during each calendar year.

CHAPTER 103

(S. B. 329—By Senators Burdette, Mr. President, and Boley)
(By Request of The Executive)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to supervision and regulation of the transportation of persons and property for hire by motor vehicles upon or over the public highways of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.


1 As used in this chapter:

2 (1) “Commission” means the public service commission of West Virginia;
Ch. 103]  MOTOR CARRIERS  1105

(2) "Common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air and of express or forwarding agencies, and leased or rented motor vehicles, with or without drivers;

(3) "Contract carrier by motor vehicle" means any person not included in subdivision (2) of this section, who under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property over the highways in this state by motor vehicles for hire;

(4) "Driveaway operation" means an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported;

(5) "Exempt carrier" means any person operating a motor vehicle exempt from the provisions of this chapter under section three thereof;

(6) "I.C.C." means the interstate commerce commission;

(7) "Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle;

(8) "Motor vehicle" means, and includes, any automobile, truck, tractor, truck-tractor, trailer, semitrailer, motorbus, taxicab, any self-propelling motor-driven motor vehicle or any combination thereof, used upon any public highway in this state for the purpose of transporting persons or property;

(9) "NARUC" means the national association of regulatory utility commissioners;
(10) "Operations within the borders of this state" means interstate or foreign operations to, from, within or traversing this state;

(11) "Person" means and includes any individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof;

(12) "Private commercial carrier" means and includes any person who undertakes, whether directly or by lease or other arrangement, to transport property, including hazardous materials as defined in rules and regulations promulgated by the commission, for himself over the public highways of this state, in interstate or intrastate commerce, for any commercial purpose, by motor vehicle with a gross vehicle weight rating of ten thousand one pounds or more, by motor vehicle designed to transport more than fifteen passengers, including the driver; or by any motor vehicle used to transport hazardous materials in a quantity requiring placarding under federal hazardous material regulations as adopted by the commission.

(13) "Power unit" means any vehicle which contains within itself the engine, motor or other source of power by which said vehicle is propelled; and

(14) "Public highway" means any public street, alley, road or highway, or thoroughfare of any kind in this state used by the public.

§24A-1-3. Exemptions from chapter.

The provisions of this chapter, except where specifically otherwise provided, shall not apply to:

(1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(2) Motor vehicles owned and operated by the United
States of America, the state of West Virginia, or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or such other legitimate transportation for the schools as the commission may specifically authorize;

(3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to such farms or orchards to be used thereon;

(4) Motor vehicles used exclusively in the transportation of human or animal excreta;

(5) Motor vehicles used exclusively in ambulance service, or duly chartered rescue squad service;

(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission; and

(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when such transportation is incidental to the business of selling said products: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission.
AN ACT to amend article three, 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 vehicles, registration of vehicles of new residents.

Be it enacted by the Legislature of West Virginia:

That article three, 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 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-1a. Registration of vehicles of new residents.

(a) Every owner of a motor vehicle, trailer or other vehicle, shall, within thirty days after taking up residence in the state, apply to the division and obtain registration and title for the vehicle.

(b) For the purposes of this chapter there is a rebuttable presumption that a natural person is a resident of this state if any of the following elements exist including, but not limited to:

(1) The person is registered to vote in this state.

(2) The person enrolls the person's child to be educated in a public elementary or secondary school in this state.

(3) The person is receiving public assistance from this state.

(4) The person resides or has continuously remained in this state for a period exceeding thirty days except for infrequent or brief absences.
(5) The person has accepted employment or engages in any trade, profession, or occupation within this state, except that this does not include a person who is commuting from the person’s residence in another state or whose employment is seasonal or temporary, not exceeding ninety days.

(6) The person has filed for a homestead tax exemption on property in this state.

“Resident” does not include a person who is attending a college, university or other educational institution in this state, if the person has a domicile in another state and has a valid operator’s license and vehicle registration issued by the state of domicile. “Resident” also does not include members of the armed forces who are stationed in West Virginia, providing that their vehicles are properly registered in their state of residence, or a member of the armed forces stationed in another state or country providing that their vehicles are properly registered in that state or country.

A corporation, association, partnership, company or firm whose principal place of business is located within this state is a resident of this state.

The provisions of this section shall not apply to vehicles registered under proportional registration agreement.

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CHAPTER 105

(Com. Sub. for S. B. 129—By Senators Spears and Brackenrich)

[Passed February 18, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to recreating the driver’s licensing advisory board pursuant to review by the joint committee on government operations and increase of the per diem of board members.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver's licensing advisory board.

1 The driver's licensing advisory board which was
2 terminated pursuant to the provisions of article ten,
3 chapter four of this code, is hereby recreated following
4 a review of its functions by the joint committee on
5 government operations. The board shall consist of five
6 members to be appointed by the governor, by and with
7 the advice and consent of the Senate, for terms of three
8 years, except that as to the members first appointed, two
9 shall be appointed for a term of three years, two shall
10 be appointed for a term of two years, and one shall be
11 appointed for a term of one year, all from the first day
12 of July, one thousand nine hundred seventy-four. All
13 vacancies occurring on the board shall be filled by the
14 governor, by and with the advice and consent of the
15 Senate. One member of the board shall be an optome-
16 trist duly registered to practice optometry in this state
17 and the other four members of the board shall be
18 physicians or surgeons duly licensed to practice medi-
19 cine or surgery in this state. The governor shall appoint
20 persons qualified to serve on the board who, in his
21 opinion, will best serve the work and function of the
22 board.
23
24 The board shall advise the commissioner of motor
25 vehicles as to vision standards and all other medical
26 criteria of whatever kind or nature relevant to the
27 licensing of persons to operate motor vehicles under the
28 provisions of this chapter. The board shall, upon request,
29 advise the commissioner of motor vehicles as to the
30 mental or physical fitness of an applicant for, or the
31 holder of, a license to operate a motor vehicle. The board
32 shall furnish the commissioner with all such medical
33 standards, statistics, data, professional information and
34 advice as he may reasonably request.
The members of the board shall receive a per diem of fifty dollars for each day actually devoted to the business of the board, and shall be reimbursed for all reasonable and necessary expenses actually incurred by them in the discharge of their official duties.

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 driver's licensing advisory board should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the drivers' licensing advisory board shall continue to exist until the first day of July, one thousand nine hundred ninety-seven.

CHAPTER 106
(H. B. 2864—By Delegate J. Martin)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article fifteen of said chapter, all relating to emergency vehicles, authorization for emergency vehicle permits; transferring authority from division of motor vehicles to certain agencies including county sheriffs.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six, article fifteen of said chapter be amended and reenacted, all to read as follows:

Article
1. Words and Phrases Defined.
15. Equipment.
ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-6. Authorized emergency vehicle.

"Authorized emergency vehicle" means vehicles of a fire department, duly chartered rescue squad, police, department, ambulance service, state, county or municipal agency and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, and Class A vehicles of members of duly chartered rescue squads, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by section one, article ten, chapter seventeen-a of this code. Agency authorization and emergency equipment are defined in section twenty-six, article fifteen, chapter seventeen-c of this code. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles.

ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in section nineteen, flashing lights are prohibited on motor vehicles, except on an
authorized emergency vehicle, school bus, snow removal
right or left turn, or on any vehicle as a means of
indicating the same is disabled or otherwise stopped for
an emergency.

(d) Notwithstanding any other provisions of this
chapter, the following colors of flashing warning lights
are restricted for the use of the type of vehicle
designated:

(1) Blue flashing warning lights are restricted to
police vehicles. Authorization for police vehicles shall be
designated by the chief administrative official of each
police department.

(2) Except for standard vehicle equipment authorized
by section nineteen of this article, red flashing warning
lights are restricted to ambulances, fire-fighting
vehicles, school buses, Class A vehicles, as defined by
section one, article ten, chapter seventeen-a of this code,
of those firefighters who are authorized by their fire
chiefs to have such lights and to Class A vehicles of
members of ambulance services or duly chartered
rescue squads who are authorized by their respective
chiefs to have such lights: Provided, That red flashing
warning lights attached to such Class A vehicles may
be operated only when responding to or engaged in
handling an emergency requiring the attention of such
firefighters or members of such ambulance services or
chartered rescue squads.

Authorization for all ambulances shall be designated
by the department of health and human services and the
sheriff of the county of residence.

Authorization for all fire-fighting vehicles shall be
designated by the fire chief and the state fire marshal's
office.

Authorization for all rescue squad vehicles shall be
designated by the squad chief, the sheriff of the county
of residence and the department of health and human
services.

Authorization for school buses shall be designated by
the sheriff of the county of residence.
Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the state fire marshal's office.

Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the department of health and human services and the sheriff of the county of residence.

Authorization for members of duly chartered rescue squads to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the department of health and human services.

(3) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by section twenty-seven of this article shall be restricted to amber or yellow flashing warning lights.

Authorization for tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles and snow removal equipment shall be designated by the sheriff of the county of residence.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

It shall be unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.
AN ACT to amend article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to the revocation of licenses to operate a motor vehicle for driving under the influence of alcohol, controlled substances or drugs; providing that a person who is convicted of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs shall have his or her operator's license revoked; and eliminating the administrative hearing for persons so convicted who do not act to appeal such convictions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

1 (a) If a person is convicted for an offense defined in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, because such person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent or more,
by weight, and if such person does not act to appeal such
conviction within the time periods described in subsec-
tion (b) of this section, such person's license to operate
a motor vehicle in this state shall be revoked in
accordance with the provisions of this section.

(b) The clerk of the court in which a person is
convicted for an offense described in section two, article
five of this chapter or for an offense described in a
municipal ordinance which has the same elements as an
offense described in said section two of article five, shall
forward to the commissioner a transcript of the
judgment of conviction. If the conviction is the judgment
of a magistrate court, the magistrate court clerk shall
forward such transcript when the person convicted has
not requested an appeal within twenty days of the
sentencing for such conviction. If the conviction is the
judgment of a mayor or police court judge or municipal
court judge, the clerk or recorder shall forward such
transcript when the person convicted has not perfected
an appeal within ten days from and after the date upon
which the sentence is imposed. If the conviction is the
judgment of a circuit court, the circuit clerk shall
forward such transcript when the person convicted has
not filed a notice of intent to file a petition for appeal
or writ of error within thirty days after the judgment
was entered.

(c) If, upon examination of the transcript of the
judgment of conviction, the commissioner shall deter-
mine that the person was convicted for an offense
described in section two, article five of this chapter or
for an offense described in a municipal ordinance which
has the same elements as an offense described in said
section two of article five, because such person did drive
a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or the combined influ-
ence of alcohol or controlled substances or drugs, or did
drive a motor vehicle while having an alcoholic concen-
tration in his blood of ten hundredths of one percent or
more, by weight, the commissioner shall make and enter
an order revoking such person's license to operate a
motor vehicle in this state. The order shall contain the
52 reasons for the revocation and the revocation periods
53 provided for in section two of this article. Further, the
54 order shall give the procedures for requesting a hearing
55 which is to be held in accordance with the provisions of
56 section two of this article. The person shall be advised
57 in the order that because of the receipt of a transcript
58 of the judgment of conviction by the commissioner a
59 presumption exists that the person named in the
60 transcript of the judgment of conviction is the person
61 named in the commissioner's order and such constitutes
62 sufficient evidence to support revocation and that the
63 sole purpose for the hearing held under this section is
64 for the person requesting the hearing to present
65 evidence that he or she is not the person named in the
66 transcript of the judgment of conviction. A copy of such
67 order shall be forwarded to such person by registered
68 or certified mail, return receipt requested. No revoca-
69 tion shall become effective until ten days after receipt
70 of a copy of such order.

71 (d) The provisions of this section shall not apply if an
72 order reinstating the operator's license of the person has
73 been entered by the commissioner prior to the receipt
74 of the transcript of the judgment of conviction.

75 (e) For the purposes of this section, a person is
76 convicted when such person enters a plea of guilty or
77 is found guilty by a court or jury.

CHAPTER 108

(Com. Sub. for S. B. 90—By Senators Brackenrich, Dittmar, Whitlow and Felton)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-six-a, article
fifteen, chapter seventeen-c of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to sun screening devices; definitions; specifica-
tions; exceptions; and penalties.
Be it enacted by the Legislature of West Virginia:

That section thirty-six-a, 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.

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

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

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

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

(d) Each manufacturer shall:

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

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

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

(e) No person may:

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

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

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

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

(h) As used in this section:

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

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

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

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

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

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

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

(8) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.

(9) "Sun screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

(10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.
(i) Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, may be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

CHAPTER 109

(H. B. 2869—By Delegates Faircloth and Douglas)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing motor vehicle dealers to operate certain motor vehicles without an inspection sticker.

Be it enacted by the Legislature of West Virginia:

That section nine, article sixteen, 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 16. INSPECTION OF VEHICLES.

§17C-16-9. Operation without certificate or failure to produce certificate; penalty for misdemeanor.

1 It is a misdemeanor for any owner or operator, or both owner and operator, of any vehicle required to be inspected under subsection (a), section four of this article, to operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as designated under subsection (a), section four of this article: Provided, That a dealer licensed to sell new vehicles under the provision of article six, chapter seventeen-a of this code shall not be required to display a certificate of inspection and approval upon any new vehicle if the vehicle is driven for an operational purpose including all activities associated with dealer preparation for sale of a motor vehicle belonging to such dealer when such
vehicle has not been titled or delivered to a purchaser, and when such car is not to be used in the demonstrator fleet or otherwise routinely driven on the highways or roads of this state.

Unless another penalty is by the laws of this state provided, every person convicted of a misdemeanor for operating a vehicle without having displayed thereon a current and valid certificate of inspection and approval or for failure to produce such certificate upon demand of an authorized person shall be punished by a fine of not more than one hundred dollars.

CHAPTER 110
(H. B. 2824—By Delegates Burk and Roop)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, extending the term of years any municipality is empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof from thirty to fifty years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART VI. SALE, LEASE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale, lease or disposition of other municipal property.
(a) Every municipality may sell, lease as lessor or
dispose of any of its real or personal property or any
interest therein or any part thereof (other than a public
utility which shall be sold or leased in accordance with
the provisions of section seventeen of this article), as
authorized in article five, chapter one of this code, or
to the United States of America or any agency or
instrumentality thereof for a public purpose for an
adequate consideration, without considering alone the
present commercial or market value of such property.

(b) In all other cases involving a sale, any municipality
is hereby empowered and authorized to sell any of its
real or personal property or any interest therein or any
part thereof for a fair and adequate consideration, such
property to be sold at public auction at a place
designated by the governing body, but before making
any such sale, notice of the time, terms and place of sale,
together with a brief description of the property to be
sold, 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. The
requirements of notice and public auction shall not
apply to the sale of any one item or piece of property
of less value than one thousand dollars, and under no
circumstances shall the provisions of this section be
construed as being applicable to any transaction
involving the trading in of municipally owned property
on the purchase of new or other property for the
municipality, and every municipality shall have plenary
power and authority to enter into and consummate any
such trade-in transaction.

(c) In all other cases involving a lease, any municipali-
ity is hereby empowered and authorized to lease as
lessor any of its real or personal property or any interest
therein or any part thereof for a fair and adequate
consideration and for a term not exceeding fifty years.
Every such lease shall be authorized by resolution of the
governing body of such municipality, which resolution
may specify terms and conditions which must be
contained in such lease: Provided, That before any such
proposed lease is authorized by resolution of the
governing body, a public hearing on such proposed lease
shall be held by such governing body after notice of the
date, time, place and purpose of such public hearing has
been published as a Class I legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the municipality. The power and
authority granted in this subsection shall be in addition
to and not in derogation of any power and authority
vested in any municipality under any constitutional or
other statutory provision now or hereafter in effect.

CHAPTER 111
(H. B. 2700—By Delegates Damron and Williams)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]
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.

§8-14-17. Vacancies filled by promotions; eligibility for promotion; rights of chief.

Vacancies in positions in a paid police department of a Class I or Class II city shall be filled, so far as practicable, by promotions from among individuals holding positions in the next lower grade in the department. Promotions shall be based upon experience and by written competitive examinations to be provided by the policemen's civil service commission: Provided, that except for the chief of police, no individual shall be eligible for promotion from the lower grade to the next higher grade until such individual shall have completed at least two years of continuous service in the next lower grade in the department immediately prior to said examination: Provided, however, That notwithstanding the provisions of section six of this article, any member of a paid police department of Class I or Class II city now occupying the office of chief of such paid police department, or hereafter appointed to such office, shall, except as hereinafter provided in this section, be and shall continue to be entitled to all of the rights and benefits of the civil service provisions of this article, except that he may be removed from such office of chief of police without cause, and the time spent by such member in the office of such chief of police shall be added to the time served by such member during the entire time he was a member of said paid police department prior to his appointment as chief, and shall in all cases of removal, except for removal for good cause, retain the regular rank within said paid police department which he held at the time of his appointment to the office of chief of police or which he has attained during his term of service as chief of police. The provisions of this section shall be construed to apply and to inure to the benefit of all individuals who have
ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-22. Vacancies filled by promotions; eligibility for promotion.

Vacancies in positions in a paid fire department shall be filled, so far as practicable, by promotions from among individuals holding positions in the next lower grade in the department. Promotions shall be based upon experience and by competitive examinations to be provided by the firemen's civil service commission: Provided, That no individual shall be eligible for promotion from the lower grade to the next higher grade until such individual shall have completed at least two years of continuous service in the next lower grade in the department immediately prior to said examination. The commission shall have the power to determine in each instance whether an increase in salary constitutes a promotion.

CHAPTER 112
(Com. Sub. for H. B. 2625—By Delegates Browning and Kiss)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty, twenty-four, twenty-six and twenty-six-a, article twenty-two, chapter eight 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 sixteen-a, all relating to providing legislative findings; amending the amortization period for municipal pension funds; providing a base for death benefit calculations; providing disability benefit for nonservice related disability; creating a maximum supplemental
pension benefit; providing supplemental disability benefit; creating a waiting period for eligibility for supplemental pension benefits and supplemental disability benefits; providing for actuarial certification of supplemental benefit amounts and providing for increased member contribution when required by actuary.

Be it enacted by the Legislature of West Virginia:

That sections twenty, twenty-four, twenty-six 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; and that said article be further amended by adding thereto a new section, designated section sixteen-a, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREFR MEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-16a. Legislative findings.

§8-22-16a. Legislative findings.


§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

§8-22-16a. Legislative findings.

1 The Legislature finds that prudence often dictates a review of well meaning actions previously taken. The Legislature further finds that implementation of the cost of living benefit enacted during the one thousand nine hundred ninety regular legislative session would be disadvantageous to members of the municipal policemen and firemen pension funds and municipal budgets due to the large cost associated with that benefit and that this fact was unknown at the time of enactment of the cost of living benefit. The Legislature further finds that the fiscal integrity of the various municipal policemen and firemen pension funds will be in extreme jeopardy if an alternative benefit is not enacted. The Legislature further finds that maintenance of an actuarially sound pension system is incumbent upon the administrators of
the various funds and is also incumbent upon the Legislature when it enacts changes to the benefit structure. The Legislature further finds that the implementation of the cost of living benefit enacted in the one thousand nine hundred ninety regular legislative session would prevent the maintenance of an actuarially sound pension system and would jeopardize the interests of the members of the retirement funds, therefore, it is necessary to amend the cost of living benefit as previously enacted.


The board of trustees for each pension and relief fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary. All of the following standards must be met:

(a) An actuarial valuation report shall be prepared at least once every three years commencing with the later of (1) the first day of July, one thousand nine hundred eighty-three, or (2) three years following the most recently prepared actuarial valuation report: Provided, That this most recently prepared actuarial valuation report meets all of the standards of this section.

(b) The actuarial valuation report shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained, (2) the progress being made toward realization of the financial objective, (3) recent changes in the nature of the fund, benefits provided, or actuarial assumptions or methods, (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report, (5) the method used to value fund assets, (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund's auditor or examined by the qualified actuary for reasonableness, (7) a description and explanation of the actuarial assumptions and methods, and (8) any other information the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c) After the thirtieth day of June, one thousand nine
hundred ninety-one, and thereafter, the financial
objective of each municipality shall not be less than to
contribute to the fund annually an amount which,
together with the contributions from the members and
the allocable portion of the state premium tax fund for
municipal pension and relief funds established under
section fourteen-d, article three, chapter thirty-three of
this code and other income sources as authorized by law,
will be sufficient to meet the normal cost of the fund
and amortize any actuarial deficiency over a period of
not more than forty years: Provided, That in the fiscal
year ending the thirtieth of June, one thousand nine
hundred ninety-one, the municipality may elect to make
its annual contribution to the fund utilizing an alterna-
tive contribution in an amount not less than (i) one
hundred seven percent of the amount contributed for the
fiscal year ending the thirtieth day of June, one
thousand nine hundred ninety, or (ii) an amount equal
to the average of the contribution payments made in the
five highest fiscal years beginning with the 1984 fiscal
year whichever is greater: Provided, however, That
collection payments in subsequent fiscal years under
this alternative contribution method shall not be less
than one hundred seven percent of the amount contrib-
uted in the prior fiscal year: Provided further, That prior
to utilizing this alternative contribution methodology
the actuary of the fund shall certify in writing that the
fund is projected to be solvent under the alternative
contribution method for the next consecutive fifteen-
year period. For purposes of determining this minimum
financial objective, (1) the value of the fund's assets shall
be determined on the basis of any reasonable actuarial
method of valuation which takes into account fair
market value, and (2) all costs, deficiencies, rate of
interest, and other factors under the fund shall be
determined on the basis of actuarial assumptions and
methods which, in aggregate, are reasonable (taking
into account the experience of the fund and reasonable
expectations) and which, in combination, offer the
qualified actuary’s best estimate of anticipated expe-
ience under the fund.

Notwithstanding any other provision of this section or
(d) For purposes of this section the term "qualified actuary" means only an actuary who is a member of the society of actuaries or the American academy of actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his duties with respect to a fund solely in the interest of the members and member's beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his opinion the technique and assumptions used are reasonable and meet the requirements of this section of this article.

(e) The cost of the preparation of the actuarial valuation report shall be paid by the fund.

(f) Notwithstanding any other provision of this section, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, the municipality may calculate its annual contribution based upon the provisions of the supplemental benefit provided for in this article enacted during the one thousand nine hundred ninety-one regular session of the Legislature.


(a) The monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of section twenty-three-a of this article shall be equal to sixty percent of the monthly salary being received by such member, at the time he is so disabled, or the sum of five hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions
of section twenty-three-a of this article, as a proximate
result of service rendered in the performance of his
duties within such departments, his monthly disability
payment as provided in subsection (a) of this section
shall not, when aggregated with the monthly amount of
state workers' compensation, result in such disabled
member receiving a total monthly income from such
sources in excess of one hundred percent of the basic
compensation which is paid to members holding the
same position which such member held within such
department at the time of his disability. Lump sum
payments of state workers' compensation benefits shall
not be considered for purposes of this subsection unless
such lump sum payments represent commuted values of
monthly state workers' compensation benefits.

(c) Any member who has served on active duty with
the armed forces of the United States as described in
section twenty-seven of this article, whether prior or
subsequent to becoming a member of a paid police or
fire department covered by the provisions of this article,
and who, on the first day of July, one thousand nine
hundred eighty-six, is receiving or thereafter receives a
disability pension, shall receive in addition to the sixty
percent or minimum five hundred dollars authorized in
subsection (a) of this section, one additional percent for
each year served in active military duty, up to a
maximum of four additional percent.

(d) Beginning on and after the first day of April, one
thousand nine hundred ninety-one, the monthly sum to
be paid to a member who becomes eligible for total
disability incurred not in the line of duty shall be the
monthly benefit provided in subsection (a) of this
section: Provided, That the limitation in subsection (b)
of this section is not exceeded: Provided, however, That
for any person receiving benefits under this subsection
who is self-employed or employed by another, there shall
be offset against said benefits the amount of one dollar
for each three dollars of income derived from self-
employment or employment by another: Provided
further, That a person receiving disability benefits must
file a certified copy of his or her tax return on or before
the fifteenth day of April of each year to demonstrate either unemployment or income earned from self-
employment or employment by another: And provided further, That there shall be no offset of benefit for any income derived from self-employment or employment by another when the annual total amount of such income is seven thousand five hundred dollars or less.


(a) In case:

(1) Any member of a paid police or fire department who has been in continuous service for more than five years dies from any cause other than as specified in subsection (b) of this section before retirement on a disability pension under the provisions of, prior to the first day of July, one thousand nine hundred eighty-one, section twenty-four of this article, or after the thirtieth day of June, one thousand nine hundred eighty-one, sections twenty-three-a and twenty-four of this article or a retirement pension under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, leaving in either case surviving a spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years, or any dependent child over the age of eighteen years of age who is totally physically or mentally disabled so long as such condition exists; or

(2) Any former member of any such department who is on a disability pension prior to the first day of July, one thousand nine hundred eighty-one, under section twenty-four of this article, or after the thirtieth day of June, one thousand nine hundred eighty-one, under sections twenty-three-a and twenty-four of this article, or is receiving or is entitled to receive retirement pension benefits under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, dies from any cause other than as specified in subsection (b) of this section leaving in either case surviving a spouse or any dependent child or children under the age of eighteen years or dependent father or
mother or both, or any dependent brothers or sisters or both under the age of eighteen years, or any dependent child over the age of eighteen years of age who is totally physically or mentally disabled so long as such condition exists; then in any of the cases set forth above in (1) and (2) the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of such entitled surviving dependents the following pension benefits: To such spouse, until death or remarriage, a sum per month equal to sixty percent of such member’s pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to sixty percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or the sum of three hundred dollars per month, whichever is greater; to each such dependent child, a sum per month equal to twenty percent of such member’s pension or, in the event such member was not receiving a pension on the date of his death, a sum per month equal to twenty percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent orphaned child, a sum per month equal to twenty-five percent of such member’s pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to twenty-five percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent orphaned child, a sum per month equal to twenty-five percent of such member’s pension or, in the event such member was not receiving a pension on the
date of his death, a sum per month equal to twenty-five percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent father or mother, a sum per month for each equal to ten percent of such member's pension or, in the event such member was not receiving a pension on the date of his death, a sum per month equal to ten percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder; to each such dependent brother or sister, the sum of fifty dollars per month until such individual attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed one hundred dollars per month. If at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments. In no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount paid to all dependents.

(b) The surviving spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any such member who dies by reason of service rendered in the performance of such member's duties shall, regardless of the length of such member's service and irrespective of whether such member was or was not entitled to receive, or was or was not receiving, disability pension or temporary disability payments at the time of his death, receive the death benefits provided for in subsection (a) of this section. If such member had less than three years' service at the time of his death, the member's pension shall be computed on the basis of the actual number of years of service.
(c) If a member dies without leaving a spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, his contributions to the fund plus six percent interest shall be refunded to his named beneficiary or, if no beneficiary has been named, to his estate to the extent that such contributions plus interest exceed any disability or retirement benefits that he may have received before his death.

(d) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly subject to such subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.

(e) Notwithstanding the provisions of section twenty-four of this article the benefit provided for in this section shall be calculated as if the member had remained unemployed throughout any period of disability.

§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

(a) Except as otherwise provided in this section, all retirees, surviving beneficiaries, disability pensioners or future retirees shall receive as a supplemental pension benefit an annualized monthly amount commencing on the first day of July, based on a percentage 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: Provided, That the supplemental pension benefit specified herein shall not exceed four percent per year: Provided, however, That no retiree shall be eligible for the supplemental pension benefit specified herein until the first day of July after the expiration of two years from the date of retirement of said retiree: Provided further, That persons retiring prior to the effective date of this
section shall receive the supplemental benefit provided for in this section immediately upon retirement and shall not be subject to the two year delay: *And provided further,* That the supplemental benefit shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the total annual benefit paid. If at any time, after the supplemental benefit becomes applicable, the total accumulated percentage increase in benefit on the allowable amount becomes less than seventy-five percent of the total accumulated percentage increase in the consumer price index over that same period of time, the four percent limitation shall be inapplicable until such time as the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index. The supplemental pension benefit payable under the provisions of this section shall be paid in equal monthly installments.

(b) Upon commencement of the payment of death benefits pursuant to section twenty-six of this article, there shall be calculated on the allowable amount, which is the first fifteen thousand dollars of the annual allowable benefit under said section twenty-six, the supplemental benefit provided for in subsection (a) of this section using the date that the retirement benefit provided for pursuant to section twenty-five of this article began as the base year. The amount of the death benefit provided pursuant to section twenty-six of this article shall be calculated without regard to any supplemental benefit previously paid under this section. After the initial calculation made pursuant to this subsection the beneficiary of the benefits provided for pursuant to section twenty-six, shall, after reindexation, thereafter receive the supplemental benefit provided for in subsection (a).

(c) Persons becoming disabled and eligible for a benefit under subsection (d), section twenty-four of this article after the first day of January, one thousand nine hundred ninety-one, shall receive as an annualized monthly supplemental benefit commencing on each July first an amount based on a percentage increase equal to any increase in the consumer price index as calcu-
lated by the United States Department of Labor, Bureau of Statistics, for the preceding year: *Provided*, That the supplemental pension benefit shall not exceed four percent per year: *Provided, however*, That the benefit provided herein shall not commence until the first day of July in the second year after what would have been the earliest service retirement date pursuant to section twenty-five of this article for the person receiving the disability benefit: *Provided further*, That for persons becoming eligible for a benefit under subsection (d), article twenty-four of this section who were not employed in the preceding year and file a copy of his or her income tax return by the fifteenth of April each year, evidencing said lack of employment, the benefit provided herein shall commence on the first day of July in the second year after the date of disablement: *And provided further*, That the supplemental benefit shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the total annual benefit paid. If at any time after the commencement of the payment of the supplemental benefit provided under this subsection the total accumulated percentage increase in benefit on the allowable amount becomes less than seventy-five percent of the total accumulated increase in the consumer price index for that same period of time, the four percent limitation shall be inapplicable until such time as the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index.

(d) Persons receiving a disability pension pursuant to section twenty-four of this article prior to the first day of January, one thousand nine hundred ninety-one, shall receive commencing each July first, as an annualized monthly supplemental benefit an amount based on a percentage 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: *Provided*, That the supplemental benefit provided herein shall not exceed two percent per year: *Provided, however*, That beginning the first day of July two years after what would have been the earliest service retirement date pursuant to section twenty-five
of this article the supplemental benefit provided herein shall not exceed four percent per year. The amount of supplemental benefit provided in this subsection shall not exceed four percent beginning the first day of July in any twelve month period for any pensioner who files a certified copy of his or her tax return evidencing that said pensioner was unemployed in the preceding year and received no earned income. The tax return shall be filed by the fifteenth of April in any such year. If at any time after the first day of July in the second year from what would have been the earliest service retirement date pursuant to section twenty-five of this article the total accumulated percentage increase in the supplemental benefit provided pursuant to this subsection on the allowable amount becomes less than the seventy-five percent of the total accumulated percentage increase in the consumer price index over that same period of time, the maximum percentage shall be inapplicable until such time as the percentage increase in the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index. The supplemental benefit provided in this subsection shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the annual benefit paid.

(e) Any supplemental benefits paid during a period of non-entitlement may be withheld out of subsequent regular monthly pension benefits.

(f) During the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-six, and each year thereafter, each municipal policemen's and firemen's pension fund shall be reviewed by a qualified actuary who shall make a determination as to its actuarial soundness. Based upon the actuary's determination of the actuarial soundness of the fund, the actuary shall certify to the board of trustees of the fund the amount of increase in supplemental benefits, if any, which may be paid, and which will preserve the minimum standards for actuarial soundness of the fund, as set forth in section twenty of this article. The board of trustees shall increase supplemental benefits by an amount which is equal to the actuary's certified
recommendation, up to the four percent limit contained in this section or the increase in the consumer price index, whichever is less. If the actuary determines that it is necessary to preserve the actuarial soundness of the fund, the board of trustees of the fund shall increase the percentage of the members’ contribution from seven percent to the amount certified by the actuary not to exceed eight and one-half percent, but only for so long as is necessary to achieve the minimum standards for actuarial soundness required by section twenty of this article. In any year in which there is no supplemental benefit paid, such year shall not be included in the reindexation calculation provided pursuant to this section.

(g) This section shall be construed liberally to effectuate the purpose of establishing minimum pension benefits under this article for members and surviving spouses.

CHAPTER 113
(S. B. 512—By Senator Wooton)

[Passed March 6, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-nine-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county airport authority; and providing generally therefor.

Be it enacted by the Legislature of West Virginia:

That article twenty-nine-a, 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 29A. COUNTY AIRPORT AUTHORITIES.

§8-29A-1. County airport authority authorized as public agency.
§8-29A-2. Appointment of members; powers and duties; compensation; terms; removal or replacement.
§8-29A-4. Funds; accounting; reporting.
§8-29A-5. Full-time employees of the authority to be public employees.
§8-29A-6. Authority may incur indebtedness: county not liable for indebtedness.
§8-29A-7. Exemption from taxes; payment for portion used as industrial park.
§8-29A-8. County commission authorized to convey present airport properties and facilities to the authority.
§8-29A-11. Purpose of article; liberal construction; article cumulative.

§8-29A-1. County airport authority authorized as public agency.

The county commission of a county is hereby authorized to create and establish as a public agency a county airport authority to be known as the “_________ County Airport Authority” for the purposes and in the manner hereinafter set forth.

§8-29A-2. Appointment of members; powers and duties; compensation; terms; removal or replacement.

(a) The management and control of the county airport authority, its property, operations, business and affairs, shall be lodged in a board of five persons who shall be known as “Members of the Authority”. The board shall constitute and be a public corporation under the name of “_________ County Airport Authority” and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be imploled, and have and use a common seal.

(b) All members shall be appointed by the county commission: Provided, That one member of the authority shall be a member of the county commission: Provided, however, That of the remaining four members of the authority no more than two shall be members of the same political party. Members shall be residents of the county and be appointed for a term of five years, except that as to the first four appointed to the first board appointed, the term of one member shall expire on the first day of July next ensuing and the term of the next member shall expire on the first day of July two years thereafter, the term of another member shall expire on the first day of July three years thereafter and the term of the remaining member shall expire on the
first day of July four years thereafter: Provided further, that the county commissioner appointed to serve as a member of the authority shall not serve for a term as member of the authority which is longer than the term of office as a member of the county commission.

(c) The members of said board shall receive no compensation for their services, but they shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as members of said board. They shall not be personally interested, directly or indirectly, in any contract entered into by said board, or hold any remunerative position in connection with the establishment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as members of said board.

(d) The county commission shall have the power to remove any member of the authority for consistent violations of any provisions of this article, for reasonable cause which shall include, but not be limited to, a continued failure to attend meetings of the authority, failure to diligently pursue the objectives for which the authority was created or failure to perform any other duty prescribed by law, or for any misconduct in office: Provided, That if the county commission desires to remove a member of the authority it shall notify said member in writing, stating the reasons for the county commission desiring said removal. Within ten days of the receipt of the written notice of removal by the member of the authority, the member may request a hearing before the county commission, and any such hearing shall be held within ten days of the member's request for said hearing.

If any member of the authority shall die, resign or be removed, or for any other reason cease to be a member of the authority, the county commission shall within thirty days appoint another person to fill the unexpired portion of the term of such member.


(a) The authority is hereby authorized and empo-
1142 MUNICIPALITIES [Ch. 113

were to acquire, equip, construct, improve, maintain
and operate a public airport within the county, with all
usual and convenient appurtenances and facilities
pertaining thereto, including, but not limited to, an
industrial park and a waterworks or sewerage system
or a combined waterworks and sewerage system, and
said airport shall be for the convenience and accommoda-
tion of the inhabitants of the county and the public
generally.

(b) A county airport authority is hereby given power
and authority as follows:

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

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

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

(4) To enter into contracts with any person, govern-
mental department, firm or corporation, and generally
to do any and all things necessary or convenient for the
purpose of acquiring, equipping, constructing, main-
taining, improving, extending, financing and operating
a public airport, including the development of an
industrial park in the same general area;

(5) To apply for, receive and use grants-in-aid,
donations and contributions from any source or sources,
including, but not limited to, the federal government
and any agency thereof, and the state of West Virginia,
and to accept and use bequests, devises, gifts and
donations from any person, firm or corporation;

(6) To enter into any agreement with any person,
including the federal or state government, or any agency
or subdivision thereof, in connection with obtaining
funds for its purposes, which agreement may contain
such provisions, covenants, terms and conditions as the
authority may deem advisable;
(7) To accept contributions from time to time by the county commission and by any persons that shall desire so to do;

(8) To acquire lands, structures or buildings and hold title thereto in its own name, including, whenever it shall be deemed necessary by the authority, to take or acquire such property either in fee or as easements, to purchase same directly or through its agents from the owner or owners thereof, or to exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter fifty-four of this code inasmuch as such purposes are hereby declared to be public uses for which private property may be taken: Provided, That such right of eminent domain shall not apply to the development of an industrial park;

(9) To sell, lease or otherwise dispose of any real estate which it may own;

(10) To purchase, own, hold, sell and dispose of personal property;

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

(12) To raise funds by the issuance and sale of revenue bonds or refunding bonds in the manner provided by the applicable provisions of article sixteen of this chapter, it being hereby expressly provided that, for that purpose, a county airport authority shall be treated as a municipality or board as those terms are used in said article sixteen;

(13) To acquire, construct, establish, equip, maintain and operate, within a reasonable distance of the airport, a waterworks, a sewerage system or a combined waterworks and sewerage system for its own use and for the use of any person, and to finance the same by the issuance of revenue bonds as provided in this article:
Provided, That no existing waterworks or sewerage system, or any part thereof, may be acquired without the prior consent and approval of the public service commission;

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

(15) To lease its airport and all or any part of the appurtenances and facilities therewith to any available lessee, subject to all constitutional and statutory limitations with respect thereto, at such rental and upon such terms and conditions as the authority shall deem proper: Provided, That such lease shall be for some purpose associated with airport activities and subordinate to any mortgage or deed of trust executed by the authority; and

(16) To expend its funds in the execution of the powers and authority herein given.

§8-29A-4. Funds; accounting; reporting.

All funds received by the authority from whatever source shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county commission containing an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter.

Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be 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 the county. The books, records and accounts of the authority shall be subject to audit and
examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

*§8-29A-5. Full-time employees of the authority to be public employees.*

Any person who serves regularly as an employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by the authority, shall be deemed to be a public employee and shall be subject to any and all applicable provisions of law relating thereto, including, but not limited to, the workers' compensation act and the West Virginia public employees insurance act.

§8-29A-6. Authority may incur indebtedness; county not liable for indebtedness.

The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the county commission, nor of the county, or a charge against any property of the county. No obligation incurred by the authority shall give any right against any member of the county commission or any member of the board of the authority. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

§8-29A-7. Exemption from taxes; payment for portion used as industrial park.

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

*Clerk's Note: This section was also amended by S. B. 132 (Chapter 16), which passed subsequent to this act.*
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.

It shall be the duty of the county assessor on the first day of July of each year to ascertain what portion of the real and personal property of the authority, if any, is devoted to use as an industrial park and to appraise such property as if taxable. The assessor shall likewise determine the tax which would be levied upon such property if it were taxable. On the first day of August of the year following such determination and the first day of February thereafter, the authority shall pay unto the sheriff of the county a sum of money equal to that which would have been due if the property were taxable, which sums shall be distributed by the sheriff as if such sums were tax receipts.

§8-29A-8. County commission authorized to convey present airport properties and facilities to the authority.

Notwithstanding any other provision of law to the contrary, the county commission of a county is hereby authorized to convey to the authority the present airport property owned by the county, if any, situate in the county, together with all the appurtenances and facilities therewith, such conveyance to be without consideration or for such price and upon such terms and conditions as the county commission shall deem proper.


If the authority should realize a surplus, whether from operating the airport or leasing it for operation, over and above the amount required for the maintenance, improvement and operation of the airport and for meeting all required payments on its obligations, it shall set aside such reserve for future operations, improvements and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due; and after all such recognized and established obligations have been paid off and dis-
charged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future operations, improvements and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the county commission, to be used by the county commission for general county purposes.


The authority may at any time pay off and discharge in full all of its indebtedness, obligations and liabilities, convey the airport properties, appurtenances and facilities to the county commission and be dissolved. Before making such conveyance of its properties, the authority shall give notice of its intention to do so and of its intention to be dissolved, and said notice shall be published 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. Affidavits from the publishers of the newspapers showing such publication shall be filed with the county commission before the deed conveying said properties is delivered. Any funds remaining in the hands of the authority at the time of the conveyance of said properties shall be by the authority paid over to the county commission to be used by it for purposes in connection with said airport. Upon the payment of its indebtedness, obligations and liabilities, the publishing of the notices aforesaid, the conveyance of its properties, and the paying over to the county commission of any funds remaining in its hands, the authority shall cause a certificate showing its dissolution to be executed under its name and seal and to be recorded in the office of the clerk of the county commission and thereupon its dissolution shall be complete.

§8-29A-11. Purpose of article; liberal construction; article cumulative.

It is the purpose of this article to provide for the acquisition, construction, improvement, extension, maintenance and operation of a public airport and
related facilities in a prudent and economical manner, and this article shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes hereof. The provisions of this article are in addition to and not in derogation of any power existing in the county commission of a county under any constitutional or statutory provisions which it may now have, or may hereafter acquire.

CHAPTER 114
(Com. Sub. for H. B. 2641—By Delegate Compton)

[Passed March 5, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to possession of wildlife.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

Except as otherwise provided by law, no person shall have in his/her possession any wildlife during closed seasons. Lawfully taken wildlife may be in a person's possession during the open season therefor, and for sixty days thereafter: Provided, That any person, upon application to the director, may be issued a permit authorizing the possession of the flesh and meat of such wildlife for an additional period.

Wildlife lawfully taken outside of this state shall be subject to the same laws and rules as that taken within this state.
Migratory wild birds shall be possessed only in accordance with the "Migratory Bird Treaty Act" and regulations thereunder.

The restrictions in this section do not apply to the director or duly authorized agents, who may, in any manner, take or maintain in captivity, at any time, any wildlife for the purpose of carrying out the provisions of this chapter.

CHAPTER 115
(H. B. 2615—By Delegates Prunty and Mezzatesta)

[Passed March 6, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing developmentally disabled residents to fish without a license; defining developmentally disabled.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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.

§20-2-28. When licenses or permits not required.

Persons in the following categories shall not be required to obtain licenses or permits as indicated:

(a) Bona fide resident landowners or their resident children, or resident parents, or bona fide resident tenants of such land, may hunt, trap or fish on their own land during open season in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

(b) Any bona fide resident of this state who is totally
blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of said resident at all times while he is fishing in this state.

(c) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.

(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older shall not be required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of such license any such person shall at all times while hunting, trapping or fishing, carry on his person a card issued by the director stating his name, address and date of birth.

(e) Residents of the state of Maryland who carry hunting or fishing licenses valid in that state may hunt or fish from the West Virginia banks of the Potomac River without obtaining licenses to do so, but such hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: Provided, That the state of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac River from the Maryland banks of said river to licensed residents of West Virginia, without requiring said residents to obtain Maryland hunting and fishing licenses.

(f) Residents of the state of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio River or from the West Virginia banks of said river without obtaining licenses to do so, but such hunting or fishing shall be confined to fish and
waterfowl of the river proper and not on its tributaries:

Provided, That the state of Ohio shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio banks of said river to licensed residents of West Virginia without requiring said residents to obtain Ohio hunting and fishing licenses. In the event the state of Ohio accords this privilege to residents of West Virginia, such Ohio residents will not be required to obtain the license provided for by section forty-two of this article.

(g) Any resident of West Virginia who was honorably discharged from the armed forces of the United States of America, and who receives a veteran's pension based on total permanent service connected disability as certified to by the veterans administration, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall promulgate rules and regulations setting forth the procedure for the certification of the veteran, manner of applying for and receiving the certification and requirements as to identification while said veteran is hunting, trapping or fishing.

(h) Any disabled veteran, who is a resident of West Virginia, and who, as certified to by the commissioner of motor vehicles, is eligible to be exempt from the payment of any fee on account of registration of any motor vehicle owned by such disabled veteran as provided for in section eight, article ten, chapter seventeen-a of this code, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall promulgate rules and regulations setting forth the procedure for the certification of the disabled veteran, manner of applying for and receiving the certification, and requirements as to identification while said disabled veteran is hunting, trapping or fishing.

(i) Any resident or inpatient in any state mental health, health or benevolent institution or facility may fish in this state, under proper supervision of the institution involved, without obtaining a fishing license to do so. A written statement or certificate signed by the
superintendent of the mental health, health or benevo-

lent institution or facility in which the resident or

inpatient, as the case may be, is institutionalized shall

serve in lieu of a fishing license and shall be carried on

the person of the resident or inpatient at all times while

he is fishing in this state.

(j) Any resident who is developmentally disabled, as
certified by a physician and the director of the depart-
ment of health, may fish in this state without obtaining
a fishing license to do so. As used in this section,
“developmentally disabled” means a person with a
severe, chronic disability which:

(1) Is attributable to a mental or physical impair-
ment, or a combination of mental and physical
impairments;

(2) Is manifested before the person attains age
twenty-two;

(3) Results in substantial functional limitations in
three or more of the following areas of major life
activity: (A) Self care; (B) receptive and expressive
language; (C) learning; (D) mobility; (E) self-direction;
(F) capacity for independent living; and (G) economic
self-sufficiency; and

(4) Reflects the person’s need for a combination and
sequence of care, treatment or supportive services which
are of lifelong or extended duration and are individually
planned and coordinated.

CHAPTER 116
(S. B. 204—By Senators Dittmar and J. Manchin)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article five-
h, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to clarifying the definition of owner for corrective action
purposes.
Be it enacted by the Legislature of West Virginia:

That section fourteen, 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:


1 (a) Prior to the effective date of regulations promulgated pursuant to subdivision (9) or (10), subsection (b), section six of this article, the director is authorized to:

2 (1) Require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum from said tank when the director determines that such corrective action shall be done properly and promptly by the owner or operator if, in the judgment of the director, such action is necessary to protect human health and the environment;

3 or

4 (2) Undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if, in the judgment of the director, such action is necessary to protect human health and the environment.

The corrective action undertaken or required under this subsection shall be such as may be necessary to protect human health and the environment. The director shall use funds in the leaking underground storage tank response fund established pursuant to this article for payment of costs incurred for corrective action taken under subparagraph (2) of this subsection in the manner set forth in subsection (e), section twenty-one of this article. The director shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment and where the director cannot identify a solvent owner or operator of the tank who will undertake action properly.

(b) Following the effective date of regulations promul-
gated under subdivision (9) or (10), subsection (b),
section six of this article, all actions or orders of the
director described in subsection (a) of this section shall
be in conformity with such regulations. Following such
effective date the director may undertake corrective
action with respect to any release of petroleum into the
environment from an underground storage tank only if,
in the judgment of the director, such action is necessary
to protect human health and environment and one or
more of the following situations exists:

(1) If no person can be found within ninety days, or
such shorter period as may be necessary to protect
human health and the environment, who is an owner or
operator of the tank concerned, subject to such correc-
tive action regulations and capable of carrying out such
corrective action properly.

(2) A situation exists which requires prompt action by
the director under this subsection to protect human
health and the environment.

(3) Corrective action costs at a facility exceed the
amount of coverage required pursuant to the provisions
of section ten of this article and, considering the class
or category of underground storage tank from which the
release occurred, expenditures from the leaking under-
ground storage tank response fund are necessary to
assure an effective corrective action.

(4) The owner or operator of the tank has failed or
refused to comply with an order of the director under
this section or of the board under section eighteen of this
article to comply with the corrective action regulations.

(c) The director is authorized to draw upon the
leaking underground storage tank response fund in
order to take action under subdivision (1) or (2),
subsection (b) of this section if the director has made
diligent good faith efforts to determine the identity of
the party or parties responsible for the release or
threatened release and:

(1) He is unable to determine the identity of the
responsible party or parties in a manner consistent with
the need to take timely corrective action; or
(2) The party or parties determined by the director to be responsible for the release or threatened release have been informed in writing of the director's determination and have been requested by the director to take appropriate corrective action but are unable or unwilling to take such action in a timely manner.

(d) The written notice to a responsible party must inform the responsible party that if that party is subsequently found liable for releases pursuant to subsection (a) or (b) of this section, he will be required to reimburse the leaking underground storage tank response fund for the costs of the investigation, information gathering and corrective action taken by the director.

(e) If the director determines that immediate response to an imminent threat to public health and welfare or the environment is necessary to avoid substantial injury or damage to persons, property or resources, corrective action may be taken pursuant to subsections (a) and (b) of this section without the prior written notice required by subdivision (2), subsection (c) of this section. In such a case the director must give subsequent written notice to the responsible party within fifteen days after the action is taken describing the circumstances which required the action to be taken without prior notice.

(f) As used in this section, the term "owner" shall not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining or marketing, holds indicia of ownership primarily to protect the person's security interest in the tank.

CHAPTER 117

(Com. Sub. for H. B. 2377—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]
amended, by adding thereto a new article, designated article five-m, relating to the West Virginia groundwater protection act; short title; legislative findings, public policy and purposes; definitions; authority and duties of water resources board; standards of purity and quality; promulgation of such standards; effectiveness of current standards; authority and duties of other agencies; rules; action required to protect existing quality of groundwater; deviations from existing quality; inapplicability of certain provisions to certain activities; effectiveness of current rules, permits, policies, directives and orders; designation of lead agency; authority and duties of lead agency; additional authority of agencies; authority and duties of groundwater coordinating committee; authority and duties of director of division of natural resources; groundwater certification; groundwater protection fees; groundwater remediation fees; dedication of fee proceeds; creation of groundwater protection fund; creation of groundwater remediation fund; sources of funding; expenditures from funds; civil and criminal penalties; civil administrative penalties and procedures for review of imposition thereof; dedication of penalty proceeds; injunctive relief; enforcement orders; administrative appeal and judicial review; rule-making petition; existing rights and remedies; exemption from criminal prosecution; conflicting provisions; effective date of provisions subject to federal approval; and severability.

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 five-m, to read as follows:

ARTICLE 5M. WEST VIRGINIA GROUNDWATER PROTECTION ACT.

§20-5M-1. Short Title.
§20-5M-2. Legislative findings, public policy and purposes.
§20-5M-3. Definitions.
§20-5M-4. Authority of state water resources board; standards of purity and quality.
§20-5M-5. Authority of other agencies; applicability.
§20-5M-6. Lead agency designation; additional powers and duties.
§20-5M-7. Groundwater coordination committee; creation.
§20-5M-9. Groundwater protection fees authorized; director to promulgate rules; dedication of fee proceeds; groundwater protection fund established; groundwater remediation fund established.
§20-5M-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearing.
§20-5M-11 Appeal and review procedures.
§20-5M-12. Rule-making petition.
§20-5M-15. Effective dates of provisions subject to federal approval.

§20-5M-1. Short title.
1 This article may be known and cited as the "Groundwater Protection Act."

§20-5M-2. Legislative findings, public policy and purposes.
1 (a) The Legislature finds that:
2 (1) West Virginia has relatively pure groundwater resources which are abundant and readily available;
3 (2) Over fifty percent of West Virginia's overall population, and over ninety percent of the state's rural population, depend on groundwater for drinking water;
4 (3) A rural lifestyle has created a quality of life in many parts of West Virginia which is highly valued. Maintaining this lifestyle depends upon protecting groundwater to avoid increased expenses associated with providing treated drinking water supplies to rural households;
5 (4) West Virginia's groundwater resources are geologically complex, with the nature and vulnerability of groundwater aquifers and recharge areas not fully known;
6 (5) Contamination of groundwater is generally much more difficult and expensive to clean up than is the case with surface water;
7 (6) Groundwaters and surface waters can be highly interconnected. The quality of any given groundwater
can have a significant impact on the quality of ground-
waters and surface waters to which it is hydrologically
connected;

(7) A diverse array of human activities can adversely
impact groundwater, making it necessary to develop
regulatory programs that utilize a variety of
approaches;

(8) Various agencies of state government currently
exercise regulatory control over activities which may
impact on groundwater. Coordination and streamlining
of the regulatory activities of these agencies is necessary
to assure that the state’s groundwater is maintained and
protected through an appropriate groundwater protec-
tion program;

(9) Disruption of existing state regulatory programs
should be avoided to the maximum extent practical;

(10) The maintenance and protection of the state’s
groundwater resources can be achieved consistent with
the maintenance and expansion of employment oppor-
tunities, agriculture, and industrial development; and

(11) A state groundwater management program will
provide economic, social, and environmental benefits for
the citizens of West Virginia now and in the future.

(b) Therefore, the Legislature establishes that it is the
public policy of the state of West Virginia to maintain
and protect the state’s groundwater so as to support the
present and future beneficial uses and further to
maintain and protect groundwater at existing quality
where the existing quality is better than that required
to maintain and protect the present and future benefi-
cial uses. Such existing quality shall be maintained and
protected unless it is established that (1) the measures
necessary to preserve existing quality are not techni-
cally feasible or economically practical and (2) a change
in groundwater quality is justified based upon economic
or societal objectives. Such a change shall maintain and
protect groundwater quality so as to support the present
and future beneficial uses of such groundwater.

(c) The purposes of this article are to:
(1) Maintain and protect the state's groundwater resources consistent with this article to protect the present and future beneficial uses of the groundwater:

(2) Provide for the establishment of a state groundwater management program which will:

(i) Define the roles of agencies of the state and political subdivisions with respect to the maintenance and protection of groundwater, and designate a lead agency for groundwater management;

(ii) Designate a state agency responsible for establishment of groundwater quality standards;

(iii) Provide for the establishment of standards of purity and quality for all groundwater;

(iv) Provide for the establishment of groundwater protection programs consistent with this article;

(v) Establish groundwater protection and groundwater remediation funds;

(vi) Provide for the mapping and analysis of the state's groundwater resources and coordination of the agencies involved; and

(vii) Provide for public education on groundwater resources and methods for preventing contamination.

(3) Provide such enforcement and compliance mechanisms as will assure the implementation of the state's groundwater management program.

(4) Assure that actions taken to implement this article are consistent with the policies set forth in section one, article five-a of this chapter.

§20-5M-3. Definitions.

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

3 (a) "Agency action" means the issuance, renewal or denial of any permit, license or other required agency approval, or any terms or conditions thereof, or any order or other directive issued by the division of natural resources, division of health, division of energy, depart-
ment of agriculture or any other agency of the state or
a political subdivision to the extent that such action
relates directly to the implementation, administration or
enforcement of this article.

(b) "Beneficial uses" means those uses which are
protective of human health and welfare and the
environment. Pollution of groundwater shall not be
considered a beneficial use.

(c) "Board" means the state water resources board.

(d) "Constituent" means any chemical or biological
substance found in groundwater due to either natural
or man-made conditions.

(e) "Director" means the director of the division of
natural resources of the department of commerce, labor
and environmental resources.

(f) "Groundwater" means the water occurring in the
zone of saturation beneath the seasonal high water table,
or any perched water zones.

(g) "Groundwater certification" means an assurance
issued by the director of the division of natural resources
that a permit or other approval issued by a state, county
or local government body regarding an activity that
affects or is reasonably anticipated to affect ground-
water complies with all requirements of this chapter,
the legislative rules promulgated pursuant to this
chapter in accordance with chapter twenty-nine-a of this
code and any other requirements of state law, regula-
tions or agreements regarding groundwater.

(h) "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; state of West Virginia;
governmental agency, including federal facilities;
political subdivision; county commission; municipal
corporation; industry; sanitary district; public service
district; soil conservation district; watershed improve-
ment district; partnership; trust; estate; person or
individual; group of persons or individuals acting
individually or as a group; or any legal entity whatever.
(i) "Pollution" shall mean the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of the groundwater;

(j) "Preventative action limit" means a numerical value expressing the concentration of a substance in groundwater that, if exceeded, shall cause action to be taken to assure that standards of purity and quality of groundwater are not violated.

(k) "Water" means 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.

§20-5M-4. Authority of state water resources board; standards of purity and quality.

(a) The state water resources board shall have the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state and shall promulgate such standards following a public hearing within one year from the effective date of this article, by legislative rules in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Such standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall such standards allow contaminant levels in groundwater to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. The board may set standards more restrictive than the maximum contaminant levels where it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the
federal Safe Drinking Water Act, standards for such
contaminants shall be established by the board to be no
less stringent than may be reasonable and prudent to
protect drinking water or any other beneficial use.
Where the concentration of a certain constituent exceeds
such standards due to natural conditions, the natural
concentration shall be the standard for that constituent.
Where the concentration of a certain constituent exceeds
such standard due to human-induced contamination, no
further contamination by that constituent shall be
allowed, and every reasonable effort shall be made to
identify, remove or mitigate the source of such contam-
ination, and to strive where practical to reduce the level
of contamination over time to support drinking water
use.

(d) The standards of purity and quality for ground-
water promulgated by the board shall recognize the
degree to which groundwater is hydrologically con-
ected with surface water and other groundwater and
such standards shall provide protection for such surface
water and other groundwater.

(e) In the promulgation of such standards the board
shall consult with the division of natural resources,
department of agriculture, division of energy, and
division of health, as appropriate.

(f) Any groundwater standard of the board that is in
effect on the effective date of this article shall remain
in effect until modified by the board. Notwithstanding
any other provisions of this code to the contrary, the
authority of the board to adopt standards of purity and
quality for groundwater granted by the provisions of
this article is exclusive, and to the extent that any other
provisions of this code grant such authority to any
person, body, agency or entity other than the board,
those other provisions shall be void.

§20-5M-5. Authority of other agencies; applicability.

(a) Notwithstanding any other provision of this code
to the contrary, no agency of state government or any
political subdivision may regulate any facility or
activities for the purpose of maintaining and protecting
the groundwater except as expressly authorized pursuant to this article.

(b) To the extent that such agencies have the authority pursuant to any provision of this code, other than this article, to regulate facilities or activities, the division of natural resources, the department of agriculture, the division of energy, the division of health, and such agencies of the state or any political subdivision as may be specifically designated by the director with the concurrence of such designated agencies or political subdivisions, as appropriate, are hereby authorized to be groundwater regulatory agencies for purposes of regulating such facilities or activities to satisfy the requirements of this article. In addition, the department of agriculture is hereby authorized to be the groundwater regulatory agency for purposes of regulating the use or application of pesticides and fertilizers. Where the authority to regulate facilities or activities which may adversely impact groundwater is not otherwise assigned to the division of natural resources, the department of agriculture, the division of energy, the division of health or such other specifically designated agency pursuant to any other provision of this code, the division of natural resources is hereby authorized to be the groundwater regulatory agency with respect to such unassigned facilities or activities. The division of natural resources shall cooperate with the department of agriculture, division of energy, and division of health, as appropriate, in the regulation of such unassigned facilities or activities.

(c) Within one year of the effective date of this article, the department of agriculture, division of energy, division of health, and division of natural resources shall promulgate in accordance with the provisions of chapter twenty-nine-a of this code such legislative rules as may be necessary to implement the authority granted them by this article.

(d) Groundwater regulatory agencies shall develop groundwater protection practices to prevent groundwater contamination from facilities and activities within their respective jurisdictions consistent with this article.
Such practices shall include, but not be limited to, criteria related to facility design, operational management, closure, remediation and monitoring. Such agencies shall issue such rules, permits, policies, directives or any other appropriate regulatory devices, as necessary, to implement the requirements of this article.

(e) Groundwater regulatory agencies shall take such action as may be necessary to assure that facilities or activities within their respective jurisdictions maintain and protect groundwater at existing quality, where the existing quality is better than that required to maintain and protect the standards of purity and quality promulgated by the board to support the present and future beneficial uses of the state’s groundwater.

(f) Where a person establishes to the director that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives, the director may allow for a deviation from such existing quality. Upon the director's finding of (1) and (2) above, the director may grant or deny such a deviation for a specific site, activity or facility or for a class of activities or facilities which have impacts which are substantially similar and exist in a defined geographic area. The director's reasons for granting or denying such a deviation shall be set forth in writing and the director shall have the exclusive authority to determine the terms and conditions of such a deviation. To insure that groundwater standards promulgated by the board are not violated and that the present and future beneficial uses of groundwater are maintained and protected, the director shall evaluate the cumulative impacts of all facilities and activities on the groundwater resources in question prior to any granting of such deviation from existing quality. The director shall consult with the department of agriculture, division of health and division of energy, as appropriate in the implementation of this subsection. The director or the chief of the water resources section of the division of natural resources shall, upon a written
request for such information, provide notice of any
deviations from existing quality granted pursuant to
this subsection.

(g) Should the approval required in subsection (f) of
this section be granted allowing for a deviation from
existing quality, the groundwater regulatory agencies
shall take such alternative action as may be necessary
to assure that facilities and activities within their
respective jurisdictions maintain and protect the
standards of purity and quality promulgated by the
board to support the present and future beneficial uses
for that groundwater. In maintaining and protecting
such standards of the board, such agencies shall
establish preventative action limits which, once reached,
shall require action to control a source of contamination
to assure that such standards are not violated. The
director shall provide guidelines to the groundwater
regulatory agencies with respect to the establishment of
such preventative action limits.

(h) Subsections (e), (f) and (g) of this section shall not
apply to coal extraction and earth disturbing activities
directly involved in coal extraction that are subject to
either or both article three, chapter twenty-two-a of this
code and article five-a of this chapter. Such activities
shall be subject to all other provisions of this article.

(i) This article shall not be applicable to groundwater
within areas of geologic formations which are site
specific to:

(1) The production or storage zones of crude oil or
natural gas and which are utilized for the exploration,
development or production of crude oil or natural gas
permitted pursuant to chapter twenty-two-b of this code;

and

(2) The injection zones of Class II or III wells
permitted pursuant to the statutes and regulations
governing the underground injection control program.

All groundwater outside such areas shall remain
subject to the provisions of this article. Groundwater
regulatory agencies shall have the right to require the
submission of data with respect to the nature of the activities subject to this subsection.

(j) Those agencies regulating the activities specified in subsections (h) and (i), of this section shall retain their groundwater regulatory authority as provided for in the relevant statutes and regulations governing such activities, other than this article.

(k) The director shall have authority to modify the requirements of subsection (g) of this section with respect to noncoal mining activities subject to article four, chapter twenty-two-a of this code. Such modification shall assure protection of human health and the environment. Those agencies regulating such noncoal mining activities shall retain their groundwater regulatory authority as provided for in the relevant statutes and regulations governing such activities other than this article.

(l) If the director proposes a need for a variance for classes of activities which by their nature cannot be conducted in compliance with the requirements of subsection (g) of this section, then the director shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code, following public hearing on the record. The rules so promulgated shall set forth the director's findings to substantiate such need and the criteria by which such variances shall be granted or denied. Should any person petition or request the director to undertake such a determination, that person will give contemporaneous notice of such petition or request by Class I advertisement in a newspaper of general circulation in the area to be affected by the request.

(m) All rules, permits, policies, directives and orders of the department of agriculture, the division of health, the division of energy and division of natural resources, in effect on the effective date of this article and which are consistent with this article shall remain in full force and effect as if they were issued pursuant to this article unless and until modified pursuant to this article.
§20-5M-6. Lead agency designation; additional powers and duties.

(a) The division of natural resources is hereby designated to be the lead agency for groundwater and is authorized and shall perform the following additional powers and duties:

(1) To maintain the state groundwater management strategy;

(2) To develop, as soon as practical, a central groundwater data management system for the purpose of providing information needed to manage the state's groundwater program;

(3) To provide a biannual report to the Legislature on the status of the state's groundwater and groundwater management program, including detailed reports from each groundwater regulatory agency;

(4) To coordinate with other agencies to develop a uniform groundwater program;

(5) To perform any and all acts necessary to obtain the benefits to the state of any federal program related to groundwater;

(6) To receive grants, gifts or contributions for purposes of implementing this article from federal agencies, state agencies or any other persons interested in the management of groundwater resources; and

(7) To promulgate legislative rules implementing this subsection in accordance with the provisions of chapter twenty-nine-a of this code, including rules relating to monitoring and analysis of groundwater.

(b) The division of natural resources, division of energy, division of health, and department of agriculture shall participate in the data management system developed by the division of natural resources pursuant to subsection (a) of this section and shall provide the director with such information as the director shall reasonably request in support of his or her promulgation of rules pursuant to this article.
(c) The division of natural resources, division of energy, division of health, and department of agriculture are hereby authorized:

(1) To engage the voluntary cooperation of all persons in the maintenance and protection of groundwater, and to advise, consult and cooperate with all persons, all agencies of this state, universities and colleges, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purposes of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, receive and spend funds as appropriated by the Legislature, and from such agencies and other officers and persons on behalf of the state;

(2) To encourage the formulation and execution of plans to maintain and protect groundwater by cooperative groups or associations of municipal corporations, industries, industrial users and other users of groundwaters of the state, who, jointly or severally, are or may be impacting on the maintenance and protection of groundwater;

(3) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the maintenance and protection of groundwater, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article, and to make reports and recommendations with respect thereto;

(4) To conduct groundwater sampling, data collection, analyses and evaluation with sufficient frequency so as to ascertain the characteristics and quality of groundwater, and the sufficiency of the groundwater protection programs established pursuant to this article;

(5) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for the maintenance and protection of groundwater.
§20-5M-7. Groundwater coordinating committee; creation.

(a) There is hereby created a state groundwater coordinating committee which shall consist of the director of the division of health, the commissioner of the division of energy, the commissioner of agriculture, the chairperson of the water resources board, the chief of the water resources section of the division of natural resources and the director of the division of natural resources who shall serve as its chairperson.

(b) The groundwater coordinating committee shall consult, review and make recommendations on the implementation of this article by each of the groundwater regulatory agencies. Such committee shall require the periodic submittal to it of the groundwater protection programs of each groundwater regulatory agency including all rules, permits, policies, directives and any other regulatory devices employed to implement this article.

(c) Upon a review of such programs, the groundwater coordinating committee shall recommend to the director approval of such programs, in whole or in part, and identify in writing any aspect of such programs that are not sufficient to satisfy the requirements of this article and specify a reasonable time period for correcting those portions of the program that are found not to be sufficient.

(d) The director may accept the recommendation of the committee, in whole or in part and identify in writing any additional aspects of such programs that are not sufficient to satisfy the requirements of this article and specify a time period for correcting those portions of the program that are found not to be sufficient.

(e) In the biannual report to the Legislature required by this article, the director shall identify all portions of groundwater protection programs which have been determined not to be sufficient to satisfy the requirements of this article and which have not been adequately
addressed within the time period specified by the director.

(f) No agency shall modify any aspect of its groundwater protection program as approved by the director without the prior written approval of the director of such modification. This requirement does not relieve such agency of any other requirements of law that may be applicable to such a modification.

(g) The groundwater coordinating committee is authorized and empowered to promulgate such legislative rules as may be necessary to implement this section in accordance with the provisions of chapter twenty-nine-a of this code.


(a) To ensure a comprehensive, consistent and unfragmented approach to the management and protection of groundwater, including evaluation of the cumulative effects of all activities that have the potential to impact on groundwater, the director shall oversee and coordinate the implementation of this article by each of the groundwater regulatory agencies through a groundwater certification program as hereby established.

(b) Every state, county or local government body which reviews or issues permits, licenses, registrations, certificates of other forms of approval, or renewal thereof, for activities or practices which may affect groundwater quality shall first submit to the director of the division of natural resources for review and approval an application for certification. Such application shall include a copy of the approval proposed by such body, including any terms and conditions which have been imposed by it. Upon receipt of this application, the director shall act within thirty days to determine whether to waive or exercise his or her certification powers. If no decision is made or communicated by the director within said thirty day period, groundwater certification shall be deemed approved. If the director decides to exercise his or her certification powers, he or she may utilize additional time, not to exceed an additional sixty days, to further review the materials
submitted or to conduct such investigations as he or she
deems necessary.

(c) The director may waive, grant, grant with condi-
tions, or deny groundwater certification. Groundwater
certification, and all conditions required under such
certification, shall become a condition on any permit,
approval, or renewal thereof, issued by any state, county
or local government body. Where appropriate, the
director may provide general groundwater certification
for or may waive certification for classes or categories
of activities or approvals.

§20-5M-9. Groundwater protection fees authorized;
director to promulgate rules; dedication of
fee proceeds; groundwater protection fund
established; groundwater remediation
fund established.

(a) The director of the division of natural resources
shall promulgate legislative rules in accordance with the
provisions of chapter twenty-nine-a of this code estab-
lishing a schedule of groundwater protection fees
applicable to persons who own or operate facilities or
conduct activities subject to the provisions of this article.
The schedule of fees shall be calculated by the director
to recover the reasonable and necessary costs of
implementing the provisions of this article as it relates
to a particular facility or activity. In addition, the fee
may include an appropriate assessment of other pro-
gram costs not otherwise attributable to any particular
facility or activity. Such fees in the aggregate shall not
exceed one million dollars per year and shall be
deposited into the groundwater protection fund estab-
lished pursuant to this article: Provided, That any
unexpended balance in the groundwater protection fund
at the end of each fiscal year may, by an act of the
Legislature, be transferred to the groundwater remedi-
ation fund created by this article: Provided, however,
That if no action is taken to transfer the unexpended
balance to the remediation fund, such moneys shall not
be transferred to the general revenue fund, but shall
remain in the groundwater protection fund. Such fees
imposed by this section are in addition to all other fees
and taxes levied by law. The director shall require such fees to be paid at the time of certification pursuant to section eight of this article, or at such more frequent time as the director may deem to be appropriate. The director may withhold certification pursuant to section eight of this article where such fees have not been timely paid.

(b) The director of the division of natural resources shall also promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater remediation fees which in the aggregate shall not exceed two hundred fifty thousand dollars. Such groundwater remediation fees shall be assessed over a time period not to exceed two years from the effective date of such rules and shall be deposited into the groundwater remediation fund established pursuant to this article. Such fees shall be assessed against persons who own or operate facilities or conduct activities subject to the provisions of this article in proportion to the groundwater protection fees assessed pursuant to subsection (a) of this section for the year in which such groundwater remediation fees, or any portion thereof, are assessed.

(c) There are hereby created and established in the state treasury two special revenue accounts:

(1) The "Groundwater Protection Fund", the moneys of which shall be expended by the director in the administration, certification, enforcement, inspection, monitoring, planning, research, and other activities of the state water resources board, division of natural resources, division of energy, division of health and department of agriculture in accordance with legislative rules promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The moneys, including the interest thereon, in said fund shall be kept and maintained by the director and expended without appropriation by the Legislature for the purpose of implementing the provisions of this article. The director may withhold the payment of any such moneys to any agency whose groundwater protection program has been determined by the director, in consultation with the
groundwater coordinating committee, not to be sufficient to satisfy the requirements of this article and where such agency has failed to adequately address such determination within the time period specified by the director. At the end of each fiscal year, any unexpended balance of said fund may not be transferred to the general revenue fund, but shall remain in the groundwater protection fund.

(2) The "Groundwater Remediation Fund", the moneys of which, to the extent that moneys are available, shall be expended by the director for the purposes of investigation, clean-up and remedial action intended to identify, minimize or mitigate damage to the environment, natural resources, public and private water supplies, surface waters and groundwaters and the public health, safety and general welfare which may result from contamination of groundwater or the related environment. The director or other authorized agency officials are authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any and all groundwater remediation fund moneys expended pursuant to this article. All moneys expended from such fund which are so recovered shall be deposited in such fund. The director may expend moneys from said fund and the interest thereon without necessity of appropriation by the Legislature. All civil penalties and assessments of civil administrative penalties collected pursuant to this article shall be deposited into the said fund. In addition, said fund may receive proceeds from any gifts, grants, contributions or other moneys accruing to the state which are specifically designated for inclusion in the fund.

§20-5M-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearings.

(a) Any person who violates any provision of this article, or any permit or agency approval, rule or order issued to implement this article, shall be subject to civil penalties in accordance with the provisions of section seventeen, article five-a of this chapter: Provided, That
such penalties shall be in lieu of civil penalties which may be imposed under other provisions of this code for the same violation.

(b) Any person who willfully or negligently violates any provision of this article, or any provision of a permit or agency approval, rule or order issued to implement this article, shall be subject to criminal penalties in accordance with the provisions of section nineteen, article five-a of this chapter: Provided, That such penalties shall be in lieu of other criminal penalties which may be imposed under other provisions of this code for the same violation.

(c) Any person who violates any provision of this article, or any permit or rule or order issued to implement this article, shall be subject to a civil administrative penalty to be levied by the director of the division of natural resources, the commissioner of agriculture, the director of the division of health or the commissioner of the division of energy, as appropriate, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars. In assessing any such penalty, any such official shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by such official by legislative rules promulgated pursuant to this article and the provisions of chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by such official by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to such official a written request for an informal hearing. If no hearing is requested, the notice becomes
a final order after the expiration of the twenty-day period. If a hearing is requested, such official shall inform the alleged violator of the time and place of the hearing. Such official may appoint an assessment officer to conduct the informal hearing who shall make a written recommendation to such official concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, such official shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of such official's decision, the alleged violator may request a formal hearing before the board in accordance with the provisions of section eleven of this article. Any administrative civil penalty assessed pursuant to this section shall be in lieu of any other civil penalty which may be assessed under any provision of this code for the same violation. No combination of assessments against any violator under this section may exceed twenty-five thousand dollars per day of each such violation. All administrative penalties shall be levied in accordance with legislative rules promulgated by such official in accordance with the provisions of chapter twenty-nine-a of this code.

(d) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section and all assessments of any civil administrative penalties collected pursuant to subsection (c) of this section shall be deposited into the groundwater remediation fund established pursuant to this article.

(e) Any such official may seek an injunction, or may institute a civil action against any person in violation of any provision of this article or any permit, agency approval, rule or order issued to implement this article. In seeking an injunction, it is not necessary for such official to post bond nor to allege or prove at any point in 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 or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all adminis-
trative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) If any such official upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, or any permit, order or rules issued to implement the provisions of this article, he or she may issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders implementing this article which (1) suspend, revoke or modify permits; (2) require a person to take remedial action; or (3) are cease and desist orders.

(g) Any person issued a cease and desist order under subsection (f) of this section may file a notice of request for reconsideration with such official not more than seven days from the issuance of such order and shall have a hearing before such official to contest the terms and conditions of such order within ten days after filing such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order.


(a) Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director or any public official authorized to take or implement an agency action, or by the issuance or denial of a permit issued to implement this article or by such permit’s term or conditions, or by the failure or refusal to act within a reasonable time, may appeal to the water resources board in the same manner as appeals are taken under section fifteen, article five-a of this chapter.

(b) Any person, the director or any public official adversely affected by an order made and entered by the water resources board may obtain judicial review thereof in the same manner as provided for under section sixteen, article five-a of this chapter.
§20-5M-12. Rule-making petition.

1 Any person may petition the appropriate rule-making agency for rule making on an issue arising under this article. The appropriate rule-making agency, if it believes such issue to merit rule making, may initiate rule making in accordance with the provisions of chapter twenty-nine-a of this code. A decision by the appropriate rule-making agency not to pursue rule making must set forth in writing reasons for refusing to do so. Any person may petition an agency to issue a declaratory ruling pursuant to section one, article four, chapter twenty-nine-a of this code with respect to the applicability to any person, property or state of facts of any rules promulgated by that agency pursuant to this article.


1 (a) It is the purpose of this article to provide additional and cumulative remedies to address the quality of the groundwater of the state. This article shall not be interpreted to alter the authority of any agency with respect to water other than groundwater. Except as expressly stated in this article, it is not the intention of the Legislature in enacting this article to repeal any other provision of this code.

2 (b) Nothing contained in this article shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.

3 (c) Where a person is operating a source or conducting an activity in compliance with the terms and conditions of a permit, rule, order, directive, or other authorization issued by a groundwater regulatory agency pursuant to this article, such person shall not be subject to criminal prosecution for pollution recognized
and authorized by such permit, rule, order, directive or 
other authorization.


1 In the event that any provision of this article is 
inconsistent or in conflict with any other provisions of 
this code, making it impossible to comply with both, the 
provisions of this article shall control.

§20-5M-15. Effective dates of provisions subject to 
federal approval.

1 To the extent that this article modifies any powers, 
duties, functions and responsibilities of any state agency 
that may require approval of one or more federal 
agencies or officials in order to avoid disruption of the 
federal-state relationship involved in the implementa-
tion of federal regulatory programs by the state, any 
such modifications shall become effective upon a 
proclamation by the governor stating either that final 
approval of such modifications has been given by the 
appropriate federal agency or official or that final 
approval of such modification is not necessary to avoid 
disruption of the federal-state relationship under which 
such regulatory programs are implemented.


1 If any provision of this article or the application 
thereof to any person or circumstance is held invalid, 
such invalidity shall not affect other provisions or 
applications of the article, and to this end the provisions 
of the article are declared severable.

CHAPTER 118

(Com. Sub. for H. B. 2602—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to repeal sections four, five, six and eight, article two;
sections nine-a, nine-b, nine-c and nineteen-a, article
three; and sections eight, nine, ten, eleven, twelve, thirteen and fifteen, article eight, all of chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article ten, chapter eleven of said code; to amend and reenact sections three, four, thirteen, fourteen, fifteen, twenty-three and twenty-four, article sixteen of said chapter; to amend and reenact sections two and twelve, article two, chapter fifteen of said code; to amend and reenact section twenty-three, article three, chapter seventeen-a of said code; to amend and reenact section six, article one, chapter sixty of said code; to amend and reenact sections seven, nine and twenty-one, article two of said chapter; to amend and reenact section seventeen, article three-a of said chapter; to amend and reenact section nineteen, article four of said chapter; to amend and reenact section seven, article six of said chapter; to amend and reenact sections three, twelve, thirteen and thirteen-a, article seven of said chapter; and to amend and reenact sections four, five, seven, twenty-four, twenty-eight and twenty-nine, article eight of said chapter, all relating to including the barrel tax on nonintoxicating beer and the wine liter tax in the list of taxes covered under the tax procedures act; abolishing the office of nonintoxicating beer commissioner and substituting the alcohol beverage control commissioner therefor; defining the terms commissioner and tax commissioner in the nonintoxicating beer act; transferring administration of the beer barrel tax to the tax commissioner; providing for mandatory revocation of license for conviction of certain offenses; changing the title of chapter sixty to the alcohol beverage control act; increasing the salary of the administrator of the division of public safety; specifying the responsibilities of the superintendent under the alcohol beverage control act; increasing the salary of the alcohol beverage control commissioner; providing for a net annual profit of six and one-half million dollars; prohibiting consumption of alcoholic liquors or nonintoxicating beer by persons under twenty-one years of age when consumption or procurement of such beverages takes place at the premises of a private club licensee; changing provisions
relating to revocation or suspension of licenses, money, penalties and assessment of costs; providing for a special alcohol beverage control enforcement fund, and hearing and appeal procedures to conform to provisions in article sixteen, chapter eleven of the code concerning beer licensees; and transferring administration of the liter tax on wine and wine labels registration to the tax commissioner.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.
15. Public Safety.
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
60. Alcohol Beverage Control.
CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

Article
10. Procedure and Administration.

§11-10-3. Application of this article.

(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 provisions of this article shall apply to the beer barrel tax levied by article sixteen of this chapter and to the wine liter tax levied by section four, article eight, chapter sixty of this code.

(c) The provisions of this article shall also apply to any other article of this chapter when such application is expressly provided for by the Legislature.

ARTICLE 16. NONINTOXICATING BEER.
§11-16-3. Definitions.

§11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees, and agents; administration and enforcement expenses.

§11-16-13. Barrel tax on nonintoxicating beer; reporting and paying to tax commissioner.


§11-16-15. Records of brewer, manufacturer or distributor; collection of unpaid tax and penalty.

§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.

§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.

*§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

(1) "Brewer" or "manufacturer" means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.

(2) "Commissioner" means the West Virginia alcohol beverage control commissioner.

(3) "Distributor" means any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.

(4) "Nonintoxicating beer" means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent alcohol by volume, but not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating, and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

*Clerk's Note: This section was also amended by H. B. 2764 (Chapter 119), which passed subsequent to this act.
(5) "Original container" means the container used by the brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer for sale at wholesale.

(6) "Person" means and includes an individual, firm, partnership, limited partnership, association or corporation.

(7) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, any malt cooler, at his established and licensed place of business.

(8) "Tax commissioner" means the tax commissioner of the state of West Virginia or the commissioner's designee.

§11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees, and agents; administration and enforcement expenses.

(a) The alcohol beverage control commissioner described under the provisions of article two, chapter sixty of this code shall have sole responsibility for the administration of this article, except for those responsibilities expressly vested in the tax commissioner under sections thirteen, fourteen and fifteen of this article.

All acts heretofore performed by the nonintoxicating beer commissioner under previous proceedings of this article are hereby again ratified and confirmed, and the commissioner shall succeed to the same position previously maintained by the nonintoxicating beer commissioner in all proceedings and official acts instituted and perfected under the provisions of this article prior to the effective date of this section.

(b) The commissioner shall appoint an adequate number of competent persons to serve as administrators, employees and agents of the commissioner for the purpose of keeping all necessary accounts and records required under the provisions of this article; investigating the books, accounts, records and other papers of retailers, distributors and brewers; investigating
applicants for license and the places of business of retailers, distributors and brewers; procuring evidence with respect to violations of the provisions of this article, and particularly for use at hearings held by the commissioner and on proceedings instituted in court for the purpose of revoking or suspending licenses hereunder; and such administrators, employees and agents shall perform such other duties as the commissioner may direct. Such administrators, employees and agents shall have the right to enter any licensed premises in the state in the performance of their duties at any hour of the day or night when beer is being sold or consumed on such licensed premises. Refusal by any licensee or by any employee of a licensee to permit such administrators, employees or agents to enter the licensed premises shall be an additional cause for revocation or suspension of the license of such licensee by the commissioner. The compensation of such administrators, employees and agents shall be fixed by the commissioner: Provided, That the commissioner may employ up to five special investigators who shall be nonclassified exempt employees of the division.

(c) Services rendered the state by clerks, sheriffs, commissioners in chancery and special commissioners, designated by the court, and court reporters and stenographers performing services for said commissioner and fees of witnesses summoned on behalf of the state in proceedings to revoke or suspend retailer's licenses shall be treated as part of the expenses of administration and enforcement, and such officers and said other persons shall be paid the same fees and charges as would be chargeable for like services performed for an individual; and the compensation of such clerks, sheriffs and other persons shall be paid out of the amount allocated for the expense of administration enforcement, after the amount of such fees and other charges shall be certified by the court to the auditor.

*§11-16-13. Barrel tax on nonintoxicating beer; reporting and paying to tax commissioner.*

*Clerk's Note: This section was also amended by H. B. 2764 (Chapter 119), which passed subsequent to this act.*
(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of five dollars and fifty cents on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this state.

(b) On or before the tenth day of each month during the license period, every brewer who manufactures or produces nonintoxicating beer within this state shall file a report in writing, under oath, to the tax commissioner, in the form prescribed by the tax commissioner, stating its total estimated sales of nonintoxicating beer to distributors within this state during that month, and at the same time shall pay the tax levied by this article on such estimated monthly sales. On or before the tenth day of each month during the license period, every distributor who is the original consignee of nonintoxicating beer manufactured or produced outside this state or who brings such beer into this state for sale shall file a report in writing, under oath, to the tax commissioner, in the form prescribed by the tax commissioner, stating its total estimated purchases of such nonintoxicating beer during that month, and at the same time shall pay the tax thereon levied by this article for such estimated monthly purchase: Provided, That the tax commissioner may allow, or require, a brewer who manufactures or produces nonintoxicating beer outside this state to file
the required report and pay the required tax on behalf
of its distributor or distributors. Any brewer or
distributor who files a report under this subsection may
adjust its monthly estimated sales or purchases report
or reports by filing amended reports by the twenty-fifth
day of the reporting month.

(c) Every brewer or distributor who files a report
under subsection (b) of this section shall file a final
monthly report of said sales or purchases, in a form and
at a time prescribed by the tax commissioner, stating
actual nonintoxicating beer sales and purchases and
other information which the tax commissioner may
require, and shall include a remittance for any barrel
tax owed for actual sales or purchases made in excess
of the amount estimated for that month.

(d) Any brewer or distributor who files a report
pursuant to subsection (b) of this section reflecting an
underestimation of twenty-five percent or more of actual
sales or purchases of nonintoxicating beer as shown by
the report filed pursuant to subsection (c) of this section
shall be assessed a penalty of one percent of the total
taxes due in such prior month.

(e) Brewers and distributors shall keep all records
which relate to the sale or purchase in this state of
nonintoxicating beer for a period of three years unless
written approval for earlier disposal is granted by the
tax commissioner.


If any person whose report to the tax commissioner
as provided for in section thirteen of this article shows
him to be liable for any unpaid taxes, and who shall fail
to pay the same as provided herein, the tax commis-
sioner shall be authorized to institute collection reme-
dies provided for in article ten of this chapter. In
addition, the alcohol beverage control commissioner may
revoke the license of any such person failing to pay any
such tax.

*§11-16-15. Records of brewer, manufacturer or distrib-
utor; collection of unpaid tax and penalty.

*Clerk's Note: This section was also amended by H. B. 2764 (Chapter 119),
which passed subsequent to this act.
Every brewer, manufacturer or distributor shall maintain, keep and preserve for a period of three years such record or records of nonintoxicating beer manufactured, sold or distributed in this state, including, but not limited to, coolers, together with such invoices, records, receipts, bills of lading and other pertinent papers as may be required by the tax commissioner, and the tax commissioner shall have authority to inspect, by himself or through the tax commissioner's duly designated agent, the books, accounts, records and memoranda of any person licensed under the provisions of this article, and to examine, under oath, any officer, agent or employee of any brewer, manufacturer or distributor. The tax commissioner may require the production, within this state at such time and place as the tax commissioner may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the tax commissioner or the tax commissioner's duly designated agents. If, as the result of such examination, it shall be found that any nonintoxicating beer, subject to the payment of a tax, has been manufactured, brewed, sold or distributed by any person, upon which the tax has not been paid, the tax commissioner shall make an assessment of the amount of tax so found to be due, and, in addition thereto and as a part thereof, shall assess a penalty of fifty percent of the amount of such tax and shall notify such person of the total amount due. If the same remains unpaid for a period of thirty days, the tax commissioner shall have the authority to collect the amount found to be due by an appropriate legal proceeding in any of the circuit courts in which an action for the collection of unpaid taxes may be maintained under section fourteen of this article, unless an appeal is taken from the action of the tax commissioner as hereinafter provided. The tax commissioner shall notify the alcohol beverage control commissioner of any such unpaid assessment.

Within ten days after receipt of notice of any additional amount claimed to be due from any person as shown by an examination by the tax commissioner, such person, if he or she deems themselves aggrieved thereby,
shall so notify the tax commissioner and shall request a hearing thereon and the tax commissioner shall set a hearing into the matters raised by such notice, which hearing shall be held as a contested case pursuant to article ten of this chapter, except that the licensee shall have the right of appeal from the tax commissioner's findings only to the circuit court of Kanawha County, West Virginia. Whether the finding of the tax commissioner is affirmed or reversed, such circuit court shall enter an order accordingly and either party shall then have the right of appeal to the supreme court of appeals of the state.

§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.

(a) Upon a determination by the commissioner that a licensee has (i) violated the provisions of section eighteen of this article or of chapter sixty of this code, (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. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution or the sale, possession or distribution of narcotics or controlled substances shall be mandatory grounds for revocation of the licensee’s license for a period of at least one year.

§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 may 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 commis-
ioner in Charleston, Kanawha County, West Virginia,
less otherwise provided in such notice, or agreed upon
between the licensee and the commissioner; and when
such hearing is held elsewhere than in the commissi-
er'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 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-2. Superintendent; departmental headquarters.

§15-2-12. Mission of the division; powers of superintendent, officers and
members; patrol of turnpike.

§15-2-2. Superintendent; departmental headquarters.

1 The department of public safety, heretofore estab-
lished, shall be continued. The governor shall nominate,
and by and with the advice and consent of the Senate,
appoint a superintendent to be the executive and
administrative head of the department. Notwithstand-
ing any provision of this code to the contrary, the
superintendent shall be paid an annual salary of sixty
thousand dollars. The superintendent shall hold the rank
of colonel and is entitled to all rights, benefits and
privileges of regularly enlisted members. On the date of
his appointment, the superintendent shall be at least
thirty years of age. Before entering upon the discharge
of the duties of his office, he shall execute a bond in the
penalty of ten thousand dollars, payable to the state of
West Virginia and conditioned upon the faithful
performance of his duties. Such bond both as to form
and security shall be approved as to form by the
attorney general, and to sufficiency by the governor.

Before entering upon the duties of his office the
superintendent shall subscribe to the oath hereinafter
provided. The headquarters of the department shall be
located in Kanawha County.

*§15-2-12. Mission of the division; powers of superinten
dent, officers and members; patrol of
turnpike.

(a) The West Virginia division of public safety shall
have the mission of statewide enforcement of criminal
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 misde-
meanor 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

*Clerk’s Note: This section was also amended by S. B. 383 (Chapter 138),
which passed prior to this act.
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 laws 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 apprehending 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 jurisdiction. 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 command 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 multicounty 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.

(j) The superintendent may at his discretion and upon the written request of the West Virginia alcohol beverage control commissioner assist the commissioner in the coordination and enforcement of the alcohol beverage control act and the general law concerning nonintoxicating beer and wine.

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION, ISSUANCE OF CERTIFICATES OF TITLES.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles.

Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, treasurer, vehicles operated by the department of public safety, not to exceed six vehicles operated by conservation officers of the division of natural resources, not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal, and not to exceed ten vehicles
operated by inspectors of the office of the alcohol
beverage control commissioner, shall not be operated or
driven by any person unless it shall have displayed and
attached to the front thereof, in the same manner as
regular motor vehicle registration plates are attached,
a plate of the same size as the regular registration plate,
with white lettering on a green background bearing the
words "West Virginia" in one line and the words "State
Car" in another line, and the lettering for the words
"State Car" shall be of sufficient size to be plainly
readable from a distance of one hundred feet during
daylight.

Such vehicle shall also have attached to the rear a
plate bearing a number and such other words and
figures as the commissioner of motor vehicles shall
prescribe. The rear plate shall also be green with the
number in white.

On registration plates issued to vehicles owned by
counties, the color shall be white on red with the word
"County" on top of the plate and the words "West
Virginia" on the bottom. On any registration plates
issued to a city or municipality, the color shall be white
on blue with the word "City" on top, and the words
"West Virginia" on the bottom. The colors may not be
reversed and shall be of reflectorized material. The
commissioner is hereby authorized to designate the
colors and design of any other registration plates that
are issued without charge to any other agency in
accordance with the motor vehicle laws. The
registration plates issued to counties, municipalities and
other governmental agencies authorized to receive
colored plates hereunder shall be affixed to both the
front and rear of such vehicles: Provided, That upon
application and payment of fees, the commissioner is
hereby authorized to issue a maximum of five Class A
license plates per applicant to be used by county sheriffs
and municipalities on law-enforcement vehicles while
engaged in undercover investigations.

No other registration plate shall be issued for, or
attached to, any such state-owned vehicle.
The commissioner of motor vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered registration plates for such vehicles shall start with the number “five hundred” and the commissioner shall issue consecutive numbers for all state-owned cars.

It shall be the duty of each office, department, bureau, commission or institution furnished any such vehicle to have such plates affixed thereto prior to the operation of such vehicle by any official or employee.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

Magistrates shall have concurrent jurisdiction with circuit and criminal courts for the enforcement of this section.

CHAPTER 60. ALCOHOL BEVERAGE CONTROL.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-6. How chapter cited.

This chapter may be cited as the “Alcohol Beverage Control Act.”

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-7. Oath and bond.


§60-2-7. Oath and bond.

Before entering upon the duties of the office, the commissioner shall take and subscribe to the oath prescribed by section 5, article IV, of the constitution.
of this state, and shall give bond in the penalty of twenty-five thousand dollars, to be approved by the governor and conditioned upon the faithful performance of the duties of the office and the accounting for and payment into the treasury of all moneys coming into the commissioner's custody by virtue of the office. The bond and oath shall be filed with the secretary of state.


The commissioner shall receive an annual salary of sixty thousand dollars, and shall be paid actual and necessary traveling expenses incurred in performance of the official duties of the office.


At the close of each fiscal year the legislative auditor shall audit the affairs of the West Virginia alcohol beverage control commissioner and report the results of the audit to the governor. The cost of the audit shall be paid from the operating fund.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-17. Wholesale prices set by commissioner; 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) Wholesale prices shall be established in order to yield a net profit for the general fund of not less than six million five hundred thousand dollars annually on an annual volume of business equal to the average for the
past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the general revenue fund in the manner provided in section seventeen, 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: Provided, however, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(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.

ARTICLE 4. LICENSES.

§60-4-19. When license revoked.

1 The commissioner may revoke a license issued under this article upon a finding that:

2 (1) The licensee is not a suitable person;

3 (2) The place occupied by the licensee is not a suitable place;
(3) The licensee has violated a provision of this chapter or a regulation made by the commissioner under the authority of this chapter; or

(4) The licensee has failed to comply with the spirit and intent of this chapter by encouraging intemperance, the unlawful consumption of alcoholic liquors, or otherwise.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

A person shall not:

(1) Manufacture or sell in this state without a license any alcoholic liquor except as permitted by this article;

(2) Aid or abet in the manufacture or sale of alcoholic liquor without a license except as permitted by this article;

(3) Sell without a license any alcoholic liquor other than permitted by this article;

(4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

(5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this state;

(6) Advertise any alcoholic liquor in this state except in accordance with the rules and regulations of the commissioner; or

(7) Distribute, deal in, process, or use crowns, stamps or seals required under the authority of this chapter, except in accordance with the rules and regulations prescribed by the commission.

A person who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than five hundred dollars, or confined in jail not less than thirty
days nor more than one year or both such fine and
imprisonment, for the first offense. Upon conviction of
a second or subsequent offense, the court may in its
discretion impose a penalty of confinement in the
penitentiary for a period not to exceed three years.

An indictment for any first violation of subdivisions
(1), (2) and (3) of this section, or any of them, shall be
sufficient if in form or effect as follows:

State of West Virginia

County of ________________________, to wit:

The Grand Jurors of the State of West Virginia, in
and for the body of the County of ____________,
upon their oaths present that ________________, on
the __________ day of ________________, 19____, in the
said County of ____________, did unlawfully,
without a State license and without authorization under
the Alcohol Beverage Control Act, manufacture and sell,
and aid and abet in the manufacture and sale of a
quantity of alcoholic liquor, against the peace and
dignity of the State.

Any indictment under this section shall otherwise be
in conformity with section one, article nine, chapter
sixty-two of the code.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

§60-7-13a. 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.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

Notwithstanding any other provisions of this code to
the contrary, licensees are hereby authorized to sell
alcoholic liquors, other than in sealed packages, for
consumption on the premises of the licensees, to their
members and their guests in accordance with the
provisions of this article. The licensees may keep and maintain on their premises a supply of those alcoholic liquors in such quantities as may be appropriate for the conduct of operations thereof.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It shall be unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

1. Sell or offer for sale any alcoholic liquors other than from the original package or container;

2. Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

3. Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

4. Sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, for or to any mental incompetent, or for a person who is physically incapacitated due to consumption of alcoholic liquor or the use of drugs;

5. Sell, give or dispense alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

6. Permit the consumption by, or serve to, on the licensed premises any alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

7. With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;
(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Permit any person who is less than eighteen years of age to sell, furnish or give alcoholic liquors to any person; or

(10) Violate any reasonable rule or regulation of the commissioner.

(b) It shall further be unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not to exceed one year, or by both fine and imprisonment.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

(a) Upon a determination by the commissioner that a licensee has (i) violated the provisions of article sixteen, chapter eleven or chapter sixty of this code, (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 impose any one or a combination of the following sanctions:

(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 Alcohol Beverage Control Enforcement Fund", which is hereby created. All moneys collected, received and deposited in the "Alcohol Beverage Control Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, 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 alcohol beverage control 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 alcoholic liquor, nonintoxicating beer or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession or distribution of narcotics or controlled substances shall be mandatory grounds for revocation of the licensee's license for a period of at least one year.

§60-7-13a. 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 or 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: Provided, That the
commissioner may forthwith suspend any such license
when the commissioner believes the public safety will
be adversely affected by the licensee's continued
operation.

The commissioner shall have authority to summon
witnesses in the hearing 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 of witness
fees, court reporter fees and travel costs incurred in
holding the hearing. Any moneys so assessed shall be
transferred to the alcohol beverage control enforcement
fund created by section thirteen 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 may 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
alcoholic liquor pending an appeal as provided by this
article. Any person continuing to sell alcoholic liquor
after his license has been suspended or revoked, as
hereinbefore provided, is guilty of a misdemeanor and
shall be punished as provided in section twelve 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 alcoholic liquor, or nonintoxicating beer, 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. The commissioner shall report violations of any of the provisions of section twelve or twelve-a of this article to the prosecuting attorney of the county in which the licensed premises is located.

ARTICLE 8. SALE OF WINES.

§60-8-4. Liter tax.
§60-8-5. Refund or credit of taxes.
§60-8-7. Records; inspection.
§60-8-24. Disposition of revenue.
§60-8-28. Registration of labels.
§60-8-29. Bond required of distributors and suppliers.

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after the thirtieth day of April, one thousand nine hundred eighty-three, by suppliers to distributors, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter.

Before the sixteenth day of each month thereafter, every supplier shall make a written report under oath to the tax commissioner showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors during the preceding month, and at the same time shall pay the tax imposed by this article on the wine sold to the distributor during the preceding month.

The reports shall contain other information and be in the form the tax commissioner may require. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of article ten, chapter eleven of this code.

No wine imported, sold or distributed in this state shall be subject to more than one liter tax.

§60-8-5. Refund or credit of taxes.

The tax commissioner shall refund, or credit on a subsequent return, any tax which has been erroneously or illegally collected. In the event that a licensee, while the owner of wine on which the tax imposed by this article has been paid, loses such wine through fire or casualty, other than breakage occurring on the premises of the licensee because such wine has been declared by the alcohol beverage control commissioner to be unfit for sale, and the amount of tax paid exceeds fifty dollars, the tax commissioner shall refund the tax paid. The alcohol beverage control commissioner shall promulgate regulations establishing the procedure and nature of proof required in case of any claim for refund or credit.

§60-8-7. Records; inspection.
Every person who sells or ships wine to a distributor, and every distributor, shall maintain records of all sales, shipments and deliveries, including invoices, records, receipts, bills of lading and other pertinent papers required by the commissioner. All such records shall be preserved for at least two years. The tax commissioner may inspect the books, accounts and records of any licensee and examine, under oath, any officer, agent or employee of any licensee or any person engaged in the business of selling, shipping or delivering wine to a distributor. The tax commissioner may require the production, within this state at the time and place the tax commissioner may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the tax commissioner or the tax commissioner’s duly designated agents.

§60-8-24. Disposition of revenue.

(a) All fees collected by the commissioner under the provisions of this article shall be deposited in the state treasury and credited to a special fund to be known as the “wine license special fund”. All moneys in such special fund may be expended only for the administration of the provisions of this article or, to the extent of any excess, for the administration of this chapter or as may be appropriate by law.

(b) The liter tax imposed and collected by the tax commissioner under the provisions of this article shall be paid into the state treasury and deposited in the general revenue fund of the state.

(c) All moneys collected by the alcohol beverage control commissioner and the tax commissioner under the provisions of this article shall be remitted to the state treasury monthly within fifteen days after the end of each month.

§60-8-28. Registration of labels.

Every distributor and farm winery offering wine for sale under this article shall register with the tax
commissioner each label offered for sale in the state and shall pay a fee of three dollars for the registration of such label. No wine may be sold under this article unless its label has been registered.

§60-8-29. Bond required of distributors and suppliers.

Each applicant for a distributor's license or each company registered as a supplier shall furnish at the time of application a bond with a corporate surety authorized to transact business in this state, payable to the state, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

The penal sum of the bond for distributors shall be ten thousand dollars, and the penal sum of the bond for suppliers shall be twenty-five thousand dollars. Each distributor shall be required to furnish separate bond for each location or separate place of business from which wine is distributed, sold, or delivered. Revocation or forfeiture of the bond furnished for any such location may, in the discretion of the tax commissioner, cause the revocation or forfeiture of all such bonds furnished by the distributor suffering such revocation or forfeiture.

CHAPTER 119

(H. B. 2764—By Mr. Speaker, Mr. Chambers, and Delegate Houvouras)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, nine, twelve, thirteen, fifteen, seventeen, eighteen, twenty-one and twenty-six, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to regulation of retail sales by resident manufacturers of nonintoxicating beer.

Be it enacted by the Legislature of West Virginia:

That sections three, six, nine, twelve, thirteen, fifteen, seventeen, eighteen, twenty-one and twenty-six, article sixteen,
chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 16. NONINTOXICATING BEER.**

§11-16-3. Definitions.

§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewpub.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

§11-16-12. Bond of brewer, distributor, brewpub and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.


§11-16-15. Records of brewer, manufacturer or distributor or operator of a brewpub; collection of unpaid tax and penalty.

§11-16-17. Container labeling.

§11-16-18. Unlawful acts of licensees; criminal penalties.

§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.

§11-16-26. Municipal license tax.

*§11-16-3. Definitions.*

For the purpose of this article, except where the context clearly requires differently:

(1) "Brewer" or "manufacturer" shall mean any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.

(2) "Brewpub" shall mean a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal regulations and guidelines, a portion of which premises are designated for retail sales.

(3) "Commissioner" shall mean the West Virginia alcohol beverage control commissioner.

(4) "Distributor" shall mean and include any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.

*Clerk’s Note: This section was also amended by H. B. 2602 (Chapter 118), which passed prior to this act.*
(5) "Nonintoxicating beer" shall mean all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent alcohol by volume, but not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(6) "Original container" shall mean the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

(7) "Person" shall mean and include an individual, firm, partnership, limited partnership, association or corporation.

(8) "Resident brewer" shall mean any person, firm, association, partnership, or corporation whose principal place of business is within the state.

(9) "Retailer" shall mean any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, any malt cooler, at his established and licensed place of business.

§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewpub.

(a) No person shall be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer or distributor or brewer, and no person shall be interested directly or indirectly through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such person is at the
same time interested in the business of a brewer or distributor. A brewer whose place of brewing or manufacture is located within the state of West Virginia may act as distributor of his own product from such brewery, place of manufacture or bottling, but must have a distributor’s license for distribution from a place other than the place of brewing or manufacture. A resident brewer or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers.

(b) It shall be unlawful for any brewer, manufacturer or distributor to assist any retailer or for any retailer to accept assistance from any brewer, manufacturer or distributor any gifts or loans or forebearance of money or property of any kind, nature or description, or other thing of value or by the giving of any rebates or discounts of any kind whatsoever except as may be permitted by rule, regulation, or order promulgated by the commissioner in accordance with this article.

Notwithstanding paragraphs (a) and (b) above, a brewpub may manufacture and offer for retail sale non-intoxicating beer so long as the sale of the non-intoxicating beer is limited to the brewpub premises.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of non-intoxicating beer permitted; distributors; brewers; brewpubs.

(a) There is hereby levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer as defined by this article, which license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and, if granted for a less period the same shall be computed semiannually in proportion to the remainder of the fiscal year as follows:

(1) Retail dealers shall be divided into two classes, Class A and Class B. In the case of a Class A retail dealer the license fee shall be one hundred fifty dollars for each place of business; the license fee for social,
fraternal or private clubs not operating for profit, and
having been in continuous operation for two years or
more immediately preceding the date of application,
shall be one hundred fifty dollars: Provided, That
railroads operating in this state may dispense nonintox-
icating beer upon payment of an annual license tax of
ten dollars for each dining, club or buffet car in which
the same is dispensed.

Class A licenses issued for railroad dining, club or
buffet cars, as herein provided, shall authorize the
licensee to sell nonintoxicating beer at retail for
consumption only on the licensed premises where sold.
All other Class A licenses shall authorize the licensee to
sell nonintoxicating beer at retail for consumption on or
off the licensed premises.

In the case of a Class B retailer, the fee for a Class
B license authorizing the sale of both chilled and
unchilled beer shall be one hundred fifty dollars for each
place of business. A Class B license shall authorize the
licensee to sell nonintoxicating beer at retail in bottles,
cans or other sealed containers only, and only for
consumption off the licensed premises. Sales under this
license to any person at any one time must be in less
quantities than five gallons: Provided, That a Class B
retailer may sell to a consumer, for personal use and not
for resale, draught beer in quantities of one-eighth, one-
fourth and one-half barrels in the original containers.
Such license may be issued only to the proprietor or
owner of a grocery store. For the purpose of this article
the term "grocery store" means and includes any retail
establishment commonly known as a grocery store or
delicatessen, where food or food products are sold for
consumption off the premises, and shall include and
mean a separate and segregated portion of any other
retail store which is dedicated solely to the sale of food,
food products and supplies for the table for consumption
off the premises. The commissioner may promulgate
rules and regulations necessary to carry this provision
into effect.

(2) In the case of distributors, the license fee shall be
one thousand dollars for each place of business.
(3) In the case of a brewer with its principal place of business located in this state, the license fee shall be one thousand five hundred dollars for each place of manufacture.

(4) In the case of a brewpub, the license fee shall be one thousand dollars for each place of manufacture.

§11-16-12. Bond of brewer, distributor, brewpub and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.

(a) In addition to furnishing the information required by this article, each brewer or distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the sale, transportation, storage and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond, in the case of a resident brewer or brewpub, shall be not less than five thousand dollars, nor more than ten thousand dollars, and in the case of a distributor, not less than two thousand dollars, nor more than five thousand dollars for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. In the case of brewers shipping nonintoxicating beer into the state, any brewer must also furnish a bond in a penalty of not less than five thousand dollars nor more than twenty-five thousand dollars conditioned as hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited to the state in the full amount of said bond upon revocation of license of any such brewer or
(b) Each Class A retail dealer, in addition to furnishing the information required by this article, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, in the amount not less than five hundred dollars, nor more than one thousand dollars, within the discretion of the commissioner. All such bonds shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the distribution, sale and dispensing of nonintoxicating beer, and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the state fund, general revenue.

(c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the prosecuting attorney of the county wherein such retail dealer's place of business is located, or the prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate proceedings for the collection of the full amount of said bond. Upon request of such prosecuting attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefore by the prosecuting attorney to perform said duty hereby imposed shall subject him to removal from office by the circuit court of the county for which said prosecuting attorney was elected upon proper proceedings and proof in the manner provided by law.

*§11-16-13. Barrel tax on nonintoxicating beer.*

(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of five

*Clerk's Note: This section was also amended by H. B. 2602 (Chapter 118), which passed prior to this act.*
dollars and fifty cents on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this state.

(b) On or before the tenth day of each month during the license period, every brewer or operator of a brewpub who manufactures or produces nonintoxicating beer within this state shall file a report in writing, under oath, to the tax commissioner, in the form prescribed by the tax commissioner, stating its total estimated sales, or in the case of a brewpub, its total estimated production of nonintoxicating beer within this state during that month, and at the same time shall pay the tax levied by this article on such estimated monthly sales or production. On or before the tenth day of each month during the license period, every distributor who is the original consignee of nonintoxicating beer manufactured or produced outside this state or who brings such beer into this state for sale shall file a report in writing, under oath, to the tax commissioner, in the form prescribed by the tax commissioner, stating its total estimated purchases of such nonintoxicating beer during that month, and at the same time shall pay the tax thereon levied by this article for such estimated monthly purchase: Provided, That the tax commissioner may allow, or require, a brewer who manufactures or produces nonintoxicating beer outside this state to file
the required report and pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator of a brewpub who files a report under this subsection may adjust its monthly estimated sales or purchases or production report or reports by filing amended reports by the twenty-fifth day of the reporting month.

(c) Every brewer or distributor or operator of a brewpub who files a report under subsection (b) of this section shall file a final monthly report of said sales or purchases or production, in a form and at a time prescribed by the tax commissioner, stating actual nonintoxicating beer sales, purchases, or production and other information which the tax commissioner may require, and shall include a remittance for any barrel tax owed for actual sales or purchases or production made in excess of the amount estimated for that month.

(d) Any brewer or distributor or operator of a brewpub who files a report pursuant to subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual sales or purchases or production of nonintoxicating beer as shown by the report filed pursuant to subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in such prior month.

(e) Brewers and distributors and operators of brewpubs shall keep all records which relate to the sale or purchase in this state of nonintoxicating beer for a period of three years unless written approval for earlier disposal is granted by the tax commissioner.

*§11-16-15. Records of brewer, manufacturer or distributor or operator of a brewpub; collection of unpaid tax and penalty.*

Every brewer, manufacturer or distributor or operator of a brewpub shall maintain, keep and preserve for a period of three years such record or records of nonintoxicating beer manufactured, sold or distributed in this state, including, but not limited to, coolers, together with such invoices, records, receipts, bills of lading and other pertinent papers as may be required.

*Clerk's Note: This section was also amended by H. B. 2602 (Chapter 118), which passed prior to this act.*
by the tax commissioner, and the tax commissioner shall
have authority to inspect, by himself or through the
commissioner's duly designated agent, the books,
accounts, records and memoranda of any person licensed
under the provisions of this article, and to examine,
under oath, any officer, agent or employee of any
brewer, manufacturer or distributor or operator of a
brewpub. The tax commissioner may require the
production, within this state at such time and place as
the commissioner may designate, of any books, accounts,
papers or records kept within or without the state, or
verified copies in lieu thereof, in order that an exami-
nation thereof may be made by the tax commissioner
or the commissioner's duly designated agents. If, as the
result of such examination, it shall be found that any
nonintoxicating beer, subject to the payment of a tax,
has been manufactured, brewed, sold or distributed by
any person, upon which the tax has not been paid, the
tax commissioner shall make an assessment of the
amount of tax so found to be due, and, in addition
thereto and as a part thereof, shall assess a penalty of
fifty percent of the amount of such tax and shall notify
such person of the total amount due. If the same remains
unpaid for a period of thirty days, the tax commissioner
shall have the authority to collect the amount found to
be due by an appropriate legal proceeding in any of the
circuit courts in which an action for the collection of
unpaid taxes may be maintained under section fourteen
of this article, unless an appeal is taken from the action
of the tax commissioner as hereinafter provided. The tax
commissioner shall notify the alcohol beverage control
commissioner of any such unpaid assessment.

Within ten days after receipt of notice of any addi-
tional amount claimed to be due from any person as
shown by an examination by the tax commissioner, such
person, if he or she deems themselves aggrieved thereby,
shall so notify the tax commissioner and shall request
a hearing thereon and the tax commissioner shall set a
hearing into the matters raised by such notice, which
hearing shall be held as a contested case pursuant to
article ten of this chapter, except that the licensee shall
have the right of appeal from the tax commissioner's
findings only to the circuit court of Kanawha County, West Virginia. Whether the finding of the tax commis-
sioner is affirmed or reversed, such circuit court shall enter an order accordingly and either party shall then have the right of appeal to the supreme court of appeals of the state.

§11-16-17. Container labeling.

It shall be unlawful for any brewer, brewpub, manufacturer, distributor or retailer to have affixed upon any beer, ale or other malt beverage or malt cooler container, sold or for sale in this state, a label bearing any design, picture or wording, indicating that the contents of the container are brewed or manufactured for one particular distributor or retailer or group of retailers, or use any trademark other than that of a licensed brewer or manufacturer.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;
(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(5) For any brewer or distributor or brewpub or his, her, its or their agents, to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: Provided, however, That no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

(7) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(8) For any licensee except the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code, or a holder of a license or a private wine restaurant issued under the provisions of article eight of said chapter sixty, to possess a federal license, tax receipt or other permit
entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(9) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times:

Provided, That provisions of this subdivision shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code, or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter sixty;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as such private wine restaurant is authorized serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located:

Provided, That no licensee shall have in connection with
(13) For any person whose license has been revoked, as in this article provided, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;

(14) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(15) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises;

(17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;

(18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or to sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of
business or licensed premises is within the assigned
territory of another distributor of such nonintoxicating
beer: Provided, That nothing herein shall be deemed to
prohibit sales of convenience between distributors
licensed in this state wherein one such distributor sells,
transfers or delivers to another such distributor a
particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant or
employee of any such licensee to knowingly violate any
rule or regulation lawfully promulgated by the commis-
sioner in accordance with the provisions of chapter
twenty-nine-a of this code.

(b) Any person who violates any provision of this
article including, but not limited to, any provision of this
section, or any rule, regulation, or order lawfully
promulgated by the commissioner, or who makes any
false statement concerning any material fact in submit-
ting application for license or for a renewal of a license
or in any hearing concerning the revocation thereof, or
who commits any of the acts herein declared to be
unlawful, shall be guilty of a misdemeanor, and shall be
punished for each offense by a fine of not less than
twenty-five nor more than five hundred dollars, or
imprisoned in the county jail for not less than thirty
days or more than six months, or by both fine and
imprisonment in the discretion of the court. Magistrates
shall have concurrent jurisdiction with the circuit court,
and any other courts having criminal jurisdiction in
their county, for the trial of all misdemeanors arising
under this article.

(c) Nothing in this article nor any rule or regulation
of the commissioner shall prevent or be deemed to
prohibit any licensee from employing any person who is
at least eighteen years of age to serve in such licensee's
lawful employ, including the sale or delivery of nonin-
toxicating beer as defined in this article. With the prior
approval of the commissioner, a licensee whose principal
business is the sale of food or consumer goods or the
providing of recreational activities, including, but not
limited to, nationally franchised fast food outlets,
family-oriented restaurants, bowling alleys, drug stores,
1224 NONINToxicATING BEER

182 discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: Provided, That such person’s duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee’s license.

§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.

1 (a) On and after July one, one thousand nine hundred seventy-one, it shall be unlawful for any brewer to transfer or deliver to a distributor any nonintoxicating beer, ale or other malt beverage or malt cooler without first having entered into an equitable franchise agreement with such distributor, which franchise agreement shall be in writing, shall be identical as to terms and conditions with all other franchise agreements between such brewer and its other distributors in this state, and which shall contain a provision in substance or effect as follows:

12 (1) The brewer recognizes that the distributor is free to manage his business in the manner the distributor deems best, and that this prerogative vests in the distributor, subject to the provisions of this article, the exclusive right to establish his or her selling prices, to select the brands of beer he or she wishes to handle, and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer's products handled by the distributor. However, since the brewer does not expect that its products handled by the distributor will be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in said territory. Consequently, the brewer expects that the distributor will price competitively the products handled by the distributor, devote
(2) Whenever the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale of any brewer is acquired by another brewer, the franchised distributor of the selling brewer shall be entitled to continue distributing the selling brewer's beer products as authorized in the distributor's existing franchise agreement, and the acquiring brewer shall market all the selling brewer's beer products through said franchised distributor as though the acquiring brewer had made the franchise agreement, and the acquiring brewer may terminate said franchise agreement only in accordance with subdivision (2), subsection (b) of this section: Provided, That the acquiring brewer may distribute any of its other beer products through its duly authorized franchises in accordance with all other provisions of this section.

(b) It shall also be unlawful:

(1) For any brewer or brewpub or distributor, or any officer, agent or representative of any brewer or brewpub or distributor, to coerce or persuade or attempt to coerce or persuade any person licensed to sell, distribute or job nonintoxicating beer, ale or other malt beverage or malt cooler at wholesale or retail, to enter into any contracts or agreements, whether written or oral, or to take any other action, which will violate or tend to violate any provision of this article or any of the rules, regulations, standards, requirements or orders of the commissioner promulgated as provided in section twenty-one of this article, or

(2) For any brewer or brewpub or distributor, or any officer, agent or representative of any brewer or brewpub or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or brewpub or distributor, and without just cause, any franchise agreement, whether oral or written, and in the case of an oral franchise agreement, whether the same was entered into on or before the eleventh day of June, one thousand nine hundred seventy-one, and in the case
of a franchise agreement in writing, whether the same was entered into on, before or subsequent to July one, one thousand nine hundred seventy-one. The cancella-
tion, termination or rescission of any such franchise agreement shall not become effective for at least ninety days after written notice of such cancellation, termina-
tion or rescission has been served on the affected party and the commissioner by certified mail, return receipt requested: Provided, That said ninety-day period and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is agreed to in writing by both the brewer and the distributor involved.

(c) In the event a distributor desires to sell or transfer his or her franchise, such distributor shall give to the brewer or brewpub at least sixty days notice in writing of such impending sale or transfer and the identity of the person, firm or corporation to whom such sale or transfer is to be made and such other information as the brewer may reasonably request. Such notice shall be made upon forms and contain such additional information as the commissioner by rule or regulation shall prescribe. A copy of such notice shall be forwarded to the commissioner. The brewer or brewpub shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or brewpub neither approves nor disapproves thereof within sixty days of the date of receipt of such notice, the sale or transfer of such franchise shall be deemed to be approved by such brewer. In the event the brewer or brewpub shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer or brewpub shall give notice to the distributor of that fact in writing, setting forth the reason or reasons for such disapproval. The approval shall not be unreasonably withheld by the brewer or brewpub. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business shall not be deemed sufficient reason in and of itself for a valid disapproval of the proposed sale or transfer, but may be considered in conjunction with other adverse factors in supporting the
position of the brewer or brewpub. Nor may the brewer
or brewpub impose requirements upon the prospective
franchisee, transferee or purchaser which are more
stringent or restrictive than those currently demanded
of or imposed upon the brewer's or brewpub's or other
distributors in the state of West Virginia. A copy of such
notice of disapproval shall likewise be forwarded to the
commissioner and to the prospective franchisee, trans-
ferree or purchaser. In the event the issue be not resolved
within twenty days from the date of such disapproval,
either the brewer, brewpub, distributor or prospective
franchisee, transferee or purchaser shall notify the other
parties of his or her demand for arbitration and shall
likewise notify the commissioner thereof. A dispute or
disagreement shall thereupon be submitted to arbitra-
tion in the county in which the distributor's principal
place of business is located by a board of three
arbitrators, which request for arbitration shall name
one arbitrator. The party receiving such notice shall
within ten days thereafter by notice to the party
demanding arbitration name the second arbitrator, or
failing to do so, the second arbitrator shall be appointed
by the chief judge of the circuit court of the county in
which the distributor's principal place of business is
located on request of the party requesting arbitration in
the first instance. The two arbitrators so appointed shall
name the third, or failing to do so within ten days after
appointment of the second arbitrator, the third arbitra-
tor may be appointed by said chief judge upon request
of either party. The arbitrators so appointed shall
promptly hear and determine and the questions submit-
ted pursuant to the procedures established by the
American Arbitration Association and shall render
their decision with all reasonable speed and dispatch but
in no event later than twenty days after the conclusion
of evidence. Said decision shall include findings of fact
and conclusions of law and shall be based upon the
justice and equity of the matter. Each party shall be
given notice of such decision. If the decision of the
arbitrators be in favor of or in approval of the proposed
sale or transfer, the brewer or brewpub shall forthwith
agree to the same and shall immediately transfer the
franchise to the proposed franchisee, transferee or purchaser, unless notice of intent to appeal such decision is given the arbitrators and all other parties within ten days of notification of such decision. If any such party deems himself aggrieved thereby, such party shall have a right to bring an appropriate action in circuit court. Any and all notices given pursuant to this subsection shall be given to all parties by certified or registered mail, return receipt requested.

(d) The violation of any provision of this section by any brewer or brewpub shall constitute grounds for the forfeiture of the bond furnished by such brewer or brewpub in accordance with the provisions of section twelve of this article. Moreover, any circuit court of the county in which a distributor's principal place of business is located shall have the jurisdiction and power to enjoin the cancellation, termination or rescission of any franchise agreement between a brewer or brewpub and such distributor, and, in granting an injunction to a distributor, the court shall provide that the brewer or brewpub so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

§11-16-26. Municipal license tax.

Any municipal corporation in this state shall have the authority to levy a license tax under the provisions of this article upon any retailer, distributor or brewer or operator of a brewpub of nonintoxicating beer whose place of business is situated within such municipality, but the amount of the license tax levied by such municipal corporation shall in no event exceed the amount fixed herein to be levied by the state. Only one municipal tax is to be so imposed and that only by the municipality in which the place of business, or warehouse, is located. Cities and incorporated towns are hereby empowered to enact ordinances for the enforcement of this article in conformity with the provisions of the same: Provided, That in no case shall the rate of such municipal license tax exceed the rate of such tax in effect on the first day of January, one thousand nine hundred eighty-six.
In the case of a brewpub, such municipal tax shall not exceed the same proportions of taxation as the other licensees.

CHAPTER 120

(H. B. 2226—By Delegates Love and Wallace)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the interagency committee on pesticides.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the interagency committee on pesticides.

1 Article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 121

(S. B. 68—By Senators Spears and Helmick)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the poet laureate of West Virginia; appointment; qualifications; and increasing salary.

Be it enacted by the Legislature of West Virginia:

That section one, article seven, 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 7. POET LAUREATE.

§29-7-1. Appointment; qualifications; salary.
There shall be a poet laureate of West Virginia, who shall be appointed by, and serve during the will and pleasure of the governor. No person shall be eligible to such appointment who is not a resident of this state, and who has not written and published poems of recognized merit. The poet laureate shall receive an annual salary of two thousand dollars, payable in equal quarterly installments.

CHAPTER 122
(Com. Sub. for S. B. 30—By Senators Whitlow and Anderson)

[Passed March 6, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter sixty-two 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 probation and parole; and when and how notification of date of parole hearing or release date to victim or member of victim’s immediate family is to be given.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter sixty-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 twenty-three, to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing or release date to victim or member of immediate family.

At the time of sentencing following a conviction for murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson or sexual offenses against minors, the prosecuting attorney shall present, in writing, to the victims or immediate family members of deceased victims of murder, a document specifying that the victim or immediate family members has the right to notification prior to the time of a parole hearing and release date. The notice provided by the prosecutor shall
specify the method to request notification from the board.

At least thirty days prior to the date of release or the date that a parole hearing is to be held for an inmate who is in the custody of the commissioner of corrections, the board of probation and parole shall notify the victim or victims of the offense for which the inmate is incarcerated of the hearing and release date. If a victim is deceased, notification of the date of the hearing and release shall be made to a member of the victim’s immediate family. The notification set forth in this section shall be required to be sent only to victims or family members of deceased victims of the offenses of murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson and sexual offenses against minors, and only if the victim or victim’s immediate family member has, in writing to the board, requested that such notice be sent. Notice stating the date, time and location of the parole hearing and the release date shall be sent by certified mail, return receipt requested.

CHAPTER 123
(Com. Sub. for S. B. 135—By Senator Hawse)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, five-a, six, six-a, eight, nine and ten of said article; and to further amend said article by adding thereto three new sections, designated sections six-b, six-c and eight-a, all relating to auctioneers and apprentice auctioneers; definitions; procedure and fees for obtaining a license; department of agriculture as statutory agent for licensees, fees; requiring bonds and specifying approved methods of bonding; requirements for license; promulgation of rules and regulations; duties of licensee; examination of applicants; examination fee; excuse for illness; renewal
fees; apprentice licenses; waiver of apprenticeship requirement; investigation of complaints; board of review; duties and responsibilities of apprentice auctioneers and sponsoring auctioneer; procedure for nonresident auctioneer's and apprentice auctioneer's license; civil and criminal penalties for violation of article or rules and regulations; suspension, revocation or denial of licenses; written contracts for auctions and exception; and advertising of auction sales.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.
§19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.
§19-2C-4. Bond required.
§19-2C-5. Requirements for license; rules and regulations; duties of licensee.
§19-2C-5a. Examinations of applicants; excuse for illness; fee renewal.
§19-2C-6. Apprentice licenses; fees.
§19-2C-6a. Investigation of complaints; board of review.
§19-2C-6b. Duties and responsibilities of an apprentice auctioneer and a sponsoring auctioneer.
§19-2C-6c. Procedure for obtaining nonresident auctioneer's and apprentice auctioneer's license.
§19-2C-8. Penalties for violation of article or rules and regulations.
§19-2C-8a. Revocation.
§19-2C-9. Written contracts; exception.
§19-2C-10. Advertising.

§19-2C-1. Definitions.

1 For the purposes of this article:
2 (a) The term "auctioneer" means and includes a person
3 who sells goods or real estate at public auction for
4 another on commission or for other compensation. The
5 term "auctioneer" does not include: (1) Persons conduct-
6 ing sales at auctions conducted by or under the direction
of any public authority or pursuant to any judicial order
or direction or to any sale required by law to be at
auction; (2) the owner of any real or personal property
when personally sold at auction by such owner and such
owner has not personally conducted an auction within
the previous twelve-month period; (3) persons conduct-
ing sales pursuant to a deed of trust or other security
agreement; (4) fiduciaries of estates when selling real or
personal property of such estate; and (5) persons
conducting sales on behalf of charitable, religious,
fraternal or other nonprofit organizations: Provided,
That nothing contained in this article exempts persons
conducting sales at public markets from the provisions
of article two-a, chapter nineteen of this code, where the
sale is confined solely to livestock, poultry and other
agriculture and horticulture products.

(b) The term "public auction" means any public sale
of real or personal property when offers or bids are
made by prospective purchasers and the property sold
to the highest bidder.

(c) The term "commissioner" means the commissioner
of agriculture of West Virginia.

(d) The term "department" means the West Virginia
department of agriculture.

§19-2C-3. Procedure for license; department of agricul-
ture as statutory agent for licensees; fee.

Any person who wishes to conduct an auction as an
auctioneer may apply for a license on forms prescribed
by the commissioner and containing such information as
the commissioner may by rule or regulation require. A
nonreturnable application fee of fifty dollars shall
accompany each application as well as a license fee of
fifty dollars. All fees collected under this article shall be
paid into the general revenue fund in the state treasury.

In addition to the payment of fees, an applicant shall
file with his application a bond as required in section
four of this article.

The commissioner shall, within thirty days after the
receipt of an application, notify the applicant of his
eligibility to be examined at the next regularly scheduled examination, as well as the date of such examination.

In the event the license is denied, the applicant shall be refunded the license fee submitted with the application.

Licenses issued shall expire on the thirty-first day of December of each year but shall be renewable upon the payment of the annual license fee within sixty days of the expiration date: Provided, That licenses issued for fiscal year one thousand nine hundred ninety-one will be extended, at no additional fee, through the thirty-first day of December, one thousand nine hundred ninety-one. Renewals received more than sixty days after the expiration date are subject to a late renewal fee of twenty-five dollars in addition to the annual renewal fee. Licenses which have been expired for more than two years will not be renewed and the auctioneer or apprentice auctioneer will be required to take the written and oral examination and to pay the examination fee. No renewal will be made unless the other requirements of this article are complied with.

Should a duplicate or replacement license or a license reflecting a change in information be required, the auctioneer or apprentice auctioneer must submit with such request a fee of five dollars.

The state department of agriculture is the agent for the purpose of service of process on any licensed auctioneer for any action occasioned by the performance of the duties of such auctioneer. Every licensed auctioneer, by virtue of his application for license, shall be considered to have consented to such statutory agency.

§19-2C-4. Bond required.

Every person applying for a license as an auctioneer, apprentice auctioneer or continuing to act as a licensed auctioneer or apprentice auctioneer shall file with the commissioner and maintain in full effect a bond satisfactory to the commissioner and in form and amount as prescribed by the commissioner pursuant to
the rules and regulations promulgated in accordance
with this article: Provided, That in no event shall the
amount of such bond be less than ten thousand dollars
for an auctioneer and in no event less than five thousand
dollars for an apprentice auctioneer. The bond may
include, at the option of the applicant, corporate surety
bonding, collateral bonding (including costs and secur-
ities), establishment of an escrow account, an irrevoca-
ble letter of credit or a combination of these methods.
If collateral bonding is used, the auctioneer may elect
to deposit cash, or any of the following collateral
securities or certificates: 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 munici-
pality of the state of West Virginia or other states; or
certificates of deposit in a bank in this state, which
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 is sufficient. The
commissioner shall, upon receipt of any such deposits 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 license is issued. The applicant
making the deposit shall be entitled from time to time
to receive from the state treasurer, upon 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. Such bond shall be conditioned upon the faithful
compliance by the auctioneer with the provisions of this
article and the payment of all required taxes, fees and
penalties imposed by this state and its political subdi-
visions, as well as the payment by any auctioneer of any
final judgment obtained for damages arising out of his
§19-2C-5. Requirements for license; rules and regulations; duties of licensee.

1 (1) Each person seeking a license hereunder after the effective date of this section shall submit satisfactory evidence to the commissioner showing:

2 (a) That he or she has successfully completed the written and oral examinations provided for in this article;

3 (b) That he or she has a good reputation;

4 (c) That he or she is of trustworthy character;

5 (d) That he or she has met the apprenticeship requirements set forth in this article, if applicable;

6 (e) That he or she is a citizen of the United States; and

7 (f) That he or she has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

8 (2) The commissioner shall promulgate such reasonable rules and regulations as he or she considers necessary to carry out the intent and the administration and enforcement of this article, which said rules and regulations shall be promulgated in accordance with the applicable provisions of chapter twenty-nine-a of this code.

9 (3) Each licensee shall promptly produce for inspection such license at all sales conducted by or participated in by such licensee when requested to do so by any person and shall keep complete and accurate records of all transactions engaged in for a period of six months, which records shall be open to inspection by the commissioner or his authorized representative.

§19-2C-5a. Examinations of applicants; excuse for illness; fee renewal.

1 Examinations shall be held in April and October of
each year, at a time and place to be designated by the
commissioner or his authorized representative.

Any individual auctioneer applicant may take the
examination for auctioneer or apprentice auctioneer at
the regularly scheduled time and place. The apprentice
auctioneer's examination shall consist of a written
examination. The auctioneer's examination will consist
of both a written and oral examination. The passing
grade for any written examination shall be seventy
percent out of one hundred percent. The oral portion
will be scored by the commissioner or his authorized
representative. If the applicant fails either the written
or oral portion of the examination, no license will be
issued and he or she shall not be administered the
examination again until the next regularly scheduled
examination date. A person who is qualified for a
auctioneer's license as provided for in this article is
considered to be a professional in his trade.

One notice only of the examination shall be mailed to
the applicant at the address given on the application. If
the applicant fails to appear for such examination,
extcept as provided herein, a new application and a new
fee shall be required. No fee shall be returned except
when the applicant fails to take the examination because
of illness evidenced by a doctor's certificate sent to the
commissioner. If excused because of illness the applicant
shall be admitted to the next scheduled examination
without paying an additional fee. No applicant shall be
excused from taking the scheduled examination for any
reason other than illness unless in the judgment of the
commissioner the applicant would suffer undue hard-
ship by not being excused.

An examination fee of fifty dollars, in addition to any
other fees required by this article, shall be collected
from each person taking such examination. If the
applicant has previously paid the examination fee and
successfully completed the apprentice auctioneer's
examination, no additional examination fee will be
required to take the auctioneer's examination as
provided for in this article.
If the commissioner determines that an applicant does not qualify for a license, he or she shall so notify the applicant by certified mail. The notice shall state the reason for refusal to grant a license and the applicant's right to appeal the commissioner's decision within twenty days of receipt of the notice.

An examination shall not be required for the renewal of any license unless such license has been revoked or suspended, in which case the applicant may be required, by the commissioner, to take and pass any written or oral examination required by the department. In cases where a license has been expired for more than two years and not been revoked or suspended, the applicant is required to take and pass any written and oral examinations required by the department. The commissioner is hereby authorized to promulgate rules as he or she considers necessary for the renewal of auctioneer licenses, including, but not limited to, requirements for continuing education of auctioneers.

§19-2C-6. Apprentice licenses; fees.

The department of agriculture may grant apprentice auctioneer's licenses to those persons considered qualified by the commissioner. Every applicant for an apprentice auctioneer's license must take and pass a written examination relating to the skills and knowledge and statutes and regulations governing auctioneers. Every applicant shall furnish to the commissioner on forms provided by the department satisfactory proof of the following:

(a) That he or she has a good reputation;

(b) That he or she is a trustworthy character; and

(c) That he or she is a citizen of the United States.

Any apprentice auctioneer may take the examination to become an auctioneer after serving a two-year apprenticeship under a licensed auctioneer: Provided, That if the apprentice auctioneer has attended a nationally accredited graduate school of auctioneering, approved by the commissioner, he or she shall serve an apprenticeship of only six months. Before an apprentice
auctioneer may take the auctioneer's examination, the
apprentice auctioneer shall conduct at least six auction
sales under the direct supervision of the sponsoring
auctioneer. The commissioner may waive the require­
ments of this section, on an individual basis, upon the
presentation of written evidence that the applicant has
educational training or exceptional experience in the
auctioneering profession and that the applicant has been
unable to obtain sponsorship by a licensed auctioneer:
Provided, however, That the commissioner shall promul­
gate rules and regulations setting forth educational and
experience qualifications which would entitle an
individual to a waiver of the provisions of this section:
Provided further, That the commissioner shall not waive
apprenticeship requirements for any applicant without
the concurrence of the board of review.

When any apprentice auctioneer is discharged or
terminates his employment with an auctioneer for any
reason, the auctioneer shall immediately provide written
notification to the commissioner. No discharged or
terminated apprentice auctioneer shall thereafter
perform any acts under the authority of his license until
such apprentice auctioneer receives a new license
bearing the name and address of his new employer. No
more than one license shall be issued to any apprentice
auctioneer for the same period of time. The fee for the
transfer of the license of an apprentice auctioneer to a
new employer auctioneer is fifteen dollars.

The fee for the annual renewal of the apprentice
auctioneer's license is fifty dollars. Bond requirements
for an apprentice auctioneer shall be established by
reasonable rules and regulations promulgated by the
commissioner, and both the annual renewal fee and the
bond must be filed with the department of agriculture:
Provided, That the bond required by this section shall
not be less than five thousand dollars. The department
shall not issue an apprentice auctioneer's license until
bond has been filed in accordance with this article. All
apprentice auctioneer licenses expire on the thirty-first
day of December of each year but are renewable upon
the payment of the annual fee.
§19-2C-6a. Investigation of complaints; board of review.

The department of agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, establishes probable cause.

Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all of the facts of the complaint and recommend a course of action to the commissioner.

The board of review shall be appointed by the governor, by and with the advice and consent of the Senate, and shall consist of three members, each appointed for a staggered three-year term. Two members of the board of review shall be licensed auctioneers in West Virginia and residents of this state and shall have been licensed and been practicing the profession of auctioneering for five years immediately preceding their appointment. The third member shall be a lay person from the commercial or agricultural community who has utilized services of auctioneers for at least three years. No more than one board member shall be from any one congressional district and no more than two members shall be from the same political party. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the department of agriculture travel regulations.

During the establishment of the board one member shall be appointed for a three-year term, one member for a two-year term and one member for a one-year term. The first year of each term expires on the first day of January, one thousand nine hundred ninety-two, and subsequently on the first day of January of each year. There shall be no limit on the number of consecutive terms a member may serve on the board. The
governor is authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.

§19-2C-6b. Duties and responsibilities of an apprentice auctioneer and a sponsoring auctioneer.

An apprentice auctioneer shall only conduct or assist in auctions under the direct supervision of his sponsoring auctioneer. A licensed apprentice auctioneer may not enter into a contract to conduct an auction unless the contract is cosigned by his sponsoring auctioneer.

The sponsoring auctioneer is responsible for the actions of an apprentice auctioneer. It is his responsibility to ensure adherence to this and all applicable sections of state law: Provided, That if the apprentice auctioneer conducts auctions without the consent of his sponsor, only the apprentice auctioneer is subject to the penalties in section eight of this article.

§19-2C-6c. Procedure for obtaining nonresident auctioneer's and apprentice auctioneer's license.

To qualify for a nonresident license by reciprocity, the applicant must show evidence of licensing in another state for a period of one year preceding the date of application. The licensing may have been as an apprentice auctioneer or as an auctioneer. Provided this qualification is met and the applicant meets all the other requirements as required by this article and by regulation, he or she shall be licensed either as an apprentice auctioneer or as an auctioneer, based on a nonresident license, as the case may be.

When an applicant's resident state has no licensing law for auctioneers or the applicant's resident state has no written or oral examination associated with its licensing requirements, the department of agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this
qualification is met, and the applicant meets other requirements for licensing as required by the statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.

§19-2C-8. Penalties for violation of article or rules and regulations.

(a) Criminal penalties. — Any person, firm, association or corporation violating any of the provisions of this article, or of the rules and regulations adopted pursuant to the provisions thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars for the first offense, and not less than four hundred dollars nor more than one thousand dollars for the second and subsequent offenses. 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 any rule or regulation 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 the person, the seriousness of the violation, and the demonstrated good faith of the person charged in attempting to achieve compliance with this article before and after written notification of the violation; (2) the commissioner may assess a penalty of not more than two hundred dollars for each first offense, and not more than one thousand dollars for a second and subsequent offense; and (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 for the recovery of damages for any administrative action taken if the court finds that there was probable cause for such action.

§19-2C-8a. Revocation.

In addition to the penalties in section eight of this article, the commissioner may, by order, suspend, deny or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer's or apprentice auctioneer's license;

(c) Engaging in a continued or flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within fifteen days of conviction;

(f) Engaging in any conduct of an auctioneer which demonstrates dishonesty or incompetency;
25 (g) Engaging in any other conduct that constitutes
26 fraudulent or dishonest dealing; and
27 (h) Acting as an attorney for a client.
28
29 Any auctioneer or apprentice auctioneer who has had
30 his license suspended or revoked shall not be issued
31 another such license until a period not to exceed two
32 years has elapsed from the date of revocation. The
33 commissioner may also require the successful comple-
34 tion of the examinations required for an auctioneer’s
35 license or an apprentice auctioneer’s license.

§19-2C-9. Written contracts; exception.

1 No person shall act as auctioneer on the sale at public
2 auction of any goods, wares, merchandise or of any other
3 property, real or personal, until he or she has entered
4 into a written contract in duplicate with the owner or
5 consignor of the property to be sold, containing the
6 terms and conditions upon which the licensee receives
7 or accepts the property for sale at auction. No apprent-
8 ice auctioneer shall be authorized to enter into a
9 contract without the written consent of his or her
10 sponsoring auctioneer. All contracts shall be in the name
11 of and on behalf of the sponsoring auctioneer.
12
13 The commissioner may require by rule the following:
14 (a) That written contracts between the auctioneer and
15 the seller be made in duplicate;
16 (b) That the original contract is to be retained by the
17 auctioneer for a period of six months;
18 (c) That one copy of the contract is to be furnished to
19 each person that entered into the contract;
20 (d) That an apprentice auctioneer may not contract
21 directly with a client but only through his or her
22 sponsoring auctioneer;
23 (e) That an apprentice auctioneer may not engage in
24 a sale with an auctioneer by whom he or she is not
25 sponsored without first obtaining the written consent of
26 his or her sponsoring auctioneer; and
26 (f) That on all contracts between an auctioneer and a
27 seller there shall be a prominent statement indicating
28 that the auctioneer is licensed by the department of
29 agriculture and bonded in favor of the state of West Vir-
30 ginia.

§19-2C-10. Advertising.

1 In advertising an auction sale by any licensed
2 auctioneer, the principal auctioneer or auctioneers who
3 physically conduct the sale shall be listed prominently
4 in such advertising as used by said auctioneer or
5 auctioneers. The individual auctioneer or auctioneers
6 who conduct the sale shall be the person or persons who
7 call for, accept and close bids on the majority of items
8 offered for sale.

9 Any apprentice auctioneer who advertises, as pro-
10 vided in this section, shall indicate in his advertisement
11 the name of the sponsoring auctioneer under whom he
12 or she is licensed.

13 The auctioneer’s name and license number shall be
14 displayed in equal prominence with the name of the
15 apprentice auctioneer and license number in such
16 advertisement.

17 Nothing in the provisions of this article shall be
18 construed so as to prohibit any other auctioneer, licensed
19 pursuant to this article, from assisting with any auction,
20 notwithstanding the failure to list the name of the other
21 auctioneer in any advertising associated with such auc-
22 tion.

CHAPTER 124

(S. B. 409—By Senators Jones, Wiedebusch, Heck, Chafin, Helmick,
20 Pritt, Humphreys, Felton, Wagner and Lucht)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article eleven, relating to the licensing of contractors;
providing definitions; creating contractor licensing board; setting forth the administrative duties of the board; providing for the promulgation of legislative rules; providing exemptions from licensing requirements; providing for the application and issuance of license; providing for fees for licenses, expiration of licenses and renewal of licenses; prohibiting assignment or transfer of license; providing prerequisites to obtain a building permit; requiring notice of license in bid submissions; providing for reinstatement of license; providing criminal penalties for violations of article; providing disciplinary powers to the board; providing administrative duties for the division of labor; creating a special revenue account and the procedure for expenditure therefrom and deposits thereto; providing for record keeping; and providing for reciprocity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-1. Short title.
§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.
§21-11-5. Administrative duties of the board; regulations.
§21-11-6. Necessity for license; exemptions.
§21-11-7. Application for and issuance of license.
§21-11-8. Licenses; expiration date; fees; renewal.
§21-11-9. Unlawful use, assignment, transfer of license; revocation.
§21-11-10. Prerequisites to obtaining building permit.
§21-11-11. Notice included with invitations to bid and specifications.
§21-11-12. License renewal, lapse and reinstatement.
§21-11-13. Violation of article; injunction; criminal penalties.
§21-11-17. Record keeping.
§21-11-18. Reciprocity.
§21-11-1. Short title.

This article shall be known and may be cited as the “West Virginia Contractor Licensing Act”.


It is hereby declared to be the policy of the state of West Virginia that all persons desiring to perform contracting work in this state be duly licensed to ensure capable and skilled craftsmanship utilized in construction projects in this state, both public and private, fair bidding practices between competing contractors through uniform compliance with the laws of this state, and protection of the public from unfair, unsafe and unscrupulous bidding and construction practices.


(a) “Commissioner” means the commissioner of the division of labor.

(b) “Board” means the West Virginia contractor licensing board.

(c) “Contractor” means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor does not include:

1. One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

2. A person who personally performs construction
work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work; or

(4) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in subsection (c) of this section and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of such corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article.

(d) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy.

(e) "General building contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole or any part of such construction.

(f) "General engineering contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage
disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundations; and structures or work incidental thereto.

(g) "Heating, ventilating and cooling contractor" means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating and air conditioning equipment or systems to heat, cool or ventilate residential and commercial structures.

(h) "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this article.

(i) "Multifamily contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure.

(j) "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects or any combination thereof.

(k) "Piping contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods.

(l) "Plumbing contractor" means a person whose principal business is the installation, maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, and piping for stand pipes.

(m) "Residential contractor" means a person whose
principal business is in connection with construction, repair or improvement of real property used as, or intended to be used for, residential occupancy.

(n) "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.

(o) "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.

(p) "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels or other transient lodging units are not residential structures.

(q) "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

(r) "Division" means the division of labor.

(s) "Cease and desist order" means an order issued by the commissioner pursuant to the provisions of this article.

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

(a) There is hereby created the West Virginia contractor licensing board. The board shall consist of ten members, appointed by the governor by and with the advice and consent of the Senate for terms of four years. Such members shall serve until their successors are appointed and have qualified. Eight of the appointed members shall be owners of businesses engaged in the various contracting industries, with at least one member
appointed from each of the following contractor classes:

One electrical contractor, one general building contractor, one general engineering contractor, one heating, ventilating and cooling contractor, one multifamily contractor, one piping contractor, one plumbing contractor and one residential contractor, as defined in section three hereof. Two of the appointed members shall be building code officials who are not members of any contracting industry. At least two members of the board shall reside at the time of their appointment in each congressional district as existing on the first day of January, one thousand nine hundred ninety-one. The commissioner of labor, the secretary of the department of tax and revenue or his designee, and the commissioner of the bureau of employment programs or his designee, shall be ex officio nonvoting members of the board.

(b) Terms of the members first appointed shall be two members for one year, two members for two years, three members for three years, and three members for four years, as designated by the governor at the time of appointment. Thereafter, terms shall be for four years. A member who has served all or part of two consecutive terms shall not be subject to reappointment unless four years have elapsed since the member last served. Vacancies shall be filled by appointment by the governor for the unexpired term of any member whose office is vacant and shall be made within sixty days of the occurrence of the vacancy. A vacancy on the board shall not impair the right of the remaining members to exercise all the powers of the board.

(c) The board shall elect a chair from one of the voting members of the board. The board shall meet at least once annually and at such other times as called by the chair or a majority of the board. Board members shall receive no remuneration for their service, but shall be reimbursed for their actual expenses incurred in the performance of their duties as such. A majority of the membership of the board shall constitute a quorum of the board.

§21-11-5. Administrative duties of the board; regulations.
(a) Pursuant to the provisions of chapter twenty-nine-a of this code, the board shall adopt rules and regulations relating to the following:

(1) The minimum qualifications for applicants for examination and license in each of the following specified classes of contractor:

(A) Electrical contractor;
(B) General building contractor;
(C) General engineering contractor;
(D) Heating, ventilating and cooling contractor;
(E) Multifamily contractor;
(F) Piping contractor;
(G) Plumbing contractor;
(H) Residential contractor; or
(I) Specialty contractor;

(2) The content of examinations for applicants in each class;

(3) Procedures for application, examination and license renewal, and the manner in which the examination will be conducted;

(4) The continued competency of licensees for purposes of renewal and reinstatement of licenses; and

(5) Procedures for disciplinary action before the board.

(b) The board shall:

(1) Hold at least one examination in each calendar quarter for each specific classification of contractor, designate the time and place of such examinations, and notify applicants thereof;

(2) Request, through the division, investigation of any alleged violation of this article or of the regulations;

(3) Forward results of examinations to the division within twenty days following the examination;
(4) Notify the commissioner and board members of meeting dates and agenda items at least five days prior to such meetings; and

(5) Take minutes and records of all meetings and proceedings.

§21-11-6. Necessity for license; exemptions.

(a) On or after the first day of October, one thousand nine hundred ninety-one, no person shall engage in this state in any act as a contractor, as defined in this article, unless such person holds a license issued under the provisions of this article. No firm, partnership, corporation, association or other entity shall engage in contracting in this state unless an officer thereof holds a license issued pursuant to this article.

(b) Any person to whom a license has been issued under this article shall keep the license or a copy thereof posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. Any person violating the provisions of this subsection shall be subject, after hearing, to a warning, a reprimand, or a fine of not more than two hundred dollars.

(c) Except as otherwise provided in this code, the following are exempt from licensure:

(1) Work done exclusively by employees of the United States government, the state of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof;

(2) The sale or installation of a finished product, material or article or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) A material supplier who renders advice concerning
(5) Work performed by a public utility company regulated by the West Virginia public service commission and its employees;

(6) Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of such equipment;

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on business property owned or leased by the employer;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

§21-11-7. Application for and issuance of license.

(a) A person desiring to be licensed as a contractor under this article shall submit to the board a written application requesting licensure, providing such information as the board may require, on forms supplied by the board, and shall pay such license fee not to exceed one hundred fifty dollars: Provided, That electrical contractors already licensed under section four, article three-b, chapter twenty-nine of this code, shall pay no more than twenty dollars.

(b) A person holding a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, one thousand nine hundred ninety-one, may register with the board, certify by affidavit the requirements of subsection (c), section fifteen hereof, and pay such license fee not to exceed one
hundred fifty dollars and shall be issued a contractor's license without further examination.

§21-11-8. Licenses; expiration date; fees; renewal.

A license issued under the provisions of this article expires one year from the date on which it is issued. The board shall establish application and annual license fees not to exceed one hundred fifty dollars. The board shall promulgate rules and regulations pursuant to the provisions of chapter twenty-nine-a of this code concerning license renewal: Provided, That the rules may not be more restrictive than those prescribed for initial licensure.

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof. Any person who violates this section is subject to the penalties imposed in section thirteen of this article.

§21-11-10. Prerequisites to obtaining building permit.

Any person making application to the building inspector or other authority of any incorporated municipality or other political subdivision in this state charged with the duty of issuing building or other permits for the construction of any building, highway, sewer or structure or for any removal of materials or earth, grading or improvement, shall, before issuance of the permit, either furnish satisfactory proof to the inspector or authority that such person is duly licensed under the provisions of this article to carry out or superintend the same, or file a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in this article. The inspector or authority shall not issue a building permit to any person who does not possess a valid contractor's license when required by this article.

§21-11-11. Notice included with invitations to bid and specifications.
Any architect or engineer preparing any plan and specification for contracting work to be performed in this state shall include in such plan, specification and invitation to bid a reference to this article informing any prospective bidder that such person's contractor's license number must be included on any bid submission. A subcontractor shall furnish such person's contractor's license number to the contractor prior to the award of the contract.

§21-11-12. License renewal, lapse and reinstatement.

(a) A license which is not renewed on or before the renewal date shall lapse. The board may establish by regulation a delayed renewal fee to be paid for issuance of any license which has lapsed: Provided, That no license which has lapsed for a period of two years or more may be renewed.

(b) In the event that continuing education or other requirements are made a condition of license reinstatement after lapse, suspension or revocation, such requirements must be satisfied before the license is reissued.

§21-11-13. Violation of article; injunction; criminal penalties.

(a) Upon a determination that a person is engaged in contracting business in the state without a valid license, the board or commissioner shall issue a cease and desist order requiring such person to immediately cease all operations in the state. The order shall be withdrawn upon issuance of a license to such person. After a hearing, the board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person engaging in contracting business in the state without a valid license.

(b) Any person continuing to engage in contracting business in the state without a valid license after service of a cease and desist order is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned.
(c) The board may institute proceedings in the circuit
court of the county in which the alleged violations of the
provisions of this article occurred or are now occurring
to enjoin any violation of any provision of this article.

(d) Any person who undertakes any construction work
without a valid license when such license is required by
this article, when the total cost of the contractor's
construction contract on any project upon which the
work is undertaken is twenty-five thousand dollars or
more, shall, in addition to any other penalty herein
provided, be assessed by the board an administrative
penalty not to exceed two hundred dollars per day for
each day the person is in violation.

(e) The board shall, by regulation, provide for an
administrative hearing before a penalty is levied, and
for review of any final ruling issued pursuant to such
hearing.


(a) The board has the power and authority to impose
the following disciplinary actions:

(1) Permanently revoke a license;
(2) Suspend a license for a specified period;
(3) Censure or reprimand a licensee;
(4) Impose limitations or conditions on the professional
practice of a licensee;
(5) Impose requirements for remedial professional
education to correct deficiencies in the education,
training and skill of a licensee; and
(6) Impose a probationary period requiring a licensee
to report regularly to the board on matters related to
the grounds for probation; the board may withdraw
probationary status if the deficiencies that require the
sanction are remedied.

(b) The board may summarily suspend a licensee
pending a hearing or pending an appeal after hearing
upon a determination that the licensee poses a clear,
significant and immediate danger to the public health
and safety.
(c) The board may reinstate the suspended or revoked license of a person, if, upon a hearing, the board finds and determines that such person is able to practice with skill and safety.

(d) The board may accept the voluntary surrender of a license: Provided, That such license may not be reissued unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(e) A person or contractor adversely affected by disciplinary action may appeal to the board within sixty days of the date such disciplinary action is taken. The board shall hear the appeal within fifteen days from receipt of notice of appeal in accordance with the provisions of chapter twenty-nine-a of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the board for its action.

(f) Any party adversely affected by any action of the board may appeal such action pursuant to the provisions of chapter twenty-nine-a of this code.

(g) The following are causes for disciplinary action:

1. Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the licensee;

2. Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to another;

3. Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;

4. Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;

5. Willful or deliberate failure to pay any moneys when due for any materials free from defect, or services rendered in connection with such person's operations as
a contractor when such person has the capacity to pay
or when such person has received sufficient funds under
the contract as payment for the particular construction
work for which the services or materials were rendered
or purchased, or the fraudulent denial of any amount
with intent to injure, delay or defraud the person to
whom the debt is owed;

(6) Willful or deliberate misrepresentation of a
material fact by an applicant or licensee in obtaining a
license, or in connection with official licensing matters;

(7) Willful or deliberate failure to comply in any
material respect with the provisions of this article or the
rules of the board;

(8) Willfully or deliberately acting in the capacity of
a contractor when not licensed, or as a contractor by a
person other than the person to whom the license is
issued except as an employee of the licensee;

(9) Willfully or deliberately acting with the intent to
evade the provisions of this article by: (i) Aiding or
abetting an unlicensed person to evade the provisions of
this article; (ii) combining or conspiring with an
unlicensed person to perform an unauthorized act; (iii)
allowing a license to be used by an unlicensed person;
or (iv) attempting to assign, transfer or otherwise
dispose of a license or permitting the unauthorized use
thereof;

(10) Engaging in any willful, fraudulent or deceitful
act in the capacity as a contractor whereby substantial
injury is sustained by another; or

(11) Performing work which is not commensurate
with a general standard of the specific classification of
contractor or which is below a building or construction
code adopted by the municipality or county in which the
work is performed.

(h) In all disciplinary hearings the board has the
burden of proof as to all matters in contention. No
disciplinary action shall be taken by the board except
on the affirmative vote of at least six members thereof.
Except for violations of section thirteen of this article,
no disciplinary action shall be taken by the board for any such cause as is set out herein unless the licensee has been finally adjudicated as having perpetrated such act in a court of record. Other than as specifically set out herein, the board shall have no power or authority to impose or assess damages.


(a) For and on behalf of the board, the division and commissioner shall perform the following administrative duties:

(1) Collect and record all fees;
(2) Maintain records and files;
(3) Issue and receive application forms;
(4) Notify applicants of the results of the board examination;
(5) Arrange space for holding examinations and other proceedings;
(6) Issue licenses and temporary licenses as authorized by this article and the board;
(7) Issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the division;
(8) Notify licensees of renewal dates at least thirty days before the expiration date of their license;
(9) Answer routine inquiries;
(10) Maintain files relating to individual licensees;
(11) Arrange for printing and advertising;
(12) Purchase supplies;
(13) Employ additional help when needed;
(14) Perform other services that may be requested by the board;
(15) Provide inspection, enforcement and investigative
services to the board; and

(16) Issue cease and desist orders to persons engaging in contracting within the state without a valid license.

(b) All authority not specifically delegated to the commissioner and division shall be the responsibility of the board.

(c) Following successful completion of the examination, and prior to the issuance of the license, the applicant shall certify by affidavit that the applicant:

(1) Is in compliance with the business franchise tax provisions of chapter eleven of this code;

(2) Has registered, and is in compliance, with the workers' compensation fund and the employment security fund, as required by chapter twenty-three and chapter twenty-one-a of this code; and

(3) Is in compliance with the applicable wage bond requirements of section one, article five of this chapter: Provided, That in the case of an out-of-state contractor not doing business in this state and seeking licensure for bidding purposes only, the applicant may be granted a conditional license for bid purposes only.


The board may adopt rules and regulations as are necessary to carry out the provisions of this article pursuant to the provisions of chapter twenty-nine-a of this code. The board may disseminate educational or any other material designed to improve performance standards of any contractor group to contractors within the state. The board may adopt, and use, a seal with the words “state contractor licensing board of West Virginia”.

§21-11-17. Record keeping.

(a) The board shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the state treasury to be known as the “West Virginia Contractor Licensing Board Fund”. Expenditures from said fund shall be for
the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) The board shall maintain at the principal office, open for public inspection during office hours, a complete indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses. Applications shall show the date of application, name, qualifications, place of business and place of residence of each applicant; and whether the application was approved or refused.

(c) (1) All investigations, complaints, reports, records, proceedings and other information received by the commissioner and board and related to complaints made to the commissioner or board or investigations conducted by the commissioner or board pursuant to this article, 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 board, the commissioner or staff, except as follows:

(A) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of this article, the complaint and all reports, records, nonprivileged and nondeliberative materials 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.
with a copy of the statement of charges.

(B) 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 introduced into evidence at such subsequent hearing, as well as the board's and commissioner's orders, are not confidential.

(C) The commissioner or board 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 immediately upon such respondent's request.

(E) Where the commissioner or board is otherwise required by the provisions of this article to disclose such information or to proceed in such a manner that disclosure is necessary and required to fulfill such requirements.

(2) If, in a specific case, the commissioner or board 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 commissioner or board shall order that all or a portion of the information communicated to the commissioner or board to cause an investigation and all allegations of violations or misconduct contained in a complaint shall be confidential, and the person providing such information or filing a complaint shall be bound to confidentiality until further order of the board.

(d) If any person violates the provisions of subsection (c) of this section by knowingly and willfully disclosing any information made confidential by such section or by the commissioner or board, such person shall be guilty
of a misdemeanor, and, upon conviction thereof, shall be
fined not less than five hundred dollars nor more than
five thousand dollars, or imprisoned in the county jail
not more than one month, or both fined and imprisoned.

(e) The commissioner shall certify to the state auditor
and to the board a detailed statement of all moneys
received and spent during the preceding fiscal year.

§21-11-18. Reciprocity.

To the extent that other states which provide for the
licensing of contractors provide for similar action, the
board, in its discretion, may grant licenses of the same
or equivalent classification to contractors licensed by
other states, without written examination upon satisfac-
tory proof furnished to the board that the qualifications
of such applicants are equal to the qualifications of
holders of similar licenses in this state, and upon
certification to the commissioner as required by
subsection (c), section fifteen of this article, and upon
payment of the required fee.


The West Virginia contractors licensing board shall
be terminated pursuant to the provisions of article ten,
chapter four of this code, on the first day of July, one
thousand nine hundred ninety-seven, unless sooner
terminated or unless continued or reestablished pursu-
ant to that article.

CHAPTER 125
(H. B. 2359—By Delegates Stemple and P. White)

[Passed March 1, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three,
chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to licenses to practice medicine and surgery or podiatry;
additional requirements for graduate clinical training
for all applicants for podiatric licensure; clarifying that
applicants for licenses must have successfully completed all required graduate clinical training; and establishing that licenses granted prior to July 1, 1991, shall continue in full effect as provided by the law.

Be it enacted by the Legislature of West Virginia:

That section ten, 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.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of such reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;

(3) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the accreditation council for graduate medical education; and

(4) He or she must pass an examination approved by
the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the said board, or a majority of them, may accept in lieu of an examination of applicants, the certificate of the national board of medical examiners. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of medicine and surgery, before being eligible for reexamination.

(c) In addition to the requirements of subsection (b) hereof, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico and Canada, to be licensed to practice medicine in this state, must also meet the following additional requirements and limitations:

(1) He or she must be able to demonstrate to the satisfaction of the board his or her ability to communicate in the English language;

(2) Before taking a licensure examination, he or she must have fulfilled the requirements of the educational commission for foreign medical graduates for certification, or he or she must provide evidence of receipt of a passing score on the examination of the educational commission for foreign medical graduates; and

(3) He or she must submit evidence to the board of having successfully completed a minimum of two years of graduate clinical training in a program approved by the accreditation council for graduate medical education.

(d) For an individual to be licensed to practice podiatry in this state, he or she must meet the following requirements:
(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of such reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine and its equivalent from a school of podiatric medicine which is approved by the council of podiatry education or by the board;

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of podiatric medicine, before being eligible for reexamination; and

(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the council on podiatric medical education, or the colleges of podiatric medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or three years private podiatric clinical experience in lieu of this requirement.

(e) All licenses to practice medicine and surgery granted prior to July first, one thousand nine hundred ninety-one, and valid on that date, shall continue in full effect for such term and under such conditions as provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section shall not apply to any person legally
entitled to practice chiropody or podiatry in this state prior to the eleventh day of June, one thousand nine hundred sixty-five: Provided, however, That all persons licensed to practice chiropody prior to the eleventh day of June, one thousand nine hundred sixty-five, shall be permitted to use the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

CHAPTER 126

(Com. Sub. for H. B. 2478—By Delegates P. White and Flanigan)

[Passed February 28, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring physicians and podiatrists to successfully complete fifty hours of continuing education every two years as a condition of renewal of licensure; automatic suspension of license for failure to timely notify the board of such completion; rules; requiring physicians and podiatrists provide supporting documentation of continuing education when requested to do so by board; and requiring written representation of continuing education in order to renew inactive licenses.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years
and shall be renewed upon a receipt of a reasonable fee, as set by the board, submission of an application on forms provided by the board and, beginning with the biennial renewal application forms completed by licensees and submitted to the board in one thousand nine hundred ninety-three, a certification in accordance with rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during the preceding two-year period. Continuing medical education satisfactory to the board is continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians and continuing podiatric education satisfactory to the board is continuing podiatric education approved by the council on podiatric education.

In addition, the Legislature hereby finds and declares that it is in the public interest to encourage alternate categories of continuing education satisfactory to the board for physicians and podiatrists. In order to provide adequate notice of the same to physicians and podiatrists, no later than the first day of June, one thousand nine hundred ninety-one, the board shall file rules under the provisions of section fifteen, article three, chapter twenty-nine-a of this code, delineating any alternate categories of continuing medical or podiatric education which may be considered satisfactory to the board and any procedures for board approval of such continuing education.

Notwithstanding any provision of this chapter to the contrary, failure to timely submit to the board a certification in accordance with rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code of successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, shall, beginning the first
day of July, one thousand nine hundred ninety-three, result in the automatic suspension of any license to practice medicine and surgery or podiatry until such time as the certification in accordance with rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code, with all supporting written documentation, is submitted to and approved by the board.

Any individual who accepts the privilege of practicing medicine and surgery or podiatry in this state is required to provide supporting written documentation of the continuing education represented as received within thirty days of receipt of a written request to do so by the board. If a licensee fails or refuses to provide supporting written documentation of the continuing education represented as received as required in this section, such failure or refusal to provide supporting written documentation is prima facie evidence of renewing a license to practice medicine and surgery or podiatry by fraudulent misrepresentation.

(b) The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing, medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state. His or her inactive license may be converted by the board to an active one upon a written request to the board that accounts for his or her period of inactivity to the satisfaction of the board: Provided, That beginning on the first day of July, one thousand nine hundred ninety-three, such licensee submits written documentation of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during each preceding two-year period. An inactive license may be obtained upon receipt of a reasonable fee, as set by the board, and submission of an application on forms provided by the board on a biennial basis.
CHAPTER 127

(Com. Sub. for H. B. 2484—By Delegates P. White and Flanigan)

[Passed March 6, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physician assistants; requirements for certification; legal responsibility and supervision; reporting of discipline by health care facilities; providing that a physician assistant may not dispense a prescription for a refraction; continuing education; and fees.

Be it enacted by the Legislature of West Virginia:

That section sixteen, 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.

§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master’s degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician;
(2) "Supervising physician" means a doctor or doctors of medicine or podiatry permanently licensed in this state who assume legal and supervisory responsibility for the work or training of any physician assistant under his or her supervision;

(3) "Approved program" means an educational program for physician assistants approved and accredited by the committee on allied health education and accreditation on behalf of the American Medical Association; and

(4) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician's office.

(b) The board shall promulgate rules and regulations governing the extent to which physician assistants may function in this state. Such regulations shall provide that the physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of a physician permanently licensed in this state, but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant's normal place of employment is on the premises of the supervising physician. The supervising physician may send the physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the physician assistant shall not be established. In promulgating such rules and regulations, the board shall allow the physician assistant to perform those procedures and examinations and in the case of certain authorized physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (1) of this section those categories of drugs submitted to it in the job description required by subsection (i) of this section. The board shall compile and publish a biennial report that includes a list of currently certified physician assistants and their employers and location in the state; a list of approved programs; the number of graduates of such approved programs each year; and the number
of physician assistants from other states practicing in this state.

(c) The board shall certify as a physician assistant any person who files an application and furnishes satisfactory evidence to it that he or she has met the following standards:

1. He or she is a graduate of an approved program of instruction in primary health care or surgery;

2. He or she has passed the examination for a primary care physician assistant administered by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants;

3. He or she is of good moral character; and

4. He or she has attained a baccalaureate or master's degree.

(d) The board may certify as a physician assistant any person who files an application and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

1. He or she is a graduate of an approved program of instruction in primary health care or surgery prior to the first day of July, one thousand nine hundred ninety-four, and has passed the examination for a primary care physician assistant administered by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants; or

2. He or she had been certified by the board as a physician assistant then classified as "Type B," prior to the first day of July, one thousand nine hundred eighty-three.

Certification of an assistant to a physician practicing the specialty of ophthalmology is permitted under this section: Provided, That a physician assistant may not dispense a prescription for a refraction.

(e) When any graduate of an approved program submits an application to the board, accompanied by a
job description in conformity with subsection (i) of this section, for a physician assistant certificate, the board shall issue to such applicant a temporary certificate allowing such applicant to function as a physician assistant for the period of one year. Said temporary certificate may be renewed for one additional year upon the request of the supervising physician. A physician assistant who has not been certified as such by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants will be restricted to work under the direct supervision of the supervising physician.

(f) Any physician applying to the board to supervise a physician assistant shall provide a job description that sets forth the range of medical services to be provided by such assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician must obtain approval of the job description from the board. The board may revoke or suspend any certification of an assistant to a physician for cause, after giving such person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.

(g) The supervising physician is responsible for observing, directing and evaluating the work, records and practices of each physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with a physician assistant within ten days of the termination. The legal responsibility for any physician assistant remains with the supervising physician at all times, including occasions when the assistant under his or her direction and supervision, aids in the care and treatment of a patient in a health care facility. In his or her absence, a supervising physician must designate an alternate supervising physician, however, the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for the actions or omissions of the physician assistant unless the physician assistant is an employee of the facility.
(h) The acts or omissions of a physician assistant employed by health care facilities providing inpatient services shall be the legal responsibility of said facilities. Physician assistants employed by such facilities in staff positions shall be supervised by a permanently licensed physician.

(i) A health care facility shall report in writing to the board within sixty days after the completion of the facility's formal disciplinary procedure, and also after the commencement, and again after the conclusion, of any resulting legal action, the name of any physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all pertinent information relating to such action. The health care facility shall also report any other formal disciplinary action taken against any physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(j) When functioning as a physician assistant, the physician assistant shall wear a name tag that identifies him or her as a physician assistant. A two and one-half by three and one-half inch card of identification shall be furnished by the board upon certification of the physician assistant.

(k) A physician assistant providing primary care outpatient services in a medically underserved area or other area of need, both as defined by the board, may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules and regulations governing the eligibility and extent to which such a physician assistant may prescribe at the direction of the supervising physician. The regulations shall provide for a state formulary classifying pharmacologic categories of drugs which may be prescribed by such a
physician assistant. In classifying such pharmacologic categories, those categories of drugs which shall be excluded shall include, but not be limited to, Schedules I and II of the Uniformed Controlled Substances Act, anticoagulants, antineoplastics, antipsychotics, radiopharmaceuticals, general anesthetics, and radiographic contrast materials. Drugs listed under Schedule III shall be limited to a forty-eight hour supply without refill. The regulations shall provide that all pharmacological categories of drugs to be prescribed by a physician assistant shall be listed in each job description submitted to the board as required in subsection (i) of this section. The regulations shall provide the maximum dosage a physician assistant may prescribe. The regulation shall also provide that to be eligible for such prescription privileges, a physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board. The regulations shall also provide that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant, and in meeting such national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection shall be construed to permit a physician assistant to independently prescribe or dispense drugs.

(l) A supervising physician shall not supervise at any one time more than two physician assistants, except that a physician may supervise up to four hospital-employed physician assistants: Provided, That an alternative supervisor has been designated for each.

A physician assistant shall not sign any prescription, except in the case of an authorized physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (k) of this section. A physician assistant shall not perform any
service that his or her supervising physician is not qualified to perform. A physician assistant shall not perform any service that is not included in his or her job description and approved by the board as provided for in this section.

The provisions of this section do not authorize any physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(m) Each job description submitted by a licensed supervising physician shall be accompanied by a fee of one hundred dollars. A fee of fifty dollars shall be charged for the biennial renewal of the certificate. A fee of twenty-five dollars shall be charged for any change of supervising physician.

(n) Beginning with the biennial renewal forms completed by physician assistants and submitted to the board in one thousand nine hundred ninety-three, as a condition of renewal of physician assistant certification, each physician assistant shall provide written documentation pursuant to rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code of participation in and successful completion during the preceding two-year period of a minimum of either forty hours of continuing education designated as Category I by the American Medical Association, American Academy of Physician Assistants or the Academy of Family Physicians, and sixty hours of continuing education designated as Category II by such association or either academy. Notwithstanding any provision of this chapter to the contrary, failure to timely submit such required written documentation shall result in the automatic suspension of any certification as a physician assistant until such time as the written documentation is submitted to and approved by the board.

(o) It is unlawful for any person who is not certified by the board as a physician assistant to use the title of "physician assistant" or to represent to any other person
that he or she is a physician assistant. Any person who
violates the provisions of this subsection is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not more than two thousand dollars.

(p) It is unlawful for any physician assistant to
represent to any person that he or she is a physician,
surgeon or podiatrist. Any person who violates the
provisions of this subsection is guilty of a felony, and,
upon conviction thereof, shall be imprisoned in the
penitentiary for not less than one nor more than two
years, or be fined not more than two thousand dollars,
or both fined and imprisoned.

CHAPTER 128
(Com. Sub. for S. B. 382—By Senator Chafin)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact sections two, six, nine, ten,
fourteen, fourteen-a and sixteen, article five, chapter
thirty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to further amend
said article by adding thereto a new section, designated
section fourteen-b, all relating to the board of pharmacy;
adding new members to the board and stating their
qualifications; registration and licensing of pharmacists;
increasing and adding new fees; providing for use of
funds; and creating a pharmacist in charge.

Be it enacted by the Legislature of West Virginia:

That sections two, six, nine, ten, fourteen, fourteen-a and
sixteen, article five, chapter thirty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted; and that said article be further
amended by adding thereto a new section, designated section
fourteen-b, all to read as follows:

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND
DRUGSTORES.
§30-5-2. Board of pharmacy; appointment; qualifications and terms of
members; powers and duties generally.
§30-5-6. Registration of pharmacists from other states.
§30-5-9. Fees.
§30-5-10. Annual renewal of registration license.
§30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees;
registered pharmacist to conduct business.
§30-5-14b. Use of funds resulting from increased fees.
§30-5-16. Permit for manufacture, packaging, etc., of drugs, medicines,
cosmetics, distribution of legend drugs, etc.; regulations as to
sanitation and equipment; penalties; revocation of permit; for
permits, including permit to handle controlled substances.

§30-5-2. Board of pharmacy; appointment, qualifications
and terms of members; powers and duties
generally.

There shall be a state board of pharmacy, known as
the "West Virginia board of pharmacy", which shall
consist of five practicing pharmacists and two public
members, who shall be appointed by the governor by
and with the advice and consent of the Senate. Each
pharmacist member of the board, at the time of his
appointment, shall be a citizen and registered pharma-
cist of this state. The public members shall be residents
of this state who have attained the age of majority and
may not be a past or present member of the profession
of pharmacy, the spouse of a member of the profession
of pharmacy, a person who has ever had any material
financial interest in the providing of pharmacy service
or who has engaged in any activity directly related to
the practice of pharmacy. Each member of the board
shall receive one hundred fifty dollars for each day spent
in attending to the duties of the board or of its
committees, and shall be reimbursed for all actual and
necessary expenses incurred in carrying out his duties.

The members of the board in office on the date this
section takes effect shall, unless sooner removed,
continue to serve until their respective terms expire and
until their successors have been appointed and have
qualified. On or before the first day of July, one
thousand nine hundred thirty-one, and on or before the
first day of July of each year thereafter, the governor
shall appoint one member to serve for a term of five
years, commencing on said first day of July, and any member shall be eligible for reappointment.

The board, in addition to the authority, powers and duties granted to the board by this chapter and chapter sixteen of the code, shall have the authority to: (a) Regulate the practice of the profession of pharmacy; (b) regulate the employment of apprentices and interns in pharmacy; (c) appoint, within the limit of appropriations, inspectors who shall be registered pharmacists, and investigators, both intended to act as agents of the board within the provisions of this chapter and chapter sixteen of the code and such rules and regulations as the board shall promulgate; and (d) adopt rules of professional conduct appropriate to the establishment and maintenance of high standards of integrity and dignity in a profession.

§30-5-6. Registration of pharmacists from other states.

The board of pharmacy may register and admit to practice as pharmacists in this state such persons as have been legally registered or licensed as pharmacists in other states: Provided, That the applicant for such registration shall appear personally before the board, at a regular meeting, and shall present satisfactory evidence of qualification equal to that required of applicants for registration in this state, and that he was registered or licensed by examination in such other state, and that the standard of competence required in such other state is not lower than that required in this state: Provided, however, That the board is satisfied that such other state accords similar recognition to registered pharmacists of this state. Applicants for registration under this section shall, with their application, forward to the secretary of the board of pharmacy a fee of two hundred fifty dollars, unless the applicant desires to be examined other than at a regular meeting of the board. In that case, there will be an additional fee of one hundred fifty dollars.

§30-5-9. Fees.

The board of pharmacy shall be entitled to charge and collect the following fees, in addition to those provided
in article one of this chapter and in sections five,
fourteen and sixteen of this article: For renewing the
registration of a pharmacist, thirty dollars; to register
an intern pharmacist, ten dollars plus five dollars for
each of the remaining periods of his internship; and to
register a consultant pharmacist, twenty dollars for the
initial application and ten dollars for each additional
application.

§30-5-10. Annual renewal of registration license.

Every registered pharmacist who desires to continue
in the practice of pharmacy shall on or before the first
day of July, one thousand nine hundred ninety-one, and
annually thereafter apply to the state board of phar-

macy for a renewal of his license, and shall transmit
with his application the fee prescribed in the preceding
section of this article. Notification of the annual renewal
shall be given by the board at least thirty days prior to
said first day of July. If any pharmacist fails for a
period of thirty days after said first day of July to apply
to the board for a renewal of his license, his name shall
be erased from the register of registered pharmacists
and such person, in order to again become licensed, shall
be required to appear personally before the board, or an
authorized committee of the board, to show cause for
permitting the license to lapse. If such person submits
to the board satisfactory reasons for allowing the license
to lapse and satisfies the board as to his qualifications
to practice the profession, such person shall be rein-
stated upon payment of a reinstatement fee of two
hundred fifty dollars plus the renewal fee of thirty
dollars.

§30-5-14. Pharmacies or drugstores to be registered;
permit to operate; fees; registered pharma-
cist to conduct business.

The board of pharmacy shall require and provide for
the annual registration of every pharmacy or drugstore,
as defined, doing business in this state. Any person,
firm, corporation or partnership desiring to operate,
maintain, open or establish a pharmacy or drugstore, as
defined in this state shall apply to the board of
pharmacy for a permit to do so. The application for such
permit or license shall be made on a form prescribed
and furnished by the board of pharmacy, which, when
properly executed, shall indicate the owner, manager,
trustee, lessee, receiver, or other person or persons
desiring such permit, as well as the location of such
pharmacy or drugstore, including street and number,
and such other information as the board of pharmacy
may require. If it is desired to operate, maintain, open
or establish more than one pharmacy or drugstore,
separate application shall be made and separate permits
or licenses shall be issued for each. Every initial
application for a permit shall be accompanied by the
required fee of one hundred fifty dollars. The fee for
renewal of such permit or license shall be seventy-five
dollars annually. If an application is found satisfactory,
the secretary of the board of pharmacy shall issue to the
applicant a permit or license for each pharmacy or
drugstore for which application is made. Permits or
licenses issued under this section shall not be transfer-
able and shall expire on the thirtieth day of June of each
calendar year, and if application for renewal of permit
or license is not made on or before that date, or a new
one granted on or before the first day of August,
following, the old permit or license shall lapse and
become null and void and shall require an inspection of
the pharmacy and a fee of one hundred fifty dollars plus
one hundred fifty dollars for the inspection. Every such
place of business so registered shall be in direct charge
of a registered pharmacist and operate in compliance
with the general provisions governing the practice of
pharmacy and the operation of a drugstore or
pharmacy.

The provisions of this section shall have no application
to the sale of patent or proprietary medicines which are
not poisonous, deleterious or habit-forming nor to such
ordinary drugs in original retail packages when such
are not poisonous, deleterious or habit-forming nor to
flavoring extracts or dyestuffs as are usually sold in a
country store.

Every pharmacy or drugstore, at all times, shall be under the jurisdiction of a licensed pharmacist who shall be designated as the pharmacist-in-charge.

The pharmacist-in-charge is responsible for the pharmacy's compliance with state and federal pharmacy laws and regulations.

The pharmacist-in-charge is responsible for maintaining records and inventory.

It is a violation of this section if the owner of a pharmacy fails to designate a pharmacist-in-charge or permit the practice of pharmacy without having designated a pharmacist-in-charge, or fails to notify the board of pharmacy if the designated pharmacist-in-charge leaves.

Before a permit is issued to operate a pharmacy, or renewed, the application must designate the pharmacist-in-charge. The designated pharmacist-in-charge must be present when a new store is to be inspected.

A pharmacist-in-charge cannot hold the designated position at more than one pharmacy, whether within or without the state of West Virginia. The board of pharmacy shall promulgate rules relative to pharmacies which are operated over forty hours a week.

An interim pharmacist-in-charge may be designated for a period not to exceed sixty days. The request for an interim pharmacist-in-charge shall detail the circumstances which warrant such a change.

The board of pharmacy shall furnish the form which designates a change of the pharmacist-in-charge and every such application shall be subject to a fee of ten dollars.

§30-5-14b. Use of funds resulting from increased fees.

The increased funds resulting from the increased fees under sections five, nine and fourteen of this article shall be used only: (a) For the employment of an investigator or investigators pursuant to section two of this article; (b) for the reimbursement of necessary expenses of such investigator or investigators upon the submittal of
§30-5-16. Permit for manufacture, packaging, etc., of
drugs, medicines, cosmetics, distribution of
legend drugs, etc.; regulations as to sanita-
tion and equipment; penalties; revocation of
permit; for permits, including permit to
handle controlled substances.

No drugs or medicines, or toilet articles, dentifrices,
or cosmetics, shall be manufactured, made, produced,
packed, packaged or prepared within the state, except
under the personal and immediate supervision of a
registered pharmacist or such other person as may be
approved by the board of pharmacy, after an investiga-
tion and determination by said board that they are
qualified by scientific or technical training and/or
experience to perform such duties of supervision as may
be necessary to protect the public health and safety; and
no person shall manufacture, make, produce, pack,
package or prepare any such articles without first
obtaining a permit to do so from the board of pharmacy.
Such permit shall be subject to such rules and regula-
tions, with respect to sanitation and/or equipment, as
the board of pharmacy may from time to time adopt for
the protection of the public health and safety.

Any person, firm, corporation, partnership, company,
cooperative society or organization who offers for sale,
sells, offers or exposes for sale through the method of
distribution any legend drugs shall be subject to this
article.

The application for such permits shall be made on a
form to be prescribed and furnished by the board of
pharmacy and shall be accompanied by the following
fees: For a distributor, one hundred fifty dollars, for a
manufacturer, five hundred dollars, which amounts
shall also be paid as the fees for each annual renewal
of such permits. Separate applications shall be made
and separate permits issued for each separate place of
manufacture, distribution, making, producing, packing,
packaging or preparation.

The following fees shall be charged for a permit to
handle controlled substances: For a hospital or clinic,
fifty dollars; for extended care facilities, twenty-five
dollars; for a nursing home, twenty-five dollars; for a
teaching institution, twenty-five dollars; for a re-
searcher, twenty-five dollars; for a medical examiner,
twenty-five dollars; and for a pharmacy or drug store,
fifteen dollars, which amounts shall also be paid for each
annual renewal of such permits.

Permits issued under the provisions of this section
shall be posted in a conspicuous place in the factory or
place for which issued; such permits shall not be
transferable, and shall expire on the thirtieth day of
June following the day of issue and shall be renewed
annually. Nothing in this section shall be construed to
apply to those operating registered pharmacies or
drugstores.

Any person, firm, corporation, partnership, company,
cooperative society or organization violating any of the
provisions of this section and any permittee hereunder
who shall violate any of the conditions of this permit or
any of the rules and regulations adopted by the board
of pharmacy in pursuance of the power hereby con-
ferred shall, upon conviction, be deemed guilty of a
misdemeanor and fined not more than fifty dollars for
each offense, and each and every day such violation
continues shall constitute a separate and distinct offense,
and upon conviction of a permittee, his permit shall also
forthwith be revoked and become null and void.

Any person, firm, corporation, partnership, company,
cooperative society, organization or any permittee
hereunder who shall have been convicted of two or more
successive violations of the provisions of this section or
of the rules and regulations adopted by the board of
pharmacy in pursuance of the powers hereby conferred
shall at the discretion of the board of pharmacy have such permit permanently revoked, and the board of pharmacy is hereby authorized to refuse the issuance of further permits to such person, firm, corporation, partnership, company, cooperative society, organization or permittee.

CHAPTER 129
(Com. Sub. for H. B. 2494—By Delegates Gallagher and Border)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty 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 requiring mail-order houses which dispense drugs into or out of the state to register with the board of pharmacy prior to doing business; exempting mail-order houses which operate solely as wholesale distributors; and promulgation of rules and regulations by board of pharmacy.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 30.
PROFESSIONS AND OCCUPATIONS.
ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-6a. Permits for mail-order houses.

(a) Every mail-order house which dispenses drugs or medicines through the United States mail or otherwise from any point in the state of West Virginia to any point outside of the state of West Virginia shall be registered as a pharmacy or drugstore pursuant to the provisions of section fourteen of this article: Provided, That the
provisions of this subsection do not apply to any mail-order house which operates solely as a wholesale distributor.

(b) Every mail-order house which dispenses drugs or medicines through the United States mail or otherwise from any point outside of the state of West Virginia to any point within the state of West Virginia shall, as a condition precedent to being qualified and authorized to transact such business in the state of West Virginia, annually register with the board of pharmacy to conduct such business in this state. Every such business shall be required to provide to the board of pharmacy satisfactory evidence that it qualifies as a pharmacy or drugstore and that such business is licensed or registered as a pharmacy or drugstore in the state where the business dispenses prescriptions by mail order to residents of this state. The board of pharmacy shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the procedures of registration pursuant to this subsection: Provided, That the provisions of this subsection do not apply to any mail-order house which operates solely as a wholesale distributor.

CHAPTER 130

(S. B. 624—By Senators Pritt, Blatnlk and Holliday)

[Passed March 8, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fourteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to osteopathic physician assistants; promulgation of rules by the board of osteopathy; certification of osteopathic physician assistants; supervising physicians and employing health care facilities; reporting of disciplinary procedures; identification; fees; continuing medical education; criminal penalties; and limited prescriptive authority.
Be it enacted by the Legislature of West Virginia:

That section one, article fourteen-a, 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 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; certification; temporary certification; recertification; job description required; revocation or suspension of certification; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of “osteopathic physician assistant”; unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) “Osteopathic physician assistant” means an assistant to an osteopathic physician who is a graduate of an approved program of instruction in primary care or surgery, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of an osteopathic physician;

(2) “Supervising physician” means a doctor of osteopathy permanently licensed in this state who assumes legal and supervising responsibility for the work or training of any osteopathic physician assistant under his or her supervision;

(3) “Approved program” means an educational program for osteopathic physician assistants approved and accredited by the committee on allied health education and accreditation;

(4) “Health care facility” means any licensed hospital, nursing home, extended care facility, state health or
(5) "Direct supervision" means the presence of the supervising physician at the site where the osteopathic physician assistant performs medical duties.

(b) The board shall promulgate rules governing the extent to which osteopathic physician assistants may function in this state. Such rules shall provide that the osteopathic physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of an osteopathic physician permanently licensed in this state, but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the osteopathic physician assistant's normal place of employment is on the premises of the supervising physician. The supervising physician may send the osteopathic physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the osteopathic physician assistant shall not be established. In promulgating such rules, the board may allow the osteopathic physician assistant to perform those procedures and examinations and in the case of authorized osteopathic physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (o) of this section those categories of drugs submitted to it in the job description required by subsection (e) of this section.

The board shall compile and publish an annual report that includes a list of currently certified osteopathic physician assistants and their employers and location in the state.

(c) The board shall certify as an osteopathic physician assistant any person who files an application and furnishes satisfactory evidence to it that he or she has met the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery;

(2) He or she has passed the examination for a primary care physician assistant or surgery adminis-
tered by the national board of medical examiners on behalf of the national commission on certification of physician assistants; and

(3) He or she is of good moral character.

(d) When any graduate of an approved program submits an application to the board, accompanied by a job description in conformity with subsection (e) of this section, for an osteopathic physician assistant certificate, the board may issue to such applicant a temporary certificate allowing such applicant to function as an osteopathic physician assistant for the period of one year. Said temporary certificate may be renewed for one additional year upon the request of the supervising physician. An osteopathic physician assistant who has not been certified as such by the national board of medical examiners on behalf of the national commission on certification of physician assistants will be restricted to work under the direct supervision of the supervising physician.

(e) Any osteopathic physician applying to the board to supervise an osteopathic physician assistant shall provide a job description that sets forth the range of medical services to be provided by such assistant. Before an osteopathic physician assistant can be employed or otherwise use his or her skills, the supervising physician must obtain approval of the job description from the board. The board may revoke or suspend any certification of an assistant to a physician for cause, after giving such person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.

(f) The supervising physician is responsible for observing, directing and evaluating the work records and practices of each osteopathic physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with an osteopathic physician assistant within ten days of his or her termination. The legal responsibility for any osteopathic physician assistant remains with the supervising physician at all
times, including occasions when the assistant, under his or her direction and supervision, aids in the care and treatment of a patient in a health care facility. In his or her absence, a supervising physician must designate an alternate supervising physician; however, the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for the actions or omissions of an osteopathic physician assistant unless the osteopathic physician assistant is an employee of the facility.

(g) The acts or omissions of an osteopathic physician assistant employed by health care facilities providing inpatient services shall be the legal responsibility of said facilities. Osteopathic physician assistants employed by such facilities in staff positions shall be supervised by a permanently licensed physician.

(h) A health care facility shall report in writing to the board within sixty days after the completion of the facility's formal disciplinary procedure, and also after the commencement, and again after the conclusion, of any resulting legal action, the name of any osteopathic physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all pertinent information relating to such action. The health care facility shall also report any other formal disciplinary action taken against any osteopathic physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(i) When functioning as an osteopathic physician assistant, the osteopathic physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(j) (1) A supervising physician shall not supervise at any time more than two osteopathic physician assistants, except that a physician may supervise up to four
Provided, That an alternative supervisor has been designated for each.

(2) An osteopathic physician assistant shall not perform any service that his or her supervising physician is not qualified to perform.

(3) An osteopathic physician assistant shall not perform any service that is not included in his or her job description and approved by the board as provided for in this section.

(4) The provisions of this section do not authorize an osteopathic physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, registered nurses, licensed practical nurses, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(k) Each job description submitted by a licensed osteopathic supervising physician shall be accompanied by a fee of one hundred dollars. A fee of fifty dollars shall be charged for the annual renewal of the certificate. A fee of twenty-five dollars shall be charged for any change of supervising physician.

(l) As a condition of renewal of osteopathic physician assistant certification, each osteopathic physician assistant shall provide written documentation satisfactory to the board of participation in and successful completion during the preceding one-year period of a minimum of twenty hours of continuing education in courses approved by the board of osteopathy for the purposes of continuing education of osteopathic physician assistants. Notwithstanding any provision of this chapter to the contrary, failure to timely submit such required written documentation shall result in the automatic suspension of any certification as an osteopathic physician assistant until such time as the written documentation is submitted to and approved by the board.

(m) It is unlawful for any person who is not certified by the board as an osteopathic physician assistant to use
the title of "osteopathic physician assistant" or to represent to any other person that he or she is an osteopathic physician assistant. Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars.

(n) It is unlawful for any osteopathic physician assistant to represent to any person that he or she is a physician. Any person who violates the provisions of this subsection is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one, nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

(o) An osteopathic physician assistant providing primary care outpatient services in a medically underserved area or other area of need, both as defined by the board, may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules and regulations governing the eligibility and extent to which such an osteopathic physician assistant may prescribe at the direction of the supervising physician. The regulations shall provide for a state formulary classifying pharmacologic categories of drugs which may be prescribed by such an osteopathic physician assistant. In classifying such pharmacologic categories, those categories of drugs which shall be excluded shall include, but not be limited to, Schedules I and II of the uniform controlled substances act, anticoagulants, antineoplastics, antiphychotics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. Drugs listed under Schedule III shall be limited to a forty-eight hour supply without refill. The regulations shall provide that all pharmacological categories of drugs to be prescribed by an osteopathic physician assistant shall be listed in each job description submitted to the board as required in subsection (e) of this section. The regulations shall provide the maximum dosage an osteopathic physician assistant may prescribe.
The regulations shall also provide that to be eligible for such prescription privileges, an osteopathic physician assistant must submit an application to the board for such privileges. The regulations shall also provide that an osteopathic physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of said application for prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board. The regulations shall also provide that to maintain prescription privileges, an osteopathic physician assistant shall continue to maintain national certification as an osteopathic physician assistant, and in meeting such national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection shall be construed to permit an osteopathic physician assistant to independently prescribe or dispense drugs.

CHAPTER 131
(Com. Sub. for H. B. 2765—By Delegate Ashcraft)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six and seven, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto six new sections, designated sections seven-a, seven-b, seven-c, seven-d, seven-e and eight-a, all relating to creating new definitions relating to the practice of school psychology; providing for license exemption in certain instances; requiring the addition of at least one licensed school psychologist to the board of examiners of psychologists; adding school psychologist examination to board duties and authorizing reasonable fees thereto; removing the reference to the specific amount of the application fee; creating
eligibility requirements for certain levels of licensed school psychologists; addressing eligibility of school psychologists currently certified by the state board; defining eligibility of certain doctoral applicants; and specifying provisions for license renewal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-2. Definitions.
§30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.
§30-21-5. Creation of board of examiners of psychologists; members, terms, meetings, officers, oath and compensation; general provisions.
§30-21-6. Powers and duties of board; funds of board.
§30-21-7. Qualifications of applicants; exceptions; applications; fee.
§30-21-7a. Eligibility for school psychologist resident.
§30-21-7b. Eligibility for licensed school psychologist.
§30-21-7c. Eligibility for licensed school psychologist independent practitioner.
§30-21-7d. Eligibility for current school psychologist.
§30-21-7e. Eligibility of doctoral applicants.
§30-21-8a. Issuance of license; renewal of license; renewal fee; display of license.

§30-21-2. Definitions.

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

2 (a) “Applicant” means any person making application for an original or renewal license or a temporary permit under the provisions of this article.

3 (b) “Licensee” means any person holding a license or a temporary permit issued under the provisions of this article.

4 (c) “Board” means the board of examiners of psychologists created by this article.

5 (d) “Psychology” means the science involving the
principles, methods and procedures of understanding, predicting and influencing behavior; the principles pertaining to learning, perception, motivation, thinking, emotions and interpersonal relationships; the methods and procedures of interviewing and counseling; the methods and procedures of psychotherapy, meaning the use of learning, conditioning methods and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes and behavior, which are intellectually, socially or emotionally maladjustive or ineffectual; the constructing, administering and interpreting of tests of intelligence, special abilities, aptitudes, interests, attitudes, personality characteristics, emotions and motivation; the psychological evaluation, prevention and improvements of adjustment problems of individuals and groups; and the resolution of interpersonal and social conflicts.

(e) "Practice of psychology" means the rendering or offering to render for a fee, salary or other compensation, monetary or otherwise, any psychological service involving: (i) The application of the principles, methods and procedures of understanding, predicting and influencing behavior; (ii) the application of the principles pertaining to learning, perception, motivation, thinking, emotions and interpersonal relationships; (iii) the application of the methods and procedures of interviewing and counseling; (iv) the application of the methods and procedures of psychotherapy, meaning the use of learning, conditioning methods and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes and behavior, which are intellectually, socially or emotionally maladjustive or ineffectual; (v) the constructing, administering and interpreting of tests of intelligence, special abilities, aptitudes, interests, attitudes, personality characteristics, emotions and motivation; (vi) the psychological evaluation, prevention and improvement of adjustment problems of individuals and groups; and (vii) the resolution of interpersonal and social conflicts.

However, for the purpose of this article, the term "practice of psychology" shall not include:
(1) Teaching, lecturing or engaging in research in psychology as part of salaried employment at an institution of higher learning;

(2) The official duties of a person employed as a psychologist by the state of West Virginia or any of its departments, agencies, divisions or bureaus, or local governments, except for the West Virginia department of education, a county board of education, or a regional education agency, which duties are performed under the direct and regular supervision of a licensee;

(3) The official duties of a person employed as a psychologist by any department, agency, division or bureau of the United States of America;

(4) The official duties of a person working under the direct and regular supervision of a licensee for the purpose of gaining the experience required for a license hereunder by the provisions of subdivision (4), subsection (a), section seven of this article, which experience is of a type approved by the board;

(5) The use, in good faith, of certain psychological techniques, procedures, methods and principles as an incident to engaging in a recognized occupation or profession, other than the practice of psychology, including, but not limited to, the occupation or profession of a physician, lawyer, dentist, social worker, sociologist, political scientist, economist, probation or parole officer, rehabilitation or marriage counselor, clergyman, audiologist, speech pathologist, teacher, educational or guidance counselor and a placement or personnel director;

(6) The activities of a student of psychology, psychological intern or psychological resident, which activities are a part of and are engaged in pursuant to a course of study at an institution of higher learning; or

(7) The activities of an assistant or technician which are performed under the direct and regular supervision of a licensee.

(f) "Examination" means the examination in psychology required by subdivision (5), subsection (a), section seven of this article.
"School psychological services" means the activities which school psychologists may engage in to promote mental health and to facilitate the education of school age children, which include, but are not limited to, the following:

(A) Consultation, which includes collaboration with individuals and groups of school personnel, parents, families and representatives of community agencies;

(B) Psychological and psychoeducational assessment, which includes the gathering, interpreting and communicating of information derived from the assessment process which relates to learning and behavior;

(C) Intervention, which includes individual and group counseling, behavioral intervention and crisis intervention;

(D) Education, which includes parent training, school inservice and community education;

(E) Facilitation, which includes assisting in developing useful communication between diverse groups of people separated by institutional, bureaucratic, educational or other barriers;

(F) Research, which includes designing, reporting and utilizing the results of research of a psychological nature;

(G) Program planning and evaluation, which includes program development, program implementation, program evaluation and problem solving for organizational decision making;

(H) Supervision, which includes the supervision of intern school psychologists, other school psychologists and personnel contracted to provide either psychological or psychoeducational assessment data;

However, for the purpose of this article, the term "practice of school psychology" shall not include:

(1) The activities of clinical, counseling, child, industrial, health, and other types of psychology which the
board determines to be outside the scope of school psychology activities;

(2) Teaching, lecturing or engaging in research in school psychology as part of salaried employment at an institution of higher learning;

(3) The official duties of a person employed as a school psychologist by the state of West Virginia or any of its departments, agencies, divisions or bureaus, or local governments, except for the West Virginia department of education, a county board of education, or a regional education service agency, which duties are performed under the direct and regular supervision of a licensee;

(4) The official duties of a person employed as a school psychologist by any department, agency, division or bureau of the United States of America;

(5) The official duties of a school psychologist working under the direct and regular supervision of a licensee for the purpose of gaining the experience required for a license hereunder by the provisions of subdivision (4), subsection (a), section seven of this article, which experience is of a type approved by the board;

(6) The use, in good faith, of certain psychological techniques, procedures, methods and principles as an incident to engaging in a recognized occupation or profession, other than the practice of school psychology, including, but not limited to, the occupation or profession of a physician, lawyer, dentist, social worker, sociologist, political scientist, economist, probation or parole officer, rehabilitation or marriage counselor, clergyman, audiologist, speech pathologist, teacher, educational or guidance counselor and placement or personnel director;

(7) The activities of a student of school psychology, school psychological intern or extern, which activities are a part of and are engaged in pursuant to a course of study at an institution of higher learning;

(8) The activities of an assistant or technician which are performed under the direct and regular supervision of a licensee.
"Practice of school psychology" means the rendering or offering to render for a fee, salary or other compensation to an individual or to the public school psychological services as defined in this article;

"School psychologist" means any person who proposes to provide school psychological services as defined herein, to the public and in so doing claims to have the knowledge, training, expertise and ethical standards necessary to engage in such practice;

"School board" means a West Virginia county school board and also means the West Virginia department of education, or a regional educational service agency;

"School board employee" means any person who provides services for the school board and is reimbursed via a salary and benefits and who has met the educational requirements under the state law and regulations of the West Virginia board of education to be certified or otherwise empowered by the state superintendent of schools to provide school psychological services for school boards;

"School board contractee" means any person who provides services for one or more school boards and is reimbursed on a per evaluation, per unit of service, or some other contract basis;

"School psychologist resident" means a school psychologist who provides school psychology services on a school board property and is a school board employee;

"Licensed school psychologist" means a school psychologist who provides school psychology services on school board property and is a school board employee or contractee;

"Licensed school psychologist independent practitioners" means a school psychologist who provides school psychology services to an individual or the public on school board or nonschool board property, and provide such services for a fee or other compensation, or as a school board employee or contractee.
§30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.

(a) No person shall engage in, offer to engage in, or hold himself out to the public as being engaged in, the practice of psychology in this state, nor shall any person use in connection with any trade, business, profession or occupation, except in those instances specifically excluded from the definition of the practice of psychology by subparagraphs (1), (2), (3), (4) and (6), subdivision (e), section two of this article, the word "psychologist," "psychology," "psychological" or any other title, word or abbreviation which induces or tends to induce the belief that such person is qualified to engage or is engaged in the practice of psychology, unless and until he shall first obtain a license or temporary permit to engage in the practice of psychology in accordance with the provisions of this article, which license or temporary permit remains unexpired, unsuspended and unrevoked: Provided, That such license or temporary permit shall not be required for an individual who is the holder of a school psychology certificate issued by the West Virginia department of education and who is engaged in the practice of school psychology solely within the scope of employment as a school board employee: Provided, however, That no such license or temporary permit shall be required for a psychologist who is not a resident of this state, who is the holder of a license or certificate to engage in the practice of psychology issued by a state with licensing or certification requirements determined by the board to be at least as great as those provided in this article, who has no regular place of practice in this state and who engages in the practice of psychology in this state for a period of not more than ten days in any calendar year.

(b) No firm, association or corporation shall, except through a licensee or licensees, render any service or engage in any activity which if rendered or engaged in by any individual would constitute the practice of psychology.
§30-21-5. Creation of board of examiners of psychologists; members, terms, meetings, officers, oath and compensation; general provisions.

(a) There is hereby created the state board of examiners of psychologists which shall be composed of five members appointed by the governor by and with the advice and consent of the Senate. Each member shall have been actively engaged in the practice of psychology or in the teaching of psychology in the state of West Virginia for at least two years immediately preceding his appointment and shall be the holder of a license under the provisions of this article, or, in the case of the members first appointed, shall be eligible for such a license: Provided, That at least one member of the board shall be a licensed school psychologist.

(b) The members of the board 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, two members shall be appointed for a term of three years and until their successors have been appointed and have qualified, two members shall be appointed for a term of two years and until their successors have been appointed and have qualified and one member shall be appointed for a term of one year and until his successor has been appointed and has qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required 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. 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 from its membership a chairman and secretary who shall serve at the will and pleasure of the board. A majority of the members of the
board shall constitute a quorum and meetings shall be held at the call of the chairman or upon the written request of three members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to conduct the examination hereinafter provided for and to transact such other business as may come before it. Members may be paid such reasonable compensation as the board may from time to time determine, and in addition may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which compensation and expenses shall be paid in accordance with the provisions of subsection (b), section six of this article.

§30-21-6. Powers and duties of board; funds of board.

(a) The board shall:

1. Examine applicants and determine their eligibility for a license or temporary permit to engage in the practice of psychology;

2. Examine applicants and determine their eligibility for a license or temporary permit to engage in the practice of school psychology as a licensed school psychologist and/or licensed school psychologist independent practitioner.

3. Prepare, conduct and grade an apt and proper written, oral or written and oral examination of applicants for a license and determine the satisfactory passing score thereon;

4. Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, including, but not limited to, reasonable rules and regulations establishing standards to insure the proper supervision of all persons working under the direct and regular supervision of a licensee under the provisions of this article, 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, set reasonable fees and record them in legislative rules, Title 17, Series 1.
(5) Issue, renew, deny, suspend or revoke licenses and temporary permits to engage in the practice of psychology in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

(6) Investigate alleged violations of the provisions of this article, reasonable rules and regulations promulgated hereunder and orders and final decisions of the board and take appropriate disciplinary action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of the provisions of this article, reasonable rules and regulations promulgated hereunder and orders and final decisions of the board or take such disciplinary action and institute such legal action;

(7) Employ, direct, discharge and define the duties of full or part-time professional, clerical or other personnel necessary to effectuate the provisions of this article;

(8) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(9) Whenever it deems it appropriate, confer with the attorney general or his assistants in connection with all legal matters and questions; and

(10) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "board of examiners of psychologists fund." All of the reasonable compensation of the members of the board, the reimbursement of all reasonable and necessary expenses actually incurred by such members and all other costs and expenses incurred by the board in the administration of this article shall
§30-21-7. Qualifications of applicants; exceptions; applic-
cations; fee.

(a) To be eligible for a license to engage in the
practice of psychology, the applicant must:

(1) Be at least eighteen years of age;
(2) Be of good moral character;
(3) Be a holder of a doctor of philosophy degree or its
equivalent or a master's degree in psychology from an
accredited institution of higher learning, with adequate
course study at such institution in psychology, the
adequacy of any such course study to be determined by
the board;
(4) When the degree held is a doctor of philosophy
degree or its equivalent, have at least one year's
experience subsequent to receiving said degree in the
performance of any of the psychological services
described in subdivision (e), section two of this article,
including those activities excluded from the definition
of the term "practice of psychology" in said subdivision
(e), and, when the degree held is a master's degree, have
at least five years' experience subsequent to receiving
said degree in the performance of any of the psycholog-
cal services described in said subdivision (e), including
those activities excluded from the definition of the term
"practice of psychology" in said subdivision (e);
(5) Have passed the examination prescribed by the
board, which examination shall cover the basic subject
matter of psychology and psychological skills and
techniques;
(6) Not have been convicted of a felony or crime
involving moral turpitude; and
(7) Not, within the next preceding six months, have
taken and failed to pass the examination required by
subdivision (5), subsection (a) of this section.

(b) The following persons shall be eligible for a license
to engage in the practice of psychology without examination:

(1) Any applicant who holds a doctor of philosophy degree or its equivalent from an institution of higher learning, with adequate course study at such institution in psychology and who is a diplomate of the “American Board of Examiners in Professional Psychology”; and

(2) Any person who holds a license or certificate to engage in the practice of psychology issued by any other state, the requirements for which license or certificate are found by the board to be at least as great as those provided in this article.

(c) Any person who is engaged in the practice of psychology in this state, or is engaged in any of the activities described in subdivision (e), (1), (2) or (3), section two of this article, in this state, on the effective date of this article and has been so engaged for a period of two consecutive years immediately prior thereto shall be eligible for a license to engage in the practice of psychology without examination and without meeting the requirements of subdivision (4), subsection (a) of this section, if application for such license is made within six months after the effective date of this article and if such person meets the requirements of subdivisions (1), (2), (3) and (6), subsection (a) of this section: Provided, That an equivalent of a master's degree in psychology may be considered by the board, only for the purpose of this subsection (c), as meeting the requirements of subdivision (3), subsection (a) of this section.

(d) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (c) of this section), in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board an application fee.

§30-21-7a. Eligibility for school psychologist resident.

(a) To qualify as a school psychologist resident the applicant must have obtained a master's degree in
3 school psychology from a board approved graduate program within a board approved institution of higher education.

(b) If such individuals are employed by school board(s) to practice school psychology, they may, within sixty days of the initiation of their employment, register with the board and pay a reasonable fee.

§30-21-7b. Eligibility for licensed school psychologist.

1 To meet minimum requirements for this license the applicant must:

2 (1) Have obtained a valid certificate of school psychology granted by the state superintendent of schools, have obtained a certificate of advanced study in school psychology and obtained a master's degree in school psychology from a board-approved institution of higher education, or have received equivalent training as determined by the board;

3 (2) Have completed at least three academic years of supervised experience in school psychology which includes a one year post degree internship or externship towards completion of the requirements for a certificate of advance study in school psychology or similar designation approved by the board: Provided, That such supervised experience shall include at least one face to face meeting between the supervisor and supervisee per month.

4 (3) Have passed a standardized national examination in school psychology promulgated by the National Association of School Psychologists or other similar organizations and approved as a standardized testing vehicle for school psychologists by the board;

5 (4) Have passed an oral examination conducted by the board; and

6 (5) Complete appropriate application and other forms, provide evidence of credentials, and pay appropriate fees as determined by the board.

§30-21-7c. Eligibility for licensed school psychologist independent practitioner.
(1) Such applicants shall meet all the minimum requirements for eligibility as a licensed school psychologist;

(2) Complete an additional two years of board approved supervision by a licensed school psychologist; and

(3) Pass an oral examination conducted by the board.

§30-21-7d. Eligibility for current school psychologist.

(1) Any person who holds a current certificate of advanced study and has the equivalent of three academic years experience in school psychology or any licensed psychologist who has been approved by the state department of education on the effective date of this section shall not be required to comply with the provisions of section seven-b, article twenty-one, chapter thirty of this code. Such persons shall submit appropriate documentation of credentials to the board, application form, and pay an application fee: Provided, That such applicants pass an oral exam given by the board of psychology.

(2) Such persons seeking eligibility as a licensed school psychologist independent practitioner must meet the provisions of section seven-b of this article, must have completed the equivalency of two years supervised experience and shall complete an oral examination before the board, submit required documentation, pay appropriate fees and complete additional supervision and training requirements as determined by the board. Applicants seeking eligibility pursuant to this section must make application on or before the first day of July, one thousand nine hundred ninety-two.

§30-21-7e. Eligibility of doctoral applicants.

Applicants with a doctorate of philosophy degree or its equivalent who apply for licensure as a school psychologist must complete one year of board-approved supervision or two years of such supervision if they have not had an internship, pass a standardized national examination in school psychology as defined in subdivision (3), section seven-b of this article, pass an oral examination given by the board, and pay appropriate fees.
§30-21-8a. Issuance of license; renewal of license; renewal fee; display of license.

1 On and after the first day of July, one thousand nine hundred ninety-one and thereafter, whenever the board finds that applicants meet all of the requirements of this article for a license to engage in the practice of school psychology, it shall forthwith issue to them such licenses; and otherwise the board shall deny the same. The license shall be valid for a period of three years from the date issued and may be renewed for a period of three years without examination upon application for renewal on a form prescribed by the board and payment to the board of a renewal fee: Provided, That the board may deny an application for renewal for any reason which would justify the denial of an original application for a license. The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at the licensee's principal place of practice.

CHAPTER 132
(S. B. 508—By Senators Blatnik and Minard)

[Passed March 5, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to amend and reenact section eleven of said article, all relating to the board of barbers and beauticians; requirements for renting or leasing chair or booth; reporting requirements; and registration fee.

Be it enacted by the Legislature of West Virginia:

That article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; and that section eleven of said article be amended and reenacted, all to read as follows:
ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.

§30-27-10a. Booth or chair rental; registration; fee; reporting requirements.

1 All persons licensed to practice as a barber, beautician or manicurist in this state who elects to rent or lease a booth or chair from an owner or operator of any barber or beauty shop shall first register with the board of barbers and beauticians and pay a registration fee of ten dollars. When registering, the registrant shall advise the board of the length of any rental or lease agreement, the name of the person and barber or beauty shop from which a chair or booth is being rented or leased, and the effective date of such rental. If a person registered with the board pursuant to this section elects to move from one barber or beauty shop to rent or lease a chair or booth from another barber or beauty shop, he or she shall again register with the board and pay a fee of two dollars and fifty cents.

16 Each owner or operator of a barber or beauty shop who elects to rent or lease chairs or booths therein shall notify the board in writing of such rental within ten days of the effective date of the rental.

20 The board shall quarterly notify the state tax commissioner of all persons registered pursuant to this section during the previous quarter. Such notice shall be in writing and shall include the name of the persons registered, the name of the person and barber or beauty shop from whom space is being rented or leased, and the length of any such rental or lease agreement.

§30-27-11. Grounds for cancellation or refusal to issue or renew license.

1 The board may refuse to issue a license of registration to any applicant, or may refuse to renew, or may suspend or revoke the same for any holder thereof, for any of the following causes: (1) Conviction of the commission of a felony, as shown by a certified copy of the record of the court of conviction; (2) obtaining or
7 attempting to obtain a license to practice barbering or
8 beauty culture in this state by false pretenses, fraudulent misrepresentation, or bribery by the use of money
9 or other consideration; (3) gross incompetency; (4) the
10 continued practice of barbering or beauty culture by a
11 person knowing himself or herself to be afflicted with
12 a contagious or infectious disease; (5) the knowingly
13 of any false or deceptive statements in advertising; (6)
14 habitual drunkenness or habitual addiction to the use of
15 morphine, cocaine or other habit-forming drugs; (7)
16 conviction for the illegal sale of any intoxicating
17 beverage, as shown by a certified copy of the record of
18 the court of conviction; (8) violation of any of the rules
19 and regulations prescribed by the board of health; (9)
20 violation of any of the rules and regulations prescribed
21 by the board of barbers and beauticians; or (10) violation
22 of any licensing or registration requirement of section
23 ten-a of this article.

CHAPTER 133
(S. B. 429—By Senators Wooton and Humphreys)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the private practice of law by public defenders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-17. Private practice of law by public defenders.

1 (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 until the first day of January, one thousand nine hundred ninety-three, the prohibition against the private practice of law does not apply to full-time public defenders employed in Class II, III or 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.
AN ACT to amend and reenact sections five and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three and four, article twenty-nine-d, chapter sixteen of said code, all relating to the purpose, powers and duties of the finance board; the initial financial plan; plan for the following year and annual financial plans; providing for an eighteen-month initial financial plan; allowing the rating separately or together of the claims experience of active and retired employees, spouses and dependents with coverage under the public employees insurance program; removing the provision requiring health care providers agreeing to deliver services to a beneficiary of any one state health care program to provide services for beneficiaries of all state health care programs; removing the time-specific conditions for preferred provider contracts; and extending the provision prohibiting balance billing of medical bills under the public employees insurance program.

Be it enacted by the Legislature of West Virginia:

That sections five and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three and four, article twenty-nine-d, chapter sixteen of said code be amended and reenacted, all to read as follows:

Chapter

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


CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

§5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

(a) The purpose of the finance board created by this article is to bring fiscal stability to the public employees insurance agency through development of an annual financial plan designed to meet the agency's estimated total financial requirements, taking into account all revenues projected to be made available to the agency, and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the public employees insurance agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The finance board shall also employ the actuary to develop alternative financing options and to perform such other services as may be requested by the finance board. All reasonable fees and expenses for actuarial services shall be paid by the public employees insurance agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary, and may not be finally approved and submitted to the governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, excluding incurred but unreported...
31 claims, for the fiscal year for which the plan is proposed.  
32 The actuary's opinion on the initial plan required by  
33 subsection (d) of this section shall allow for a target of  
34 forty-five days of accounts payable to be carried over  
35 into the next fiscal year. The actuary's opinion on the  
36 financial plan for fiscal year one thousand nine hundred  
37 ninety-two shall allow for between thirty and forty-five  
38 days of accounts payable to be carried over into the next  
39 fiscal year. The actuary's opinion on the financial plan  
40 for any succeeding fiscal year shall allow for no more  
41 than thirty days of accounts payable to be carried over  
42 into the next fiscal year. The actuary's opinion for any  
43 fiscal year shall not include a requirement for establish-  
44 ment of a reserve fund.  
45
46 (c) All financial plans required by this section shall  
47 include the design of a benefit plan or plans. All  
48 financial plans shall establish:  
49
50 (1) Maximum levels of reimbursement which the  
51 public employees insurance agency makes to categories  
52 of health care providers;  
53
54 (2) Any necessary cost containment measures for  
55 implementation by the director;  
56
57 (3) The levels of premium costs to participating  
58 employers; and  
59
60 (4) The types and levels of cost to participating  
61 employees and retired employees.  
62
63 The financial plans may provide for different levels  
64 of costs based on the insureds' ability to pay. The  
65 financial plans may also include optional alternative  
66 benefit plans with alternative types and levels of cost.  
67 The finance board may develop policies which encour-  
68 age the use of West Virginia health care providers.  
69
70 (d) Initial plan. — The director shall convene the first  
71 meeting of the finance board no later than the fifteenth  
72 day of September, one thousand nine hundred ninety.  
73 For presentation by the director at the first meeting, the  
74 governor shall prepare an estimate of the total amount  
75 of general and special revenues which the state has or  
76 will have available to fund the public employees
insurance agency and its programs for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-one.

Notwithstanding any provision of this article to the contrary, during any meeting authorized by subsection (h) of this section to review implementation of the initial financial plan in light of actual experience, the finance board, in its discretion, may elect to redesign the initial financial plan so that revenues generated will meet all incurred and projected program and administrative costs of the public employees insurance agency by the end of the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-two, rather than by the thirtieth day of June, one thousand nine hundred ninety-one. Before implementing any such modifications, the finance board shall obtain a written professional opinion from its actuary stating that the modified plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the remainder of fiscal year one thousand nine hundred ninety-one and for fiscal year one thousand nine hundred ninety-two, allowing for between thirty and forty-five days of accounts payable to be carried over into fiscal year one thousand nine hundred ninety-three. The finance board shall also afford interested and affected persons an opportunity to offer comment on the modified plan at a public meeting of the finance board. Regardless of whether or not the finance board modifies the initial financial plan as authorized by this subsection, the finance board shall prepare a financial plan for fiscal year one thousand nine hundred ninety-two in accordance with subsection (e) of this section.

The finance board shall prepare, no later than the tenth day of November, one thousand nine hundred ninety, a proposed financial plan designed to generate revenues sufficient to meet all program and administrative costs of the public employees insurance agency which have already been incurred but are unpaid, or which the actuary estimates will be incurred and paid during the remainder of fiscal year one thousand nine
111 hundred ninety-one, excluding incurred but unreported
112 claims. The finance board shall establish in the proposed
113 financial plan a target of forty-five days of accounts
114 payable which may be carried over into the next fiscal
115 year.

The finance board shall request its actuary to review
116 the proposed financial plan and to render a written
117 professional opinion stating whether the plan may be
118 reasonably expected to generate sufficient revenues to
119 meet all estimated program and administrative costs of
120 the public employees insurance agency for the fiscal
121 year. The actuary's report shall explain the basis of his
122 or her opinion. If the actuary concludes that the
123 proposed financial plan will not generate sufficient
124 revenues to meet all anticipated costs, then the finance
125 board shall make necessary modifications to the pro-
126 posed plan to ensure that all actuarially-determined
127 financial requirements of the agency will be met.

Upon obtaining the actuary's opinion and making all
129 necessary modifications to the proposed plan, the
130 finance board shall conduct two or more public hearings
131 to receive public comment on the proposed financial
132 plan, shall review such comments, and shall finalize and
133 approve the financial plan no later than the twentieth
134 day of November, one thousand nine hundred ninety.
135 Employees shall be notified of any changes in the types
136 and levels of employee costs or benefits contained in the
137 financial plan at least thirty days prior to the date of
138 implementation of the financial plan.

The finance board shall submit to the governor and
140 to the Legislature the final, approved financial plan no
141 later than the first day of December, one thousand nine
142 hundred ninety. The financial plan shall become
143 effective and shall be implemented by the director on
144 the first day of January, one thousand nine hundred
145 ninety-one.

(e) Plan for fiscal year one thousand nine hundred
148 ninety-two. — No later than the first day of December,
149 one thousand nine hundred ninety, the governor shall
150 prepare and provide to the finance board an estimate
151 of the total amount of general and special revenues
which the state will have available to fund the public employees insurance agency and its programs for the fiscal year beginning the first day of July, one thousand nine hundred ninety-one. The finance board shall request its actuary to estimate the total financial requirements of the public employees insurance agency for the fiscal year.

The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The proposed financial plan shall allow for between thirty and forty-five days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request its actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially-determined financial requirements of the agency will be met.

Upon obtaining the actuary's opinion, the finance board shall conduct one or more public hearings in each congressional district to receive public comment on the proposed financial plan, shall review such comments, and shall finalize and approve the financial plan.

The finance board shall submit to the governor and to the Legislature its final, approved financial plan for fiscal year one thousand nine hundred ninety-two, together with the actuary's final written opinion, no later than the first day of May, one thousand nine hundred ninety-one. The financial plan shall become effective and shall be implemented by the director on the first day of July, one thousand nine hundred ninety-one.
Annual plans. — The finance board shall prepare, in the manner provided in subsection (e) of this section, an annual financial plan for fiscal year one thousand nine hundred ninety-three and each fiscal year thereafter during which the finance board remains in existence. Any such financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each such fiscal year, the governor shall provide his estimate of total revenues to the finance board no later than the first day of July of the preceding fiscal year. The finance board shall submit its final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public hearings in each congressional district, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year shall become effective and shall be implemented by the director on the first day of July of such fiscal year.

The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the public employees insurance agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The financial board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

For any fiscal year in which legislative appropriations differ from the governor's estimate of general and special revenues available to the agency, the finance board shall, within thirty days after passage of the
budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(j) The types and levels of costs to employers, employees and retired employees participating in public employees insurance agency group insurance plans which are currently in effect on the effective date of this article are hereby authorized. The types and levels of costs to employees participating in public employees insurance agency group insurance plans which are currently in effect on the effective date of this article shall remain in effect unless and until changed or authorized to be changed by the finance board in a financial plan prepared and approved in accordance with this section.

§5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

The director shall promulgate such rules and regulations as may be required for the effective administration of the provisions of this article. Except as specifically provided in subsection (e), section four of this article, all rules and regulations of the public employees insurance agency and all hearings held by the public employees insurance agency shall be exempt from the provisions of chapter twenty-nine-a of this code. Any rules and regulations now in existence promulgated by the public employees insurance board or director shall remain in full force and effect until they are amended or replaced by the director.

Such regulations shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his spouse and dependents may be entitled by virtue of his
accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired. Any employee who voluntarily retires, as provided by law, shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his spouse and dependents may be entitled by virtue of his accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired. The dependents of any deceased retired employee shall be entitled to continue their participation and coverage upon payment of the total cost for such coverage. In establishing the cost of health insurance coverage for retired employees and their spouses and dependents, the finance board, in its discretion, may cause the claims experience of such retired employees and their spouses and dependents to be rated separately from that of active employees and their spouses and dependents, or may cause the claims experience of retired and active employees, and their spouses and dependents, to be rated together.

Any employee who is on a medical leave of absence, approved by his employer, shall, subject to the following provisions of this paragraph, be entitled to continue his coverage until he returns to his employment, and such employee and employer shall continue to pay their proportionate share of premium costs as provided by this article: Provided, That the employer shall be obligated to pay its proportionate share of the premium cost only for a period of one year: Provided, however, That during the period of such leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work.

Any retiree, retiring heretofore or hereafter, shall be eligible to participate in the public employees' life insurance program, including the optional life insurance coverage as already available to active employees under this article, at his own expense for the cost of coverage, based upon actuarial experience; and the director shall prepare, by rule and regulation, for such participation
61 and coverages under declining term insurance and
62 optional additional coverage for such retirees.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29D. STATE HEALTH CARE.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

§16-29D-4. Prohibition on balance billing; exceptions.

*§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

1 (a) All departments and divisions of the state, including, but not limited to, the bureau of employment programs, the division of health and the division of human services within the department of health and human resources; the public employees insurance agency within the department of administration; the division of rehabilitation services or such other department or division as shall supervise or provide rehabilitation; and the university of West Virginia board of trustees, as the governing board for the state's medical schools, are authorized and directed to cooperate in order, among other things, to ensure the quality of the health care services delivered to the beneficiaries of such departments and divisions and to ensure the containment of costs in the payment for such services.

16 (b) It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency which administers the state's medicaid program. Thus, it is the intention of the Legislature that nothing contained in this article shall be interpreted, construed, or applied to interfere with the powers and actions of the single state agency which, in keeping with applicable federal law, shall administer the state's medicaid program as it perceives to be in the best interest of that program and its beneficiaries.

26 (c) Such departments and divisions shall develop a

*Clerk's Note: This section was also amended by S. B. 132 (Chapter 16), which passed prior to this act.
plan or plans to ensure that a reasonable and appropriate level of health care is provided to the beneficiaries of the various programs including the public employees insurance agency and the workers' compensation fund, the division of rehabilitation services and, to the extent permissible, the state medicaid program. The plan or plans may include, among other things, and the departments and divisions are hereby authorized to enter into:

1. Utilization review and quality assurance programs;

2. The establishment of a schedule or schedules of the maximum reasonable amounts to be paid to health care providers for the delivery of health care services covered by the plan or plans. Such a schedule or schedules may be either prospective in nature or cost reimbursement in nature, or a mixture of both: Provided, That any payment methods or schedules for institutions which provide inpatient care shall be institution-specific and shall, at a minimum, take into account a disproportionate share of medicaid, charity care and medical education: Provided, however, That in no event may any rate set in this article for an institutional health care provider be greater than such institution's current rate established and approved by the health care cost review authority pursuant to article twenty-nine-b of this chapter;

3. Provisions for making payments in advance of the receipt of health care services by a beneficiary, or in advance of the receipt of specific charges for such services, or both;

4. Provisions for the receipt or payment of charges by electronic transfers;

5. Arrangements, including contracts, with preferred provider organizations; and

6. Arrangements, including contracts, with particular health care providers to deliver health care services to the beneficiaries of the programs of the departments and divisions at agreed upon rates in exchange for
controlled access to the beneficiary populations.

(d) The director of the public employees insurance agency shall contract with an independent actuarial company for a review every four years of the claims experience of all governmental entities whose employees participate in the public employees insurance agency program, including, but not limited to, all branches of state government, all state departments or agencies (including those receiving funds from the federal government or a federal agency), all county and municipal governments, or any other similar entities for the purpose of determining the cost of providing coverage under the program, including administrative cost, to each such governmental entity.

(e) Nothing in this section shall be construed to give or reserve to the Legislature any further or greater power or jurisdiction over the operations or programs of the various departments and divisions affected by this article than that already possessed by the Legislature in the absence of this article.

(f) For the purchase of health care or health care services by a health care provider participating in a plan under this section on or after the first day of September, one thousand nine hundred eighty-nine, by the public employees insurance agency, the division of rehabilitation services and the division of workers' compensation, a state check shall be issued in payment thereof within sixty-five days after a legitimate uncontested invoice is actually received by such division or agency. Any state check issued after sixty-five days shall include 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, which interest shall be calculated from the sixty-sixth day after such invoice was actually received by the division or agency until the date on which the state check is mailed to the vendor.

§16-29D-4. Prohibition on balance billing; exceptions.

(a) Except in instances involving the delivery of health care services immediately needed to resolve an immi-
nent life-threatening medical or surgical emergency, the
agreement by a health care provider to deliver services
to a beneficiary of any department or division of the
state which participates in a plan or plans developed
under section three of this article shall be considered to
also include an agreement by that health care provider:

(1) To accept the assignment by the beneficiary of any
rights the beneficiary may have to bill such division or
department for, and to receive payment under such plan
or plans on account of, such services; and

(2) To accept as payment in full for the delivery of
such services the amount specified in plan or plans or
as determined by the plan or plans. In such instances,
the health care provider shall bill the division or
department, or such other person specified in the plan
or plans, directly for the services. The health care
provider shall not bill the beneficiary or any other
person on behalf of the beneficiary and, except for
deductibles or other payments specified in the applicable plan or plans, the beneficiary shall not be personally
liable for any of the charges, including any balance
claimed by the provider to be owed as being the
difference between that provider's charge or charges
and the amount payable by the applicable department
or divisions. The plan or plans may specify what sums
are deductibles, copayments or are otherwise payable by
the beneficiary and the sums for which the health care
provider may bill the beneficiary: In addition, any
health care service which is not subject to payment by
the plan or plans shall be the responsibility of the
beneficiary and for those health care services which are
not covered by the plans, there shall be no prohibition
against billing the beneficiary directly.

(b) The prohibitions and limitations stated in subsec-
tion (a) of this section do not apply to the delivery of
health care services immediately needed to resolve an
imminent life-threatening medical or surgical emer-
gency. However, once the patient is stabilized, then the
delivery of any further health care services shall be
subject to subsection (a) of this section for those latter
services only.
(c) The exceptions provided in this section for the delivery of health care services immediately needed to resolve an imminent life-threatening medical or surgical emergency shall not apply to health care providers under contract with a department or division plan or plans.

CHAPTER 135
(S. B. 622—By Senators Tomblin, Blatnik, Brackenrich, Chernenko, Craigo, Hawse, Jones, Lucht, J. Manchin, M. Manchin, Sharpe, Spears, Wagner, Whitlow, Withers and Boley)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-a, relating to the state board of investments; enacting the debt management act of 1991; legislative findings and declaration of public necessity; creating the division of debt management; director of division; definitions; debt information reporting by state spending units; powers and duties for the division; and authorizing the promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. THE DEBT MANAGEMENT ACT.


§12-6A-2. Legislative findings and declaration of public necessity.

§12-6A-3. Division of debt management created; director.

§12-6A-4. Definitions.


§12-6A-6. Debt information reporting.


This article shall be known and may be cited as “The Debt Management Act of 1991”.

1326 PUBLIC MONEYS AND SECURITIES [Ch. 135
§12-6A-2. Legislative findings and declaration of public necessity.

(a) The Legislature hereby finds and declares that efficient and effective state government requires the designation of an authority having responsibility for procuring, maintaining and reporting pertinent information relating to the debt of the state and its agencies, boards, commissions and authorities. In addition to other duties and powers delegated to the state board of investments by this article, the board shall perform the functions and duties necessary to enable it to serve as a central information source concerning the incurrence, recording and reporting of debt issued by the state, its agencies, boards, commissions and authorities.

(b) The Legislature hereby finds:

(1) The credit rating and acceptance of bonds, notes, certificates of participation and other securities and indebtedness of the state and its spending units have been unstable as a result of the instability in traditional national and international markets of goods and services produced by the citizens of the state.

(2) In order to finance essential capital projects for the benefit of the citizens of the state at the lowest possible cost, the state must maintain high levels of acceptance of the indebtedness of the state and its spending units in the financial markets.

(3) In order to attain these goals, authorization of state debt must be based on the ability of the state to meet its total debt service requirements, in light of other uses of its fiscal resources.

(c) The Legislature hereby further finds that the public policies and responsibilities of the state as set forth in this article cannot be fully attained without the creation of a state division of debt management.

§12-6A-3. Division of debt management created; director.

There is hereby created within the office of the state board of investments, the division of debt management. The division shall be under the control of a director
to be appointed by the board 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 board.

§12-6A-4. Definitions.

For the purpose of this article:

“Debt” means bonds, notes, certificates of participation, certificate transactions, capital leases and all other forms of securities and indebtedness.

“Division” means the division of debt management.

“State” means the state of West Virginia.

“Spending unit” means any of the state’s agencies, boards, commissions, committees, authorities or other of its entities with the power to issue debt and secure such debt, and not including local political subdivisions of the state.


The division of debt management shall perform the following functions and duties:

(1) Develop a long-term debt plan including criteria for the issuance of debt by the state and its spending units and the continuous evaluation of the current and projected debt of the state and its spending units.

(2) Evaluate cash flow projections relative to proposed and existing revenue bond issues.

(3) Act as liaison with the Legislature on all debt matters, including, but not limited to, new debt issues and the status of debt issued by the state and its spending units.

(4) Assist the state and its spending units regarding the issuance of debt if requested.

(5) Establish reporting requirements for the issuance of debt by the state and its spending units pursuant to the provisions of this article.

(6) Make and execute contracts and other instruments
and pay the reasonable value of services or commodities rendered to the division pursuant to those contracts.

(7) Contract, cooperate or join with any one or more other governments or public agencies, or with any political subdivision of the state, or with the United States, to perform any administrative service, activity or undertaking which any such contracting party is authorized by law to perform and to charge for providing such services and expend any fees collected.

(8) Do all things necessary or convenient to effectuate the intent of this article and to carry out its powers and functions.

§12-6A-6. Debt information reporting.

(1) Within fifteen days following the end of each calendar quarter, each state spending unit shall provide the division and the legislative auditor, in the manner provided by this article and in such form and detail as the state board of investments may by regulation require, a statement of the total debt of each such state spending unit incurred during the calendar quarter and owing at the end of such calendar quarter, which statement shall include, but not be limited to, the name of the state spending unit, the amounts and types of debt incurred during the calendar quarter and outstanding at the end of the calendar quarter, the cost and expenses of incurring the debt, the maturity date of each debt, the terms and conditions of the debt, the current debt service on the debt, the current interest rate on the debt, the source of the proceeds utilized for repayment of the debt, the amounts of repayment during the calendar quarter, the repayment schedule and the security for the debt.

(2) Not less than fifteen days prior to a proposed offering of debt to be issued by a state spending unit, written notice of such proposed offering and the terms thereof shall be given to the division by such state spending unit in such form as the division may by regulation require.

(3) Within thirty days following the end of each
calendar quarter and on an annual basis the state board of investments shall prepare and issue a report of all debt of the state and its spending units and of all proposed debt issuances of which the board has received notice and shall furnish a copy of such report to the governor, the president of the Senate, the speaker of the House of Delegates, the legislative auditor and upon request to any legislative committee and any member of the Legislature and such report shall be kept available for inspection by any citizen of the state.


The division of debt management shall promulgate rules relating to reporting requirements and its duties under this article and the rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.
(a) The following securities are exempt from sections 301 and 403:

1. Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

5. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;

6. Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state;

7. Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is (A) subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of
1935 or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange, any other stock exchange approved by the commissioner, the National Association of Securities Dealers Automated Quotation/National Market System (NASDAQ/NMS), or any other market system approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing, except that the commissioner may adopt and promulgate rules and regulations pursuant to chapter twenty-nine-a of this code which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from this exemption if the commissioner finds that the listing requirements or market surveillance of such exchange or market system are such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within twelve
months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing or similar benefit plan if the commissioner is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of this chapter); and

(12) Any security issued by an agricultural cooperative association operating in this state and organized under article four, chapter nineteen of this code, or by a foreign cooperative association organized under the laws of another state and duly qualified to transact business in this state.

(b) The following transactions are exempt from sections 301 and 403:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security if (A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule
require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian or conservator, and any transaction constituting a judicial sale;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subdivision (8)) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if (A) the seller reasonably believes that all the buyers in this state (other than those designated in subdivision (8)) are purchasing for investment, and (B) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subdivision (8)); but the commissioner may by rule or
order, as to any security or transaction or any type of
security or transaction, withdraw or further condition
this exemption, or increase or decrease the number of
offerees permitted, or waive the conditions in clauses (A)
and (B) with or without the substitution of a limitation
on remuneration;

(10) Any offer or sale of a preorganization certificate
or subscription if (A) no commission or other remunera-
tion is paid or given directly or indirectly for soliciting
any prospective subscriber, (B) the number of subscrib-
ers does not exceed ten, and (C) no payment is made by
any subscriber;

(11) Any transaction pursuant to an offer to existing
security holders of the issuer, including persons who at
the time of the transaction are holders of convertible
securities, nontransferable warrants or transferable
warrants exercisable within not more than ninety days
of their issuance, if (A) no commission or other remunera-
tion (other than a standby commission) is paid or
given directly or indirectly for soliciting any security
holder in this state, or (B) the issuer first files a notice
specifying the terms of the offer and the commissioner
does not by order disallow the exemption within the next
five full business days;

(12) Any offer (but not a sale) of a security for which
registration statements have been filed under both this
chapter and the Securities Act of 1933 if no stop order
or refusal order is in effect and no public proceeding or
examination looking toward such an order is pending
under either chapter.

(c) The commissioner may by order deny or revoke
any exemption specified in subdivision (9) or (11) of
subsection (a) or in subsection (b) with respect to a
specific security or transaction. No such order may be
entered without appropriate prior notice to all inter-
ested parties, opportunity for hearing, and written
findings of fact and conclusions of law, except that the
commissioner may by order summarily deny or revoke
any of the specified exemptions pending final determi-
nation of any proceeding under this subsection. Upon
the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 301 or 403 by reasons of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(d) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

CHAPTER 137
(Com. Sub. for S. B. 471—By Senators Jones and Heck)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to repeal section four, article sixteen-b, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article sixteen-c of said chapter; to amend and reenact sections one, two, three, five, six and seven, article sixteen-b of said chapter; and to further amend said article by adding thereto eight new sections, designated sections fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, all relating to reorganizing and combining the public port authority and the wayport authority; providing for continuation of public port authority; establishing board of directors, members thereof, officers, qualifications, terms, oath, compensa-
tion, quorum and delegation of power; authorizing executive director, appointment, powers and duties, compensation; providing definitions; establishing powers and duties of authority; reestablishing special West Virginia public port authority operations fund and combining with wayport fund; authorizing and providing for port revenue bonds generally; providing for public port revenue bond trust agreements; authorizing tolls, rents, fees, charges and revenues; providing funds to be trust funds; providing remedies; providing exemption from taxation; providing for preliminary expenses of authority; authorizing and providing for public port revenue refunding bonds generally; and repealing wayport authority statutes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-1. Creation of authority.
§17-16B-2. Board of directors — Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.
§17-16B-3. Executive director; appointment; powers and duties; compensation.
§17-16B-5. Definitions.
§17-16B-6. Powers and duties of authority.
§17-16B-7. Special West Virginia public port authority operations fund.
§17-16B-17. Tolls, rents, fees, charges and revenues.
§17-16B-18. Trust funds.
§17-16B-20. Exemption from taxes.

§17-16B-1. Creation of authority.
The West Virginia public port authority is hereby continued and shall be under the supervision of the secretary of the department of transportation pursuant to the provisions of chapter five-f of this code.

§17-16B-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 eleven members, including the transportation secretary, or his or her designee, who shall serve as the chairman of the public port authority, and ten individuals who shall be appointed by the governor with the advice and consent of the Senate: Provided, That no more than six 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. The directors shall appoint a person to serve as secretary and as treasurer. The person appointed as treasurer shall give a bond for the faithful performance of his or her duties as custodian of all funds, securities and other investments of the authority in an amount set by the board. 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 two members shall be appointed that have recognized ability and practical experience in transportation. At least two members may be appointed that have recognized ability and practical experience in banking and finance. At least one member may be appointed that has recognized ability and
practical experience in international trade. At least one member may be appointed that has recognized ability and practical experience in business management, economics or accounting. Two members shall be appointed to represent the public at large.

One ex officio member of the board shall be the secretary of the department of commerce, labor and environmental resources or his or her designee.

One ex officio member of the board shall be the director of the governor's office of community and industrial development or his or her designee.

(c) Any member of the board of directors of the public port authority, appointed pursuant to the provisions of this section prior to amendment thereto, and any member of the board of directors of the wayport authority, appointed under the provisions of section two, article sixteen-c of this chapter, prior to repeal of that section, and confirmed by the Senate of West Virginia, and serving in such capacity on the effective date of amendment to this section, shall serve as a member of the board of directors of the public port authority for the duration of the appointed term. Thereafter, their respective successors shall be appointed for terms of three years. Each member shall serve until a 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 connection with the performance of their duties as members.

(f) Six 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 six
members is required for the approval of any resolution authorizing the issuance of any bonds pursuant to this article.

(g) No vacancy in the membership of 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.

§17-16B-3. Executive director; appointment; powers and duties; compensation.

1 (a) The board of directors shall appoint an executive director of the authority.

(b) The executive director shall be paid a salary to be determined by the board of directors. The executive director shall be responsible for managing and administering the daily functions of the authority and for performing any and all other functions necessary or helpful for the effective functioning of the authority, together with all other functions and powers as may be delegated to him by the board. The executive director may, with the authorization of the board of directors, employ support staff as deemed necessary to carry out the duties and responsibilities of the authority.

(c) The chairman of the board shall serve as temporary director of the authority until appointment of the executive director pursuant to this section.

§17-16B-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:

(a) The word “authority” means the West Virginia public port authority as created and continued by
section one of this article.

(b) The words "operation fund" mean the special West Virginia public port authority operation fund as created by section seven of this article.

(c) The words "port" or "public port" mean ports, airports, wayports, terminals, buildings, roadways, rights-of-way, rails, rail lines, facilities for rail, water, highway or air transportation, and such structures, equipment, facilities or improvements as are necessary or incident thereto.

(d) 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.

(e) The words "public port development" or "public port project" mean any activities which are undertaken with respect to public ports.

§17-16B-6. Powers and duties of authority.

(a) The authority is granted the following powers and duties:

(1) The authority shall initiate meetings with political subdivisions of the state to assess specific transportation needs and shall determine the needs of the state as a whole in terms of transportation, as well as consider feasibility studies for the purpose of determining the best site locations for transportation centers, terminals, ports and harbors and foreign trade zones.

The authority shall give first consideration to selected high priority opportunities as set forth in the document entitled "Development of an Inland Port Authority", as submitted to the governor's office of community and industrial development on the second day of March, one thousand nine hundred eighty-nine.

(2) On or before the first day of December, one thousand nine hundred ninety-one, the authority shall
prepare and file a comprehensive report with the
governor and the Legislature setting forth the overall
strategic plan both short term and long term for
accomplishing the purposes set forth in this article.

(3) The public port authority shall coordinate with the
West Virginia parkways, economic development and
tourism authority or other parkways authority, estab-
lished pursuant to article sixteen-a, chapter seventeen of
this code, in the exercise of its powers and duties
hereunder and development of appropriate intermodal
transportation within the state.

(b) The authority has the following additional powers
and duties:

(1) The powers of a body corporate, including the
power to sue and be sued, to make contracts, and to
adopt and use a common seal and to alter the same as
may be deemed expedient;

(2) Acquire, purchase, install, lease, construct, own,
hold, operate, maintain, equip, use and control ports, as
defined herein, and such terminals, buildings, roadways,
rights-of-way, rails and such structures, equipment,
facilities or improvements as are necessary or incident
to carry out the provisions of this article, and in
connection therewith shall have the further right to
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 goods, wares and merchandise over,
along, upon or through the railway, highway, waterway
or airway or other conveyance of such transportation
system, excluding pipelines;

(3) To 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 to give such
evidences of indebtedness as may be required;
(4) To 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 board;

(5) To initiate preservation of railroad, waterway, highway and airway facilities, to promote economic development and tourism of a specific nature in this state;

(6) To 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) To enter into agreements, contracts or other transactions with any federal, state, county, municipal agency or private entity;

(8) To report annually to the Legislature by the first day of December of each year on the status of projects, operations, financial condition and other necessary information relating to the statewide tourist intermodal transportation system and public port authority activities;

(9) To enter into agreements or contracts with the West Virginia railroad maintenance authority for the preservation, operation and use of railroad lines;

(10) The authority is hereby designated and empowered to act on behalf of the state on submitting siting proposals for public ports;

(11) The authority is empowered to take all steps appropriate and necessary to effect siting, development and operation of public ports within the state;

(12) To construct, reconstruct, improve, maintain, repair and operate infrastructure projects at the designated port sites as determined by the public port authority;

(13) 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;

(14) The 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 authority, the authority has the right of
ement 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;

(15) The authority is hereby designated and empo-
wered to act on behalf of the state and to represent the
state in the planning, financing, development, construc-
tion and operation of any port project or any facility
related to any such 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 develop-
ment fund shall, subject to the provisions of article
eighteen, chapter thirty-one of the code of West Virgi-
nia, one thousand nine hundred thirty-one, as amended,
including, 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 any project
or any facility related to any 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;

(16) The authority shall initiate meetings with local
and area port authority districts, committees and
entities in the development of possible port site design-
nations. The authority shall seek coordination, coopera-
tion and feasibility studies from local and area port
authority districts, committees and entities;

(17) The authority shall take affirmative steps to
coordinate freely all aspects of the submission of a siting
proposal for any port project, and to coordinate fully the
development of any project or any facility related to any
project with the federal government agency;

(18) To do any and all things necessary to carry out
and accomplish the purposes of this article, including
issuing revenue bonds or requesting other appropriate
state agencies to issue and administer public port
revenue bonds to finance projects;

(19) To 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;

(20) To collect reasonable fees and charges in connec-
tion with making and servicing loans, notes, bonds,
obligations, commitments and other evidence of in-
deptedness, and in connection with providing technical,
consultive and project assistance services; and

(21) To do any and all things necessary to carry out
and accomplish the purposes of this article.

(c) Incidental to the development of a comprehensive
strategic plan for intermodal transportation, the
executive director and staff of the authority shall
analyze the shipment of products through the ports of
the state for the purpose of expediting such shipments,
and shall be authorized to collect and analyze such
information, which is maintained in the ordinary course of business by the person, firm or corporation providing such information, pertaining to the transportation of products which has been moved by rail, water, highway or air to and from points within and without this state:

(1) Any such information and data supplied to the executive director of the authority shall be for exclusive use of the executive director and the staff of the authority. Such information is deemed confidential and is not subject to disclosure under the freedom of information act. Neither the executive director nor any staff member of the authority shall publicly disclose this information and data to any member of the board of the authority, nor to any person, firm, corporation or agent. It shall be unlawful for any officer or employee of this state to divulge or make known in any manner any information obtained pursuant to this subsection or disclose information concerning the personal or business affairs of any individual or the business of any single firm or corporation, or disclose any particulars set forth or disclosed in any report or other information provided to the authority.

(2) Any officer or employee (or former officer or employee) of this state who violates this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.

(3) In carrying out the functions theretofore described, the authority shall be deemed to be performing an essential governmental function as an instrumentality of the state of West Virginia.

§17-16B-7. Special West Virginia public port authority operations fund.

There is hereby established a special West Virginia public port 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. On the effective date of the amendment to this section, the West Virginia wayport authority operations fund heretofore created shall be transferred and combined with the West Virginia public port authority operations fund.


The public port authority is hereby authorized to provide by resolution at one time or from time to time, for the issuance of public port revenue bonds of the state for the purpose of paying all or any part of the cost of one or more port 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 public port authority, at such price or prices and under such terms and conditions as may be fixed by the public port authority prior to the issuance of the bonds. The public port 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 public port authority, and the official seal of the public port authority shall be affixed to or printed on each bond, and attested, manually or by facsimile signature, by the secretary of the public port authority, and any coupons attached to any bond shall bear the manual or facsimile signature of the chairman of the public port 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 public port 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 public port 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 public port 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 public port
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 public port
authority may provide in the resolution authorizing the
issuance of such bonds or in the trust agreement
hereinafter mentioned securing the same. If the pro-
ceeds of the bonds of any issue, by error of estimates or
otherwise, shall be less than such cost, additional public
port 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 public
port 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
public port authority may also provide for the replace-
ment 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 proceed-
ings or the happening of any other conditions or things
than those proceedings, conditions or things which are
specifically required by this article.

§17-16B-16. Public port revenue bonds — Trust agree-
ments.

1 In the discretion of the public port authority any
public port bonds issued under the provisions of this
article may be secured by a trust agreement by and
between the public port 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. 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
public port authority in relation to the acquisition of
property and the construction, reconstruction, improve-
ment, 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 public
port 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 public port author-
ity 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.

§17-16B-17. Tolls, rents, fees, charges and revenues.

(a) The public port authority is hereby authorized to
fix, revise, charge and collect tolls for the use of each
public port 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
color, for the use of each port, public port, 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 adver-
tising 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 public port 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.

§17-16B-18. 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.


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 agreement or resolution to be performed by the public port authority or by any officer thereof, including the fixing, charging and collecting of tolls, rents, fees and charges.

§17-16B-20. 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 public port authority will constitute the performance of essential governmental functions, the public port authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the public port 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 public port 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 public port authority shall make an annual payment as provided
herein to the county commission of such county. Any public port 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 public port authority from collecting such in lieu of payment from any private party by contract or otherwise.


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 public port 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 public port 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 public port revenue bonds or revenue refunding bonds for any public port 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.

The public port authority is hereby authorized to provide by resolution for the issuance of public port 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 public port 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 public port authority is further authorized to provide by resolution for the issuance of public port refunding revenue bonds of the state for the combined purpose of two or more of the following: (a) Refunding any public port 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 public port 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 public port authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.

CHAPTER 138
(S. B. 383—By Senator Lucht)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]
b; and to amend article two, chapter eighteen of said code by adding thereto a new section, designated section five-c, all relating to missing children, and requiring that certain records be kept and information exchanged between the board of education, the state registrar of vital statistics and the division of public safety.

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; that article five, chapter sixteen of said code be amended by adding thereto a new section, designated section twelve-b; and that article two, chapter eighteen of said code be amended by adding thereto a new section, designated section five-c, all to read as follows:

Chapter
15. Public Safety.
18. Education.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.

(a) The West Virginia division of public safety shall have the mission of statewide enforcement of criminal 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

*Clerk's Note: This section was also amended by H. B. 2602 (Chapter 118), which passed subsequent to this act.
suspected of the commission of any felony or misdemeanor 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 apprehending any person violating any of the provisions of 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
56 violated the law may make complaint in writing before
57 any court or officer having jurisdiction and procure a
58 warrant for such offender, execute the same and bring
59 such person before the proper tribunal having jurisdict-
60 ion. He shall make return on all such warrants to such
61 tribunals and his official title shall be “member of the
62 division of public safety”. Members of the division of
63 public safety may execute any summons or process
64 issued by any tribunal having jurisdiction requiring the
65 attendance of any person as a witness before such
66 tribunal and make return thereon as provided by law,
67 and any return by a member of the division of public
68 safety showing the manner of executing such warrant
69 or process shall have the same force and effect as if
70 made by a sheriff.
71
72 (e) Each member of the division of public safety, when
73 called by the sheriff of any county, or when the governor
74 by proclamation so directs, shall have full power and
75 authority within such county, or within the territory
76 defined by the governor, to direct and command
77 absolutely the assistance of any sheriff, deputy sheriff,
78 chief of police, policeman, game and fish warden, and
79 peace officer of the state, or of any county or munici-
80 pality therein, or of any able-bodied citizen of the United
81 States, to assist and aid in accomplishing the purposes
82 expressed in this article. When so called, any officer or
83 person shall, during the time his assistance is required,
84 be for all purposes a member of the division of public
85 safety and subject to all the provisions of this article.
86
87 (f) The superintendent may also assign members of
88 the division to perform police duties on any turnpike or
89 toll road, or any section thereof, operated by the West
90 Virginia parkways, economic development and tourism
91 authority: Provided, That such authority shall reim-
92 burse the division of public safety for salaries paid to
93 such members, and shall either pay directly or reim-
94 burse the division for all other expenses of such group
95 of members in accordance with actual or estimated costs
96 determined by the superintendent.
97
98 (g) The division of public safety may develop proposals
99 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 per-
formed 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.

(j) By the first day of July, one thousand nine hundred
ninety-three, the superintendent shall establish a
network to implement reports of the disappearance of
children by local law-enforcement agencies to local
school division superintendents and the state registrar
of vital statistics. The network shall be designed to
establish cooperative arrangements between local law-
enforcement agencies and local school divisions concern-
ing reports of missing children and notices to law-
enforcement agencies of requests for copies of the
cumulative records and birth certificates of missing
children. The network shall also establish a mechanism
for reporting the identities of all missing children to the
state registrar of vital statistics.
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12b. Notation on birth records of missing children.

1 Upon receiving a report of the disappearance of any child born in this state, the state registrar shall indicate in a clear and conspicuous manner in the child's birth record that the child has been reported as missing, including the title and location of the law-enforcement agency providing the report. Upon receiving a request for any birth records containing a report of the disappearance of any child, the state registrar shall immediately notify the local law-enforcement agency which provided the missing child report. The state registrar shall transmit any relevant information concerning the applicant's identity, address and other pertinent data immediately to the relevant local law-enforcement agency. The state registrar shall retain the original written request until notified of the missing child's recovery or the child attains the age of eighteen. Upon notification that any missing child has been recovered, the state registrar shall remove the report of the disappearance from the child's birth record. The provisions of this section shall be implemented by the first day of July, one thousand nine hundred ninety-three.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5c. Birth certificate required upon admission to public school; required notice to local law-enforcement agency of missing children.

1 (a) No pupil shall be admitted for the first time to any public school in this state unless the person enrolling the pupil furnishes a certified copy of the pupil's birth record confirming the pupil's identity and age. If a certified copy of the pupil's birth record cannot be obtained, the person so enrolling the pupil shall submit an affidavit explaining the inability to produce a certified copy of the birth record: Provided, That if any person submitting such affidavit is in U.S. military
That sections one and two, article twenty-seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.

§16-27-1. Definitions.
§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

§16-27-1. Definitions.

As used in this article:

(1) “Byproduct material” means (i) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (ii) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(2) “Dispose” or “disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of a substance into or on any land, water or air;

(3) “Low-level waste” means radioactive waste that:

(A) Is neither high-level waste or transuranic, nor spent nuclear fuel, nor by-product material as defined in section 11 (e)(2) of the Atomic Energy Act of 1954, as amended; and

(B) Is any radioactive material that the United States nuclear regulatory commission classified as low-level radioactive waste or, after the first day of January, one thousand nine hundred eighty-nine: Provided, That any material classified as low-level radioactive waste on or after the first day of January, one thousand nine hundred eighty-nine, shall be considered low-level radioactive waste without regard to a nuclear regulatory commission determination that such material is below regulatory concern; and

(C) Is any radioactive material produced after the
first day of January, one thousand nine hundred eighty-nine, which would have been classified as a low-level radioactive waste, utilizing the standards in effect on that date, without regard to a determination by an agency of the United States government that such material is below regulatory concern;

(4) "Radioactive waste material" means any discarded radioactive material in the form of, or resulting from the use of, any byproduct material, source material or special nuclear material and includes low-level waste;

(5) "Source material" means (i) uranium or thorium, or any combination thereof, in any physical or chemical form; or (ii) ores which contain by weight one twentieth of one percent (0.05%) or more of (a) uranium, (b) thorium or (c) any combination thereof. Source material does not include special nuclear material;

(6) "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235; or (ii) any material artificially enriched by any of the foregoing but does not include source material;

(7) "Store" or "storage" means the containment of a substance, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal or transportation; and

(8) "Transport" or "transportation" means any movement of a substance and any loading, unloading or storage incidental thereto.

The governor shall have the authority to add, by executive order, to the listing of materials constituting "source material" or "special nuclear material" by including such additional like materials as may be determined by the federal Nuclear Regulatory Commission to constitute "source material" or "special nuclear material."

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

(a) No person shall store or dispose of any radioactive
waste material within the state: Provided, That the provisions of this section shall not be deemed to prohibit (1) the storage or disposal of such material produced within the state as a result of medical, educational, research or industrial activities and so stored or disposed of in compliance with all applicable state and federal laws, or (2) the transportation of such material out of or through the state when done in compliance with all applicable state and federal laws: Provided, however, That such waste from industrial activities shall not include, for the purpose of this article, such material produced from the operation of any nuclear power generation facility, nuclear processing facility, or nuclear reprocessing facility.

(b) The disposal of radioactive waste material in a solid waste facility or in a commercial solid waste facility, as defined in section four, article five-f, chapter twenty of this code, is prohibited.

CHAPTER 141

(Com. Sub. for S. B. 454—By Senators Wiedebusch, Macnaughtan, Brackenrich and Burdette, Mr. President)

[Passed March 8, 1991; 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 sixteen-a, relating to acquisition from the West Virginia railroad maintenance authority of a portion of the CSX railway system for the purpose of developing the “North Bend Rail Trail”; and authorizing the commissioner of the division of tourism and parks to develop, construct, operate and maintain bicycle and hiking trails, horseback trails, camping facilities and other compatible recreational and tourism facilities along the trail.

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,
to be amended by adding thereto a new section, designated
section sixteen-a, to read as follows:

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-16a. Acquisition of former railway system for
establishment of North Bend Rail Trail.

The commissioner may acquire from the West Virgi-
nia railroad maintenance authority approximately sixty
and fifty-seven one-hundredths miles of right-of-way of
the CSX railway system between Walker in Wood
County and Wilsonburg in Harrison County and related
property to be developed as the "North Bend Rail Trail":
Provided, That no state moneys may be used to purchase
the right-of-way or the related property. This acquired
property shall be operated under the authority of the
division of tourism and parks and used as an improve-
ment to North Bend State Park for:

(a) 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

(b) The development, construction, operation and
maintenance of bicycle and hiking trails, horseback
trails, camping facilities and other compatible recrea-
tional and tourism facilities to be so designated by the
commissioner.

CHAPTER 142

(S. B. 369—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 5, 1991: in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen,
chapter twenty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the membership of the railroad maintenance
authority.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY.

§29-18-4. West Virginia railroad maintenance authority created; organization of authority; appointment of members; term of office, compensation and expenses; director of authority.

There is hereby created the West Virginia railroad maintenance authority. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

The authority shall consist of seven members. The secretary of the department of transportation shall be a member ex officio. The other six members shall be appointed by the governor, by and with the advice and consent of the Senate, for a term of six years. Of the members of the authority first appointed, two shall be appointed for a term ending on the thirtieth day of June, one thousand nine hundred seventy-seven, two shall be appointed for a term ending two years thereafter and two shall be appointed for a term ending four years thereafter. A person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each authority member shall serve until the appointment and qualification of his successor. No more than three of the appointed authority members shall at any one time belong to the same political party. Appointed authority members may be reappointed to serve additional terms.

All members of the authority shall be citizens of the state. Each appointed member of the board, before entering upon his duties, shall comply with the require-
ments of article one, chapter six of this code and give
bond in the sum of twenty-five thousand dollars in the
manner provided in article two, chapter six of this code.
The governor may remove any authority member for
cause as provided in article six, chapter six of this code.

Annually the authority 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 authority. Four members of the authority
shall constitute a quorum and the affirmative vote of
four members shall be necessary for any action taken
by vote of the authority. No vacancy in the membership
of the authority shall impair the rights of a quorum by
such vote to exercise all the rights and perform all the
duties of the authority. The person appointed as
secretary-treasurer, including an authority member if
he is so appointed, shall give bond in the sum of fifty
thousand dollars in the manner provided in article two,
chapter six of this code.

The secretary of the department of transportation
shall not receive any compensation for serving as an
authority member. Each of the six appointed members
of the authority shall receive fifty dollars for each day
or substantial part thereof actually spent in attending
meetings of the board or in discharging or carrying out
his duties and work as a member of the board. Each of
the six appointed members shall be reimbursed for all
reasonable and necessary expenses actually incurred in
the performance of his duties as a member of such
authority. All such compensation and expenses incurred
shall be payable solely from funds of the authority or
from funds appropriated for such purpose by the
Legislature and no liability or obligation shall be
incurred by the authority beyond the extent to which
moneys are available from funds of the authority or
from such appropriations.

There shall also be a director of the authority
appointed by the authority.
CHAPTER 143
(Com. Sub. for S. B. 33—By Senators Pritt, M. Manchin, Blalnik and J. Manchin)

[Passed March 4, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to real estate brokers and real estate salespersons; setting forth when actions for fees, commissions or other compensation may be brought; providing for the suspension of a salesperson's license upon revocation of the employing broker's license; setting forth specifications of listing agreements; requiring broker or salesperson to disclose whom he or she represents; permitting party not represented by the broker or salesperson to terminate relationship upon such disclosure; specifying when delivery of offer and acceptance thereof shall be made; and requiring all terms and conditions of a transaction to be included in the offer to purchase

Be it enacted by the Legislature of West Virginia:

That section seventeen, article twelve, 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 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-17. Actions for commissions; revocation of broker's license as suspending salesperson's licenses; listing agreements; broker or salesperson to disclose agency status; purchase agreements.

1 No person, partnership, association or corporation
2 shall bring or maintain an action in any court of this
3 state for the recovery of a commission, a fee, or
4 compensation for any act done or service rendered, the
5 doing or rendering of which is prohibited under the
6 provisions of this article to other than licensed real
estate brokers, unless such person was duly licensed hereunder as a real estate broker at the time of the doing of such act or the rendering of such service.

(a) No real estate salesperson shall have the right to institute suit in his or her own name for the recovery of a fee, commission, or compensation for the services as a real estate salesperson, but any such action shall be instituted and brought by the broker employing such salesperson: Provided, That a real estate salesperson shall have the right to institute suit in his or her own name for the recovery of a fee, commission or compensation for services as a real estate salesperson due him or her from the broker by whom he or she is employed.

(b) The revocation of a broker's license shall automatically suspend every real estate salesperson's license granted to any person by virtue of his or her employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge if granted during the same year in which the original license was granted.

(c) A broker or salesperson who obtains a listing shall, at the time of securing such listing, give the person or persons signing such listing a true, legible copy thereof. Every listing agreement, exclusive or nonexclusive, shall have set forth in its terms a definite expiration date; it shall contain no provision requiring the party signing such listing to notify the broker of his or her intention to cancel such listing after such definite expiration date; however, an exclusive listing agreement may provide that upon the expiration of the exclusive feature the listing shall continue to a definite expiration date as a nonexclusive listing only.

(d) A broker or salesperson shall promptly, or at least prior to any purchaser signing a written offer to purchase, disclose in writing to all parties to a real estate transaction, on a form promulgated by the commission, whether the broker or salesperson represents the seller, the buyer, or both: Provided, That after such disclosure, but prior to any purchaser signing a
written offer to purchase, the party not represented by
the broker or salesperson may terminate, without
incurring any liability, his or her relationship with such
broker or salesperson.

(e) A broker or salesperson shall promptly tender to
the seller every written offer to purchase obtained on the
property involved and, upon obtaining a proper accep-
tance of the offer to purchase, shall promptly deliver
true executed copies of same, signed by the seller and
purchaser, to both purchaser and seller; all brokers and
salespersons shall make certain that all of the terms and
conditions of the real estate transaction are included in
such offer to purchase.

CHAPTER 144
(S. B. 32—By Senators Pritt, J. Manchin and M. Manchin)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections ten, eleven, twelve, twenty, twenty-
one and thirty-two, article fourteen, chapter thirty-seven
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; to amend and reenact sections
two, three, four, six, thirteen, twenty-eight, thirty,
thirty-one, forty and forty-four of said article, relating
to application, licensure and certification for real estate
appraisers; eliminating waiver of certain requirements
for licensure; definitions; extending date for compliance
with licensure and certification requirements if ex-
tended by applicable federal law; exemption for apprai-
sals of personal property and government officers or
employees; authorizing emergency rules; classification
of licensure and certification; qualifications for licensure
and certification; permitting transitional license if
either experience or education requirement is not met
in certain cases; requiring examination; increasing
certain fees; and licensure, certification, or registration
for temporary practice for nonresidents.
Be it enacted by the Legislature of West Virginia:

That sections ten, eleven, twelve, twenty, twenty-one and thirty-two, article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two, three, four, six, thirteen, twenty-eight, thirty, thirty-one, forty and forty-four of said article be amended and reenacted, all to read as follows:

ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§37-14-2. Definitions.
§37-14-3. Real estate appraiser license required.
§37-14-4. Exceptions to license or certification requirement.
§37-14-6. General powers and duties.
§37-14-13. Term of license or certification.
§37-14-30. Qualifications.
§37-14-31. Examination required.
§37-14-40. Licensure and certification fees.
§37-14-44. Licensure and certification of nonresidents.

§37-14-2. Definitions.

1. 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 "valuation report", "analysis report" or "review report". For the purposes of this article, 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 appraisal report that is certified as such by a state licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal report as "certified", such real estate appraiser must indicate which type of licensure or certification he or she holds. The certification of an appraisal report by a state licensed residential real estate appraiser or a state certified general 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 license as a state licensed residential real estate appraiser 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;
"Real property interests" means one or more defined interests, benefits or rights inherent in the ownership of real estate; and

(k) "Certified real estate appraiser" means a person who holds a current, valid certification as a state certified general real estate appraiser issued to him or her under the provisions of this article.

§37-14-3. Real estate appraiser license required.

(a) 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 being licensed or certified 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.

(b) Notwithstanding the provisions of subsection (a) herein, the real estate appraiser licensing and certification board may, by emergency rule, extend the date for complying with the provisions of this article in accordance with any extensions which may be provided under applicable federal law, except that the date for compliance set by emergency rule may not be extended beyond the thirty-first day of December, one thousand nine hundred ninety-one.

§37-14-4. Exceptions to license or certification requirement.

This article does not apply to:

(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;

(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;

(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;

(d) Appraisals of personal property, including, but not limited to, jewelry, household furnishings, vehicles, and manufactured homes not attached to real estate; and

(e) Any officer or employee of the United States, or of the state of West Virginia or a political subdivision thereof, when the employee or officer is performing his official duties: Provided, That such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in West Virginia or any subdivision thereof in connection with the appraisal of real estate or real property: Provided, however, That this exception shall not apply with respect to federally related transactions as defined in Title XI of the United States Code, entitled “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”.

§37-14-6. General powers and duties.

The board shall:

(a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;
(b) Establish examination specifications as prescribed herein and provide or procure appropriate examinations;

(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.  
Emergency rules are specifically authorized upon the  
effective date of this article and prior to the first day  
of July, one thousand nine hundred ninety-one. 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 partic-

ating 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.

§37-14-13. Term of license or certification.

If the board determines that an applicant meets the  
requirements of this article and is qualified to be  
licensed or certified, it shall issue a license or certifi-
cation 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.


There shall be two classifications of real estate  
appraisers:

(a) State licensed residential real estate appraiser. —  
The state licensed residential real estate appraiser  
classification shall consist of those persons who meet the  
requirements for licensure that relate to the appraisal  
of residential real estate of one to four units, when the  
value of the property appraised is less than one million  
dollars, a net operating income capitalization analysis is  
not required by the terms of the assignment, and if the  
value of the property appraised is over two hundred fifty
thousand dollars, the appraisal is noncomplex; and to
the appraisal of nonresidential real estate when the
value of the property appraised is less than one hundred
thousand dollars.

(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.

The board is authorized to establish by rules promul-
gated pursuant to the provisions of chapter twenty-nine-
a of this code such further classes or classifications as
may be required by applicable federal law.

Each application for licensure or certification and
each application to take an examination shall specify the
classification being applied for and, if applicable, the
class of licensure or certification previously granted.

§37-14-30. Qualifications.

(a) Residential classification. — As a prerequisite to
taking the examination for licensure as a state licensed
residential real estate appraiser, an applicant shall
present evidence satisfactory to the board that he or she
has satisfied the criteria, including education and
experience criteria, for licensure of licensed appraisers
issued by the appraisal qualifications board of the
appraisal foundation, which criteria shall be incorpo-
rated in regulations of the board adopted pursuant to
the provisions of chapter twenty-nine-a of this code.

(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 has satisfied the criteria, including education and
experience criteria, for certification of general apprais-
ers issued by the appraisal qualifications board of the
appraisal foundation, which criteria shall be incorpo-
rated in regulations of the board adopted pursuant to
the provisions of chapter twenty-nine-a of this code.

(c) Transitional license. — The board may extend the
time for satisfying the requirements of subdivision (a) of this section with respect to either education requirements or experience requirements, but not both education and experience requirements, and may issue a transitional license as a state licensed residential real estate appraiser so long as: (1) All other criteria for licensure are satisfied; (2) the applicant passes the examination required pursuant to section thirty-one of this article; and (3) the educational deficiency is corrected within one year of licensure, or the experience deficiency, within two years.

§37-14-31. Examination required.

1 An original license or certification as a state licensed or certified real estate appraiser shall not be issued to any person who has not passed an examination administered through the board, which examination is consistent with the uniform state examination for licensure or certification issued or endorsed by the appraisal qualifications board of the appraisal foundation.

9 The board may offer for the benefit of prospective applicants for licensure or certification a program of instruction and preparation for the examination.

§37-14-40. Licensure and certification fees.

1 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:

5 (1) A license application fee of fifty dollars;

6 (2) A license examination fee of fifty dollars;

7 (3) A license fee of three hundred twenty-five dollars;

8 (4) A delinquent license fee of an additional one hundred dollars;

10 (5) A registration fee for temporary practice of one hundred dollars;

12 (6) A certification application fee of seventy-five dollars;

14 (7) A certification examination fee of fifty dollars;
(8) A certification fee of five hundred twenty-five dollars;

(9) A delinquent certification fee of an additional one hundred dollars;

(10) The board may 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 federal financial institution examination council on an annual basis.

All fees and revenues collected by the board pursuant to this article 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.

§37-14-44. Licensure and certification of nonresidents.

(a) Consent to service of process. — Each applicant for licensure or certification and each registrant for temporary practice within this state 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 licensure and certification. — A nonresident of this state who has complied with the provisions of subsection (a) of this section may obtain a license or certification as a real estate appraiser in this state by complying with all of the provisions of this article relating to the licensing or certification of real estate appraisers.

(c) Temporary practice. — A nonresident of this state who has complied with the provisions of subsection (a) of this section may perform a contract relating to the appraisal of real estate or real property in this state by registering with the board. An applicant for temporary registration shall:
(1) Submit an application on a form approved by the board;
(2) Submit evidence that he or she is licensed or certified to appraise real estate and real property in his or her state of domicile;
(3) Submit evidence that the applicant's business in the state is of a temporary nature;
(4) Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile; and
(5) Pay the temporary registration fee set forth in section forty of this article.

(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 or certification laws for real estate appraisers, an applicant for licensure or certification in this state who is licensed or certified under the laws of such other state, territory or district may obtain a license or certificate 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 or certified 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 licensure or certification.

CHAPTER 145
(S. B. 71—By Senator J. Manchin)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salvage yards.

Be it enacted by the Legislature of West Virginia:
That section two, article twenty-three, chapter seventeen of
the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. SALVAGE YARDS.


1 As used in this article:

2 (a) "Salvage" means old or scrap brass, copper, iron,
3 steel, other ferrous or nonferrous materials, batteries or
4 rubber and any junked, dismantled or wrecked machin-
5 ery, machines or motor vehicles or any parts of any
6 junked, dismantled or wrecked machinery, machines or
7 motor vehicles.

8 (b) "Salvage yard" means any place which is maint-
9ained, operated or used for the storing, keeping,
10 buying, selling or processing of salvage, or for the
11 operation and maintenance of a motor vehicle
12 graveyard.

13 (c) "Abandoned salvage yard" means any unlicensed
14 salvage yard or any salvage yard that was previously
15 licensed but upon which the license has not been
16 renewed for more than one year.

17 (d) "Fence" means an enclosure, barrier or screen
18 constructed of materials or consisting of plantings,
19 natural objects or other appropriate means approved by
20 the commissioner and located, placed or maintained so
21 as effectively to screen at all times salvage yards and
22 the salvage therein contained from the view of persons
23 passing upon the public roads of this state.

24 (e) "Owner or operator" includes an individual, firm,
25 partnership, association or corporation or the plural
26 thereof.

27 (f) "Commissioner" means the commissioner of the
28 West Virginia department of highways.

29 (g) "Residential community" means an area wherein
30 five or more occupied private residences are located
31 within any one thousand foot radius.

32 (h) "Occupied private residence" means a private
33 residence which is occupied for at least six months each
34 year.
CHAPTER 146
(Com. Sub. for S. B. 120—By Senators Spears and Brackenrich)

[Passed March 9, 1991; in effect ninety days from passage. 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; and 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; and the 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; and the 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; and the West Virginia alcoholic beverage
control licensing advisory board.

(5) On the first day of July, one thousand nine hundred
ninety-five: Beautification commission.

(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 hundred
eighty-seven: Civil service commission advisory board;
and the motorcycle safety standards and specifications
board.

(8) On the first day of July, one thousand nine hundred
eighty-eight: Labor management relations board;
records management and preservation advisory commit-
tee; 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; and the forest industries
industrial foundation.

(11) On the first day of July, one thousand nine
hundred ninety-one: The following divisions or pro-
grams of the department of agriculture: Interagency
committee on pesticides.

(12) On the first day of July, one thousand nine
hundred ninety-two: State water resources board; water
resources division, department of natural resources;
whitewater 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; public service commission; family protec-
tion services board; board of examiners of land survey-
ors; legislative oversight commission on education
accountability; West Virginia ethics commission; family
law masters system; state lottery commission; the
following divisions or programs of the department of
agriculture: Soil conservation committee, rural resource
division, meat inspection program; women's commission;
and the child advocate office of the department of health
and human resources.

(13) On the first day of July, one thousand nine
hundred ninety-three: Commission on uniform state
laws; state structural barriers compliance board; the oil
and gas inspectors examining board; the tree fruit
industry self-improvement program; the oil and gas
conservation commission; and the council of finance and
administration.

(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
closest commission; the division of labor; division of
tourism and parks; division of corrections; and the
veteran's council.

(15) On the first day of July, one thousand nine
hundred ninety-five: Emergency medical services
advisory council; commission on charitable organiza-
tions; information system advisory commission; West
Virginia labor-management council; 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; state geological
and economic survey; division of culture and history;
and the board of investments.

(17) On the first day of July, one thousand nine
hundred ninety-seven: The driver's licensing advisory
board; department of health and human resources; West
Virginia health care cost review authority; and the
division of personnel.
AN ACT to amend and reenact section eighteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the termination date of the division of tourism and parks.

Be it enacted by the Legislature of West Virginia:

That section eighteen, 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 TOURISM & PARKS.

§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-four, in accordance with the provisions of article ten, chapter four of this code.

CHAPTER 148
(H. B. 2232—By Delegates J. Martin and Schadler)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the labor-management council.

Be it enacted by the Legislature of West Virginia:

That section six, article four, 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 4. LABOR-MANAGEMENT COUNCIL.

§5B-4-6. Duration of council.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia labor-management council shall continue to exist until the first day of July, one thousand nine hundred ninety-five, to allow for the completion of an audit by the joint committee on government operations.

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CHAPTER 149
(H. B. 2223—By Delegates Love and J. Martin)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article one, chapter nine-a; article one-b, chapter twenty-one; section four, article five-a, chapter twenty-one; section four, article fifteen, chapter twenty-nine; and article eleven, chapter thirty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of code sections relating to agencies terminated following a performance and fiscal audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of sections relating to veterans' affairs advisory council; West Virginia labor management relations board; minimum wage rate board; mental retardation advisory committee; and the savings and loan association of the state of West Virginia.

Section eleven, article one, chapter nine-a; article one-b, chapter twenty-one; section four, article five-a, chapter twenty-one; section four, article fifteen, chapter twenty-nine; and article eleven, chapter thirty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.
CHAPTER 150
(H. B. 2235—By Delegates Love and Wallace)

[Passed February 12, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the rural resources division, now named and known as the marketing and development division.

Be it enacted by the Legislature of West Virginia:
That section three-a, article one, 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 1. DEPARTMENT OF AGRICULTURE.
§19-1-3a. Rural resources division continued.

Pursuant to the provisions of section four, article ten, chapter four of this code, the rural resources division which has been known as the marketing and development division since one thousand nine hundred eighty-seven, 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.

CHAPTER 151
(H. B. 2225—By Delegates J. Martin and Wallace)

[Passed February 12, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state soil conservation committee.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.


(a) There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this article, the state soil conservation committee. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the department of natural resources; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members thus appointed shall be four years, except that of the first members so appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules and regulations as may be necessary for the execution of its functions under this article.

(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such
legal services as it may require. It shall have authority
to delegate to its chairman, to one or more of its
members, or to one or more agents or employees, such
powers and duties as it may deem proper. The commit-
tee is empowered to secure necessary and suitable office
accommodations, and the necessary supplies and equip-
ment. Upon request of the committee, for the purpose
of carrying out any of its functions, the supervising
officer of any state agency, or of any state institution of
learning shall, insofar as may be possible, under
available appropriations, and having due regard to the
needs of the agency to which the request is directed,
assign or detail to the committee, members of the staff
or personnel of such agency or institution of learning,
and make such special reports, surveys or studies as the
committee may request.

(c) A member of the committee shall hold office so
long as he shall retain the office by virtue of which he
shall be serving on the committee. A majority of the
committee shall constitute a quorum, and the concurre-
rence of a majority in any matter within their duties
shall be required for its determination. The chairman
and members of the committee shall receive no compen-
sation for their services on the committee, but shall be
entitled to expenses, including traveling expenses,
necessarily incurred in the discharge of their duties on
the committee. The committee shall provide for the
execution of surety bonds for all employees and officers
who shall be entrusted with funds or property; shall
provide for the keeping of a full and accurate public
record of all proceedings and of all resolutions, regula-
tions and orders issued or adopted; and shall provide for
an annual audit of the accounts of receipts and
disbursements.

(d) In addition to the duties and powers hereinafter
conferred upon the state soil conservation committee, it
shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to
the supervisors of soil conservation districts, organized
as provided hereinafter, in the carrying out of any of
their powers and programs;
(2) To keep the supervisors of each of the several
districts, organized under the provisions of this article,
informed of the activities and experience of all other
districts organized hereunder, and to facilitate an
interchange of advice and experience between such
districts and cooperation between them;

(3) To coordinate the programs of the several soil
conservation districts organized hereunder so far as this
may be done by advice and consultation;

(4) To secure the cooperation and assistance of the
United States and any of its agencies, and of agencies
of this state, in the work of such districts;

(5) To disseminate information throughout the state
concerning the activities and programs of the soil
conservation districts organized hereunder, and to
encourage the formation of such districts in areas where
their organization is desirable;

(6) To accept and receive donations, gifts, contribu-
tions, grants and appropriations in money, services,
materials or otherwise, from the United States or any
of its agencies, from the state of West Virginia, or from
other sources, and to use or expend such money,
services, materials or other contributions in carrying out
the policy and provisions of this article, including the
right to allocate such money, services or materials in
part to the various soil conservation districts created by
this article in order to assist them in carrying on their
operations;

(7) To obtain options upon and to acquire by purchase,
exchange, lease, gift, grant, bequest, devise or other-
wise, any property, real or personal, or rights or
interests therein; to maintain, administer, operate and
improve any properties acquired, to receive and retain
income from such property and to expend such income
as required for operation, maintenance, administration
or improvement of such properties or in otherwise
carrying out the purposes and provisions of this article;
and to sell, lease or otherwise dispose of any of its
property or interests therein in furtherance of the
purposes and the provisions of this article. Money
114 received from the sale of land acquired in the small
115 watershed program shall be deposited in the special
116 account of the state soil conservation committee and
117 expended as herein provided.

118 Pursuant to the provisions of section four, article ten,
119 chapter four of this code, the state soil conservation
120 committee shall continue to exist until the first day of
121 July, one thousand nine hundred ninety-two, to allow for
122 the completion of an audit by the joint committee on
123 government operations.

CHAPTER 152
(H. B. 2243—By Delegates Flanigan and Love)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight,
chapter twenty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to continuation of the West Virginia oil and gas
conservation commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-4. Oil and gas conservation commissioner and
commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) There is hereby continued as provided for in
2 subsection (h) of this section, the “West Virginia Oil and
3 Gas Conservation Commission” which shall be composed
4 of five members. The commissioner of the department
5 of energy and the director for the division of oil and gas
shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the Senate. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in full-time employment in an activity under the jurisdiction of the public service commission or the federal energy regulatory commission. As soon as practical after appointment of the members of the commission, the governor shall call a meeting of the commission to be convened at the state capitol for the purpose of organizing and electing a chairman.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until his successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by him for the unexpired term of the member whose office shall be vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner. Notification of each meeting shall be given in writing to each member by the chairman at least five days in
advance of the meeting. Any three members, one of which may be the chairman, shall constitute a quorum for the transaction of any business as herein provided for. A majority of the commission shall be required to determine any issue brought before it.

(d) Each member of the commission appointed by the governor shall receive thirty-five dollars per diem not to exceed one hundred days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

(e) The commission shall appoint the oil and gas conservation commissioner, fix his salary within available funds, and advise him regarding his duties and authority under this article and consult with him prior to his reaching any final decisions and entering orders hereunder. However, the commissioner has full and final authority under this article with the commission serving in an advisory capacity to him. The commissioner shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry.

(f) The oil and gas commissioner is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the commissioner shall have jurisdiction and authority over all persons and property necessary therefor. The commissioner is authorized to make such investigation of records and facilities as he deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commissioner's duty to prevent waste shall be paramount. He shall serve as secretary of the oil and gas conservation commission.

(g) Without limiting his general authority, the commissioner shall have specific authority to:
88  (1) Regulate the spacing of deep wells;
89  (2) Make and enforce reasonable rules and regulations
90 and orders reasonably necessary to prevent waste,
91 protect correlative rights, govern the practice and
92 procedure before the commissioner and otherwise
93 administer the provisions of this article;
94  (3) Issue subpoenas for the attendance of witnesses
95 and subpoenas duces tecum for the production of any
96 books, records, maps, charts, diagrams and other
97 pertinent documents, and administer oaths and affirma-
98 tions to such witnesses, whenever, in the judgment of the
99 commissioner, it is necessary to do so for the effective
100 discharge of his duties under the provisions of this
101 article; and
102  (4) Serve as technical advisor regarding oil and gas
103 to the Legislature, its members and committees, to the
104 director for the division of oil and gas, to the department
105 of energy and to any other agency of state government
106 having responsibility related to the oil and gas industry.
107  Pursuant to the provisions of section four, article ten,
108 chapter four of this code, the oil and gas conservation
109 commission shall continue to exist until the first day of
110 July, one thousand nine hundred ninety-three, to allow
111 for the completion of an audit by the joint committee on
112 government operations.

CHAPTER 153
(H. B. 2228—By Delegates Flanigan and Schadler)

[Passed February 12, 1991; 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 continuation of 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-four, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 154
(H. B. 2144—By Delegates Love and Schadler)

[Passed February 19, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state geological and economic survey.

Be it enacted by the Legislature of West Virginia:

That section four, article two, 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 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-4. State geological and economic survey; director.

1 Pursuant to the provisions of section four, article ten, chapter four of this code, the state geological and economic survey shall continue to exist until the first day of July, one thousand nine hundred ninety-six, to allow for the completion of an audit by the joint committee on government operations. The governor shall appoint as director of the survey a geologist of established reputation. The director may employ such assistants and employees as he may deem necessary. He
shall also determine the compensation of all persons employed by the survey, and may remove them at pleasure.

The director may set such reasonable fees as may be necessary to recover additional costs incurred in performing geological and analytical analyses. These fees shall be deposited in the state treasury in a special revenue account, to be known as the "Geological and Analytical Services Fund." The director is hereby authorized to expend such funds, as are appropriated by the Legislature, from this fund for the purpose of defraying said costs.

CHAPTER 155
(S. B. 100—By Senators Spears and Brackenrich)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, 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 five-a, relating to placing the division of personnel under sunset review as provided in article ten, chapter four of this code.

Be it enacted by the Legislature of West Virginia:

That article six, 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 five-a, to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.
§29-6-5a. Termination of division.

The division of personnel shall be terminated by the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-seven, unless sooner terminated or unless continued and reestablished pursuant to that article.
CHAPTER 156
(S. B. 97—By Senators Spears, Brackenrich, Hawse and J. Manchin)

[Passed February 11, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the women's commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN'S COMMISSION.

§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses.

1 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:

2 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.

3 Each ex officio member may designate one representative employed by his or her department to meet with the commission in his or her absence. The governor shall appoint the additional eleven members, by and with the advice and consent of the Senate, from among the citizens of the state. The governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning the first day of July, one thousand nine hundred seventy-seven, three to serve for a term of one year, four to serve for a term of two years, and the remaining four to serve

*Clerk's Note: This section was also amended by H. B. 2809 (Chapter 173), which passed subsequent to this act.
for a term of three years. The successors of the members initially appointed as provided herein shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor.

No member may receive any salary for his or her services, but each may be reimbursed for actual and necessary expenses incurred in the performance of his or her duties out of funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.

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-two, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 157
(H. B. 2146—By Delegates Flanigan and Love)

[Passed February 19, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state lottery commission.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article twenty-two, 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 22. STATE LOTTERY ACT.


Pursuant to the provisions of section four, article ten, chapter four of this code, the state lottery 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.

CHAPTER 158

(H. B. 2213—By Delegates Love and J. Martin)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the family law masters system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-12. Termination of family law masters system by law.

Pursuant to the provisions of section four, article ten, chapter four of this code, the family law masters system 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.
CHAPTER 159
(S. B. 579—By Senator Sharpe)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections nine-a, thirteen and thirty-nine, article three, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, eight, nine, ten, twelve, fifteen, seventeen, eighteen, nineteen, twenty-two, twenty-six, twenty-eight and forty of said article, all relating to surface coal mining generally; repealing provisions providing for two acre exemptions, repealing the pilot program for growing of grapes; repealing temporary power to grant permits pending primacy approval; amending definitions; reducing probationary period for surface-mining reclamation supervisors and inspectors; relating to approval of a successor in interest to a transfer of a permit; requiring requests for extensions of permits be timely made; increasing minimum tonnage for small operator assistance; correcting a cross reference; measures to avoid acid or other toxic mine drainage; amending notification requirements for blasting; variances for reclamation requirements, termination of permits not commenced within three years, underground workings, extensions; durability testing for durable rock; variances, promulgation of rules; correcting cross reference; safety of citizens on inspections; mandatory notices of violations; extension of abatement periods; civil penalties; suspension of permits; requests for informal conferences or formal hearings; time for decisions on temporary relief requests; completeness and accuracy of permit applications and burden of proof; deletion of limitations on ownership or control on revocation or forfeiture of a permit; permit revisions, requirements; providing that certain operations are not exempt from article; relating to areas unsuitable for mining, right to petition; surface mining operations not subject to article; special permits, removal of coal refuse piles; and permitting authority of commissioner.
Be it enacted by the Legislature of West Virginia:

That sections nine-a, thirteen and thirty-nine, article three, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, five, eight, nine, ten, twelve, fifteen, seventeen, eighteen, nineteen, twenty-two, twenty-six, twenty-eight and forty of said article be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§22A-3-3. Definitions.

§22A-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

§22A-3-9. Permit application requirements and contents.

§22A-3-10. Reclamation plan requirements.

§22A-3-12. General environmental protection performance standards for surface mining; variances.

§22A-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.

§22A-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.

§22A-3-18. Approval; denial; revision and prohibition of permit.

§22A-3-19. Permit revision and renewal requirements; incidental boundary revisions; requirements for transfer; assignment and sale of permit rights; and operator reassignment.

§22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

§22A-3-26. Surface-mining operations not subject to article.

§22A-3-28. Special permits for reclamation of existing abandoned coal processing waste piles.

§22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; national pollutant discharge elimination system; effective date of section.

§22A-3-3. Definitions.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a
manner so that the treated water shall not violate the
effluent limitations or cause a violation of the water
quality standards established for the river, stream or
drainway into which such water is released.

(b) "Affected area" means, when used in the context
of surface-mining activities, all land and water resour-
ces within the permit area which are disturbed or
utilized during the term of the permit in the course of
surface-mining and reclamation activities. "Affected
area" means, when used in the context of underground
mining activities, all surface land and water resources
affected during the term of the permit: (1) By surface
operations or facilities incident to underground mining
activities; or (2) by underground operations.

(c) "Adjacent areas" means, for the purpose of permit
application, renewal, revision, review and approval,
those land and water resources, contiguous to or near
a permit area, upon which surface-mining and reclama-
tion operations conducted within a permit area during
the life of such operations may have an impact.
"Adjacent areas" means, for the purpose of conducting
surface-mining and reclamation operations, those land
and water resources contiguous to or near the affected
area upon which surface-mining and reclamation
operations conducted within a permit area during the
life of such operations may have an impact.

(d) "Applicant" means any person who has or should
have applied for any permit pursuant to this article.

(e) "Approximate original contour" means that surface
configuration achieved by the backfilling and grading
of the disturbed areas so that the reclaimed area,
including any terracing or access roads, closely resem-
bles the general surface configuration of the land prior
to mining and blends into and complements the drain-
age pattern of the surrounding terrain, with all
highwalls and spoil piles eliminated: Provided, That
water impoundments may be permitted pursuant to
subdivision (8), subsection (b), section twelve of this
article: Provided, however, That minor deviations may
be permitted in order to minimize erosion and sedimen-
(f) "Assessment officer" means an employee of the department, other than a surface-mining reclamation supervisor, inspector or inspector-in-training, appointed by the commissioner to issue proposed penalty assessments and to conduct informal conferences to review notices, orders and proposed penalty assessments.

(g) "Breakthrough" means the release of water which has been trapped or impounded, or the release of air into any underground cavity, pocket or area as a result of surface-mining operations.

(h) "Coal processing wastes" means earth materials which are or have been combustible, physically unstable or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal processing plants after physical or chemical processing, cleaning or concentrating of coal.

(i) "Commissioner" means the commissioner of the department of energy or his or her authorized agent.

(j) "Department" means the department of energy.

(k) "Director" means the director of the division of mines and minerals.

(l) "Disturbed area" means an area where vegetation, topsoil or overburden has been removed or placed by surface-mining operations, and reclamation is incomplete.

(m) "Division" means the division of mines and minerals of the department of energy.

(n) "Imminent danger to the health or safety of the public" means the existence of such condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or
serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

(o) “Minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

(p) “Operation” means those activities conducted by an operator who is subject to the jurisdiction of this article.

(q) “Operator” means any person who is granted or who should obtain a permit to engage in any activity covered by this article and any rule promulgated hereunder and includes any person who engages in surface mining or surface mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to Public Law 95-87.

(r) “Permit” means a permit to conduct surface-mining operations pursuant to this article.

(s) “Permit area” means the area of land indicated on the approved proposal map submitted by the operator as part of his application showing the location of perimeter markers and monuments and shall be readily identifiable by appropriate markers on the site.

(t) “Permittee” means a person holding a permit issued under this article.

(u) “Person” means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(v) “Prime farmland” has the same meaning as that prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes and as published in the federal register.
SURFACE MINING

(w) "Surface mine", "surface mining" or "surface-mining operations" means:

1. Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of section fourteen of this article, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge therefrom. Such activities include: Excavation for the purpose of obtaining coal, including, but not limited to, such common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

2. The areas upon which the above activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities: Provided, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article.

(x) "Underground mine" means the surface effects associated with the shaft, slopes, drifts or inclines connected with excavations penetrating coal seams or strata and the equipment connected therewith which
contribute directly or indirectly to the mining, preparation or handling of coal.

(y) "Significant, imminent environmental harm to land, air or water resources" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term "environmental harm" means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife and fish, and the environmental harm is imminent if a condition or practice exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the abatement time set by the commissioner. An environmental harm is significant if that harm is appreciable and not immediately repairable.

§22A-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The commissioner shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person shall be eligible for such appointment until he or she has served in a probationary status for a period of six months to the satisfaction of the commissioner.

Every surface-mining reclamation supervisor shall be paid not less than thirty thousand dollars per year. Every surface-mining reclamation inspector shall be paid not less than twenty-five thousand dollars per year.

§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

No person may engage in surface-mining operations unless such person has first obtained a permit from the commissioner in accordance with the following:
(a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after that approval.

(b) No later than eight months after the secretary’s approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the commissioner: Provided, That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502 (c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary’s approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the commissioner.

(c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the commissioner may extend a permit for such longer term: Provided, however, That subject to the prior approval of the commissioner, with such approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining and reclamation plan of the original permittee.
until such successor's permit application or application for transfer is granted or denied.

(d) Proof of insurance shall be required on an annual basis.

(e) A permit shall terminate if the permittee has not commenced the surface-mining operations covered by such permit within three years of the date the permit was issued: Provided, That the commissioner may grant reasonable extensions of time upon a timely showing that such extensions are necessary by reason of litigation precluding such commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface-mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(f) Each application for a new surface-mining permit filed pursuant to this article shall be accompanied by a fee of one thousand dollars. All permit fees and renewal fees provided for in this section or elsewhere in this article shall be collected by the commissioner and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the commissioner, for the administration of this article.

(g) Prior to the issuance of any permit, the commissioner of energy shall ascertain from the commissioner of labor compliance with section fourteen, article five, chapter twenty-one of this code. Upon issuance of the permit, the commissioner of energy shall forward a copy to the commissioner of labor, who shall assure continued compliance under such permit.

§22A-3-9. Permit application requirements and contents.

(a) The surface-mining permit application shall contain:
(1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the property, surface and mineral, to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator, if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: Provided, That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in subdivision (6) of this subsection;

(3) A statement of any current surface-mining permits held by the applicant in the state and the permit number and each pending application;

(4) If the applicant is a partnership, corporation, association or other business entity, the following where applicable: The names and addresses of every officer, partner, resident agent, director or person performing a function similar to a director, together with the names and addresses of any person owning of record ten percent or more of any class of voting stock of the applicant; and a list of all names under which the applicant, officer, director, partner or principal shareholder previously operated a surface-mining operation in the United States within the five-year period preceding the date of submission of the application;

(5) A statement of whether the applicant, or any officer, partner, director, principal shareholder of the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, has ever been an officer, partner, director or principal shareholder in a company which has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been
permanently suspended or revoked or has had a mining
bond or similar security deposited in lieu of bond
forfeited and, if so, a brief explanation of the facts
involved;

(6) A copy of the applicant's advertisement to be
published in a newspaper of general circulation in the
locality of the proposed permit area at least once a week
for four successive weeks. The advertisement shall
contain in abbreviated form the information required by
this section including the ownership and map of the
tract location and boundaries of the proposed site so that
the proposed operation is readily locatable by local
residents, the location of the office of the division of
energy where the application is available for public
inspection and stating that written protests will be
accepted by the commissioner until a certain date which
shall be at least thirty days after the last publication of
the applicant's advertisement;

(7) A description of the type and method of surface-
mining operation that exists or is proposed, the engi-
eering techniques used or proposed, and the equipment
used or proposed to be used;

(8) The anticipated starting and termination dates of
each phase of the surface-mining operation and the
number of acres of land to be affected;

(9) A description of the legal documents upon which
the applicant bases his legal right to enter and conduct
surface-mining operations on the proposed permit area
and whether that right is the subject of pending court
litigation: Provided, That nothing in this article may be
construed as vesting in the commissioner the jurisdic-
tion to adjudicate property-rights disputes;

(10) The name of the watershed and location of the
surface stream or tributary into which surface and pit
drainage will be discharged;

(11) A determination of the probable hydrologic
consequences of the mining and reclamation operations,
both on and off the mine site, with respect to the
hydrologic regime, quantity and quality of water in
surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the commissioner of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: Provided, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: Provided, however, That the permit application shall not be approved until the information is available and is incorporated into the application;

(12) Accurate maps to an appropriate scale clearly showing: (A) The land to be affected as of the date of application; (B) the area of land within the permit area upon which the applicant has the legal right to enter and conduct surface-mining operations; and (C) all types of information set forth on enlarged topographical maps of the United States geological survey of a scale of 1:24,000 or larger, including all man-made features and significant known archaeological sites existing on the date of application. In addition to other things specified by the commissioner, the map shall show the boundary lines and names of present owners of record of all surface areas abutting the proposed permit area and the location of all structures within one thousand feet of the proposed permit area;

(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the commissioner, showing pertinent elevation and location of test borings or core samplings, where required by the commissioner, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the
123 stratum immediately beneath the coal seam to be mined;
124 (E) all mineral crop lines and the strike and dip of the
125 coal to be mined, within the area of land to be affected;
126 (F) existing or previous surface-mining limits; (G) the
127 location and extent of known workings of any under-
128 ground mines, including mine openings to the surface;
129 (H) the location of any significant aquifers; (I) the
130 estimated elevation of the water table; (J) the location
131 of spoil, waste or refuse areas and topsoil preservation
132 areas; (K) the location of all impoundments for waste or
133 erosion control; (L) any settling or water treatment
134 facility or drainage system; (M) constructed or natural
135 drainways and the location of any discharges to any
136 surface body of water on the area of land to be affected
137 or adjacent thereto; and (N) adequate profiles at
138 appropriate cross sections of the anticipated final
139 surface configuration that will be achieved pursuant to
140 the operator's proposed reclamation plan;
141
142 (14) A statement of the result of test borings or core
143 samples from the permit area, including: (A) Logs of the
144 drill holes; (B) the thickness of the coal seam to be mined
145 and analysis of the chemical and physical properties of
146 the coal; (C) the sulfur content of any coal seam; (D)
147 chemical analysis of potentially acid or toxic forming
148 sections of the overburden; and (E) chemical analysis of
149 the stratum lying immediately underneath the coal to
150 be mined: Provided, That the provisions of this subdi-
151 vision may be waived by the commissioner with respect
152 to the specific application by a written determination
153 that such requirements are unnecessary;
154
155 (15) For those lands in the permit application which
156 a reconnaissance inspection suggests may be prime
157 farmlands, a soil survey shall be made or obtained
158 according to standards established by the secretary of
159 agriculture in order to confirm the exact location of such
160 prime farmlands;
161
162 (16) A reclamation plan as presented in section ten of
163 this article;
164
165 (17) Information pertaining to coal seams, test
166 borings, core samplings or soil samples as required by
this section shall be made available to any person with
an interest which is or may be adversely affected:

Provided, That information which pertains only to the
analysis of the chemical and physical properties of the
coal, except information regarding mineral or elemental
content which is potentially toxic to the environment,
shall be kept confidential and not made a matter of
public record;

(18) When requested by the commissioner, the clima-
tological factors that are peculiar to the locality of the
land to be affected, including the average seasonal
precipitation, the average direction and velocity of
prevailing winds, and the seasonal temperature ranges;

and

(19) Other information that may be required by rules
and regulations reasonably necessary to effectuate the
purposes of this article.

(b) If the commissioner finds that the probable total
annual production at all locations of any coal surface-
mining operator will not exceed three hundred thousand
tons, the determination of probable hydrologic conse-
quences and the statement of the result of test borings
or core samplings shall, upon the written request of the
operator, be performed by a qualified public or private
laboratory designated by the commissioner and a
reasonable cost of the preparation of such determination
and statement shall be assumed by the division from
funds provided by the United States department of the
interior pursuant to Public Law 95-87.

(c) Before the first publication of the applicant's
advertisement, each applicant for a surface-mining
permit shall file, except for that information pertaining
to the coal seam itself, a copy of the application for
public inspection in the nearest office of the division of
energy as specified in the applicant's advertisement.

(d) Each applicant for a permit shall be required to
submit to the commissioner as a part of the permit
application a certificate issued by an insurance company
authorized to do business in this state covering the
surface-mining operation for which the permit is sought,
or evidence that the applicant has satisfied state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(e) Each applicant for a surface-mining permit shall submit to the commissioner as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards.

(f) The applicant shall file as part of his permit application a schedule listing all notices of violation, bond forfeitures, permit revocations, cessation orders or permanent suspension orders resulting from a violation of Public Law 95-87, this article or any law or regulation of the United States or any department or agency of any state pertaining to air or environmental protection received by the applicant in connection with any surface-mining operation during the three-year period prior to the date of application, and indicating the final resolution of any notice of violation, forfeiture, revocation, cessation or permanent suspension.

(g) Within five working days of receipt of an application for a permit, the commissioner shall notify the operator in writing, stating whether the application is complete and whether the operator’s advertisement may be published. If the application is not complete, the commissioner shall state in writing why the application is incomplete.

§22A-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface-mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a
statement of:

(1) The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if such land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section nine of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farmlands, and the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management;

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, other state agencies and local governments, which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil
reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section twelve of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section twelve or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface-mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface-mining and reclamation process to assure the protection of: (A) The quality of surface and ground water systems, both on- and off-site, from adverse effects of the surface-mining operation; (B) the rights of present users to such water; and (C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the surface-mining operation or to provide alternative sources of water where such protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commissioner, including the location of subsurface water, and an analysis of the chemical
properties, including acid forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Such other requirements as the commissioner may prescribe by regulation.

(b) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.

§22A-3-12. General environmental protection performance standards for surface mining; variances.

(a) Any permit issued by the commissioner pursuant to this article to conduct surface-mining operations shall require that such surface-mining operations will meet all applicable performance standards of this article and other requirements as the commissioner shall promulgate.

(b) The following general performance standards shall be applicable to all surface mines and shall require the operation as a minimum to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit
applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, such overburden or spoil shall be shaped and
graded in such a way as to prevent slides, erosion and
water pollution and is revegetated in accordance with
the requirements of this article: Provided further, That
the commissioner shall promulgate rules and regula-
tions governing variances to the requirements for return
to approximate original contour or highwall elimination
and where adequate material is not available from
surface-mining operations permitted after the effective
date of this article for: (A) Underground mining
operations existing prior to the third day of August, one
thousand nine hundred seventy-seven, or (B) for areas
upon which surface mining prior to the first day of July,
one thousand nine hundred seventy-seven, created
highwalls;

(4) Stabilize and protect all surface areas, including
spoil piles, affected by the surface-mining operation to
effectively control erosion and attendant air and water
pollution;

(5) Remove the topsoil from the land in a separate
layer, replace it on the backfill area, or if not utilized
immediately, segregate it in a separate pile from other
spoil and, when the topsoil is not replaced on a backfill
area within a time short enough to avoid deterioration
of the topsoil, maintain a successful vegetative cover by
quick growing plants or by other similar means in order
to protect topsoil from wind and water erosion and keep
it free of any contamination by other acid or toxic
material: Provided, That if topsoil is of insufficient
quantity or of poor quality for sustaining vegetation, or
if other strata can be shown to be more suitable for
vegetation requirements, then the operator shall re-
move, segregate and preserve in a like manner such
other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil
which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and
reclaimed in accordance with the specifications for soil
removal, storage, replacement and reconstruction
established by the United States secretary of agriculture
and the soil conservation service pertaining thereto. The
Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in subparagraph (B) above with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A) above;

(8) Create, if authorized in the approved surface-mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with regulations promulgated by the commissioner;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the commissioner determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public welfare and safety: Provided, That the commissioner may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing...
hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and ground water systems both during and after surface-mining operations and during reclamation by:

(A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface-mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to subparagraph (B) of this subdivision prior to commencement of surface-mining operations, such system to be certified by a person approved by the commissioner to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the commissioner, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commissioner; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) such other actions as the commissioner may prescribe;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible
with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the commissioner shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface-mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the commissioner; and (B) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, however, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the commissioner, which shall include provisions to: (A) Provide adequate
advance written notice to local governments and residents who might be affected by the use of the explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site: Provided, That this notice shall suffice as daily notice to residents or occupants of the areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent: (i) Injury to persons; (ii) damage to public and private property outside the permit area; (iii) adverse impacts on any underground mine; and (iv) change in the course, channel or availability of ground or surface water outside the permit area; (D) require that all blasting operations be conducted by persons certified by the director of the division of mines and minerals; and (E) provide that upon written request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permit area, the applicant or permittee shall conduct a preblasting survey or other appropriate investigation of the structures and submit the results to the commissioner and a copy to the resident or owner making the request. The area of the survey shall be determined by the commissioner in accordance with regulations promulgated by him;

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface-mining operations. Time limits shall be established by the commissioner requiring backfilling, grading and planting to be kept current: Provided, That where surface-mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the commissioner may grant a
variance from the requirement that reclamation efforts
proceed as contemporaneously as practicable to permit
underground mining operations prior to reclamation:

(A) If the commissioner finds in writing that:

(i) The applicant has presented, as part of the permit
application, specific, feasible plans for the proposed
underground mining operations;

(ii) The proposed underground mining operations are
necessary or desirable to assure maximum practical
recovery of the mineral resource and will avoid multiple
disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that
the plan for the underground mining operations con-
forms to requirements for underground mining in the
jurisdiction and that permits necessary for the under-
ground mining operations have been issued by the
appropriate authority;

(iv) The areas proposed for the variance have been
shown by the applicant to be necessary for the imple-
menting of the proposed underground mining
operations;

(v) No substantial adverse environmental damage,
either on-site or off-site, will result from the delay in
completion of reclamation as required by this article;
and

(vi) Provisions for the off-site storage of spoil will
comply with subdivision (22), subsection (b) of this
section;

(B) If the commissioner has promulgated specific
regulations to govern the granting of such variances in
accordance with the provisions of this subparagraph and
has imposed such additional requirements as he deems
necessary;

(C) If variances granted under the provisions of this
paragraph are reviewed by the commissioner not more
than three years from the date of issuance of the permit:
Provided, That the underground mining permit shall
terminate if the underground operations have not
305 commenced within three years of the date the permit
306 was issued, unless extended as set forth in subsection (e),
307 section eight of this article; and
308
309 (D) If liability under the bond filed by the applicant
310 with the commissioner pursuant to subsection (b),
311 section eleven of this article shall be for the duration of
312 the underground mining operations and until the
313 requirements of subsection (g), section eleven and
314 section twenty-three of this article have been fully
315 complied with.
316
317 (17) Ensure that the construction, maintenance and
318 postmining conditions of access and haulroads into and
319 across the site of operations will control or prevent
320 erosion and siltation, pollution of water, damage to fish
321 or wildlife or their habitat, or public or private
322 property: Provided, That access roads constructed for
323 and used to provide infrequent service to surface
324 facilities, such as ventilators or monitoring devices, shall
325 be exempt from specific construction criteria provided
326 adequate stabilization to control erosion is achieved
327 through alternative measures;
328
329 (18) Refrain from the construction of roads or other
330 access ways up a stream bed or drainage channel or in
331 proximity to the channel so as to significantly alter the
332 normal flow of water;
333
334 (19) Establish on the regraded areas, and all other
335 lands affected, a diverse, effective and permanent
336 vegetative cover of the same seasonal variety native to
337 the area of land to be affected or of a fruit, grape or
338 berry producing variety suitable for human consump-
339 tion and capable of self-regeneration and plant succes-
340 sion at least equal in extent of cover to the natural
341 vegetation of the area, except that introduced species
342 may be used in the revegetation process where desirable
343 or when necessary to achieve the approved postmining
344 land use plan;
345
346 (20) Assume the responsibility for successful revege-
347 tation, as required by subdivision (19) of this subsection,
348 for a period of not less than five growing seasons, as
349 defined by the commissioner, after the last year of
augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the commissioner issues a written finding approving a long-term agricultural postmining land use as a part of the mining and reclamation plan, the commissioner may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the commissioner approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation shall commence at the date of initial planting for such agricultural postmining land use;

(21) Protect off-site areas from slides or damage occurring during surface-mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: Provided, That spoil material may be placed outside the permit area, if approved by the commissioner, after a finding that environmental benefits will result from such;

(22) Place all excess spoil material resulting from surface-mining activities in such a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the commissioner, the spoil could be placed in compliance with all the requirements of this article, and shall be placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and
prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: Provided, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the commissioner may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: Provided further, That such approval shall not be unreasonably withheld if the site is suitable;

(23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or
exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points.

(c) (1) The commissioner may prescribe procedures pursuant to which he may permit surface-mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, woodland, agricultural, residential or public use is proposed for the postmining use of the affected land, the commissioner may grant a permit for a surface-mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed postmining land use is deemed to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) supported by commitments from public agencies where appropriate; (iv) practicable with respect to private financial capability for completion of the proposed use; (v) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and (vi) designed by a person approved by the commissioner in conformance with standards estab-
lished to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the commissioner provides the county commission of the county in which the land is located and any state or federal agency which the commissioner, in his discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the commissioner shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That, at a minimum, the constructed barrier must be sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: And provided further, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years
from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on such lesser slopes as may be defined by regulation after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided, That soil or spoil material from the initial cut of earth in a new surface-mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the commissioner that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The commissioner may promulgate rules that permit variances from the approximate original contour requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material shall be required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The commissioner shall promulgate regulations for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the commissioner finds
that any coal processing waste pile constitutes an
imminent danger to human life, he may, in addition to
all other remedies and without the necessity of obtaining
the permission of any person prior or present who
operated or operates a pile or the landowners involved,
enter upon the premises where any such coal processing
waste pile exists and may take or order to be taken such
remedial action as may be necessary or expedient to
secure the coal processing waste pile and to abate the
conditions which cause the danger to human life:
Provided, however, That the cost reasonably incurred in
any remedial action taken by the commissioner under
this subsection may be paid for initially by funds
appropriated to the department of energy for these
purposes, and the sums so expended shall be recovered
from any responsible operator or landowner, individu-
ally or jointly, by suit initiated by the attorney general
at the request of the commissioner. For purposes of this
subsection “operates” or “operated” means to enter upon
a coal processing waste pile, or part thereof, for the
purpose of disposing; depositing, dumping coal process-
ing wastes thereon or removing coal processing waste
therefrom, or to employ a coal processing waste pile for
retarding the flow of or for the impoundment of water.

§22A-3-15. Inspections; monitoring; right of entry; in-
spection of records; identification signs; progress maps.

(a) The commissioner shall cause to be made such
inspections of surface-mining operations as are neces-
sary to effectively enforce the requirements of this
article and for such purposes the commissioner or his
authorized representative shall without advance notice
and upon presentation of appropriate credentials: (A)
Have the right of entry to, upon or through surface-
mining operations or any premises in which any records
required to be maintained under subdivision (1),
subsection (b) of this section are located; and (B) at
reasonable times and without delay, have access to and
copy any records and inspect any monitoring equipment
or method of operation required under this article.

(b) For the purpose of enforcement under this article,
in the administration and enforcement of any permit under this article, or for determining whether any person is in violation of any requirement of this article:

(1) The commissioner shall, at a minimum, require any operator to: (A) Establish and maintain appropriate records; (B) make monthly reports to the department; (C) install, use and maintain any necessary monitoring equipment or methods consistent with subdivision (11), subsection (a), section nine of this article; (D) evaluate results in accordance with such methods, at such locations, intervals and in such manner as the commissioner shall prescribe; and (E) provide such other information relative to surface-mining operations as the commissioner deems reasonable and necessary; and

(2) For those surface-mining operations which remove or disturb strata that serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mining site, the commissioner shall require that: (A) Monitoring sites be established to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence; (B) monitoring sites be established to record level, amount and samples of ground water and aquifers potentially affected by the surface mining and also below the lowermost mineral seam to be mined; (C) records or well logs and borehole data be maintained; and (D) monitoring sites be established to record precipitation. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the commissioner in order to assure their reliability and validity.

(c) All surface-mining operations shall be inspected at least once every thirty days. Such inspections shall be made on an irregular basis without prior notice to the operator or his agents or employees, except for necessary on-site meetings with the operator. The inspections shall include the filing of inspection reports adequate to enforce the requirements, terms and purposes of this article.
(d) Each permittee shall maintain at the entrances to the surface-mining operations a clearly visible monument which sets forth the name, business address and telephone number of the permittee and the permit number of the surface-mining operations.

(e) Copies of any records, reports, inspection materials or information obtained under this article by the commissioner shall be made immediately available to the public at central and sufficient locations in the county, multicounty or state area of mining so that they are conveniently available to residents in the areas of mining unless specifically exempted by this article.

(f) Within thirty days after service of a copy of an order of the commissioner upon an operator by registered or certified mail, the operator shall furnish to the commissioner five copies of a progress map prepared by or under the supervision of a person approved by the commissioner showing the disturbed area to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps required by this article, and shall show in detail completed reclamation work as required by the commissioner. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the commissioner. If no land has been disturbed by operations during the preceding year, the operator shall notify the commissioner of that fact.

(g) Whenever on the basis of available information, including reliable information from any person, the commissioner has cause to believe that any person is in violation of this article, any permit condition or any regulation promulgated under this article, the commissioner shall immediately order state inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior state inspection. The commissioner shall notify any person who supplied such reliable information when the state inspection will be carried out. Such
§22A-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.

(a) If any of the requirements of this article, rules and regulations promulgated pursuant thereto or permit conditions have not been complied with, the commissioner shall cause a notice of violation to be served upon the operator or his duly authorized agent. A copy of the notice shall be handed to the operator or his duly authorized agent in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this article, rules and regulations or permit conditions and shall specify a reasonable time for abatement of the violation not to exceed thirty days. If the operator has not abated the violation within the time specified in the notice, or any reasonable extension thereof, not to exceed sixty days, the commissioner shall order the cessation of the operation or the portion thereof causing the violation, unless the operator affirmatively demonstrates that compliance is unattainable due to conditions totally beyond the control of the operator. If a violation is not abated within the time specified or any extension thereof, or any cessation order is issued, a mandatory civil penalty of not less than seven hundred fifty dollars per day per violation shall be assessed. A cessation order shall remain in effect until the commissioner determines that the violation has been abated or until modified, vacated or terminated by the commissioner or by a court. In any cessation order issued under this subsection, the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(b) If the commissioner determines that a pattern of violations of any requirement of this article or any
permit condition exists or has existed, as a result of the operator's lack of reasonable care and diligence, or that the violations are willfully caused by the operator, the commissioner shall immediately issue an order directing the operator to show cause why the permit should not be suspended or revoked and giving the operator thirty days in which to request a public hearing. If a hearing is requested, the commissioner shall inform all interested parties of the time and place of the hearing. Any hearing under this section shall be recorded and subject to the provisions of chapter twenty-nine-a of this code. Within sixty days following the public hearing, the commissioner shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. Upon the operator's failure to show cause why the permit should not be suspended or revoked, the commissioner shall immediately suspend or revoke the operator's permit. If the permit is revoked, the commissioner shall initiate procedures in accordance with rules promulgated by the commissioner to forfeit the operator's bond, or other security posted pursuant to section eleven of this article, and give notice to the attorney general, who shall collect the forfeiture without delay: Provided, That the entire proceeds of such forfeiture shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund. All forfeitures collected prior to the effective date of this article shall be deposited in the special reclamation fund and shall be expended back upon the areas for which the bond was posted: Provided, however, That any excess therefrom shall remain in the special reclamation fund.

(c) Any person engaged in surface-mining operations who violates any permit condition or who violates any other provision of this article or rules and regulations promulgated pursuant thereto may also be assessed a civil penalty. The penalty shall not exceed five thousand dollars. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous
violations at the particular surface-mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(d) (1) Upon the issuance of a notice or order pursuant to this section, the assessment officer shall, within thirty days, set a proposed penalty assessment and notify the operator in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt or, if the operator wishes to contest either the amount of the penalty or the fact of violation, an informal conference with the assessment officer may be requested within fifteen days or a formal hearing before the reclamation board of review may be requested within thirty days. The notice of proposed penalty assessment shall advise the operator of the right to an informal conference and a formal hearing pursuant to this section. When an informal conference is requested, the operator shall have fifteen days from receipt of the assessment officer's decision to request a formal hearing before the board.

(A) When an informal conference is held, the assessment officer shall have authority to affirm, modify or vacate the notice, order or proposed penalty assessment.

(B) When a formal hearing is requested, the amount of the proposed penalty assessment shall be forwarded to the commissioner for placement in an escrow account. Formal hearings shall be of record and subject to the provisions of article five, chapter twenty-nine-a of this code. Following the hearing the board shall affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment be paid.

(2) Civil penalties owed under this section may be recovered by the commissioner in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation
118 fund established in section eleven of this article. If, 119 through the administrative or judicial review of the 120 proposed penalty it is determined that no violation 121 occurred or that the amount of the penalty should be 122 reduced, the commissioner shall within thirty days 123 remit the appropriate amount to the person, with 124 interest at the rate of six percent or at the prevailing 125 United States department of the treasury rate, whi- 126 chever is greater. Failure to forward the money to the 127 commissioner within thirty days shall result in a waiver 128 of all legal rights to contest the violation or the amount 129 of the penalty.

130 (e) Any person having an interest which is or may be 131 adversely affected by any order of the commissioner or 132 the board may file an appeal only in accordance with 133 the provisions of article four, chapter twenty-two of this 134 code, within thirty days after receipt of the order.

135 (f) The filing of an appeal or a request for an informal 136 conference or formal hearing provided for in this section 137 shall not stay execution of the order appealed from. 138 Pending completion of the investigation and conference 139 or hearing required by this section, the applicant may 140 file with the commissioner a written request that the 141 commissioner grant temporary relief from any notice or 142 order issued under section sixteen or seventeen of this 143 article, together with a detailed statement giving 144 reasons for granting such relief. The commissioner shall 145 issue an order or decision granting or denying such 146 relief expeditiously: Provided, That where the applicant 147 requests relief from an order for cessation of surface- 148 mining and reclamation operations, the decision on the 149 request shall be issued within five days of its receipt. 150 The commissioner may grant such relief, under such 151 conditions as he may prescribe if:

152 (1) All parties to the proceedings have been notified 153 and given an opportunity to be heard on a request for 154 temporary relief;

155 (2) The person requesting the relief shows that there 156 is a substantial likelihood that he will prevail on the 157 merits in the final determination of the proceedings;
(3) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources; and

(4) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the commissioner.

(g) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this article or regulations promulgated pursuant thereto, or fails or refuses to comply with any order issued under said article and regulations or any order incorporated in a final decision issued by the commissioner, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(h) Whenever a corporate operator violates a condition of a permit issued pursuant to this article, regulations promulgated pursuant thereto, or any order incorporated in a final decision issued by the commissioner, any director, officer or agent of the corporation who willfully and knowingly authorized, ordered or carried out the failure or refusal, shall be subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under subsections (c) and (g) of this section.

(i) Any person who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, petition, record, report, plan or other document filed or required to be maintained pursuant to this article or regulations promulgated pursuant thereto, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(j) Whenever any person: (A) Violates or fails or refuses to comply with any order or decision issued by the commissioner under this article; or (B) interferes
with, hinders or delays the commissioner in carrying out
the provisions of this article; or (C) refuses to admit the
commisioner to the mine; or (D) refuses to permit
inspection of the mine by the commissioner; or (E)
refuses to furnish any reasonable information or report
requested by the commissioner in furtherance of the
provisions of this article; or (F) refuses to permit access
to, and copying of, such records as the commissioner
determines necessary in carrying out the provisions of
this article; or (G) violates any other provisions of this
article, the regulations promulgated pursuant thereto,
or the terms and conditions of any permit, the commis-
sioner, the attorney general or the prosecuting attorney
of the county in which the major portion of the permit
area is located may institute a civil action for relief,
including a permanent or temporary injunction, restra-
ining order or any other appropriate order, in the
circuit court of Kanawha County or any court of
competent jurisdiction to compel compliance with and
enjoin such violations, failures or refusals. The court or
the judge thereof may issue a preliminary injunction in
any case pending a decision on the merits of any
application filed without requiring the filing of a bond
or other equivalent security.

(k) Any person who shall, except as permitted by law,
willfully resist, prevent, impede or interfere with the
commissioner or any of his agents in the performance
of duties pursuant to this article is guilty of a misde-
meanor, and, upon conviction thereof, shall be punished
by a fine of not more than five thousand dollars or by
imprisonment for not more than one year, or both.

§22A-3-18. Approval, denial, revision and prohibition of
permit.

(a) Upon the receipt of a complete surface-mining
application or significant revision or renewal thereof,
including public notification and an opportunity for a
public hearing, the commissioner shall grant, require
revision of, or deny the application for a permit within
sixty days and notify the applicant in writing of his
decision. The applicant for a permit, or revision of a
permit, has the burden of establishing that the applica-
tion is in compliance with all the requirements of this article and the rules promulgated hereunder.

(b) No permit or significant revision of a permit may be approved unless the applicant affirmatively demonstrates and the commissioner finds in writing on the basis of the information set forth in the application or from information otherwise available which shall be documented in the approval and made available to the applicant that:

(1) The permit application is accurate and complete and that all the requirements of this article and regulations thereunder have been complied with;

(2) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance, as specified in section nine of this article, has been made by the commissioner and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) The area proposed to be mined is not included within an area designated unsuitable for surface mining pursuant to section twenty-two of this article or is not within an area under administrative study by the commissioner for such designation; and

(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted: (A) The written consent of the surface owner to the extraction of coal by surface mining; or (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining; or (C) if the conveyance does not expressly grant the right to extract coal by surface mining, the surface-subsurface legal relationship shall be determined in accordance with applicable law: Provided, That nothing in this article shall be construed to authorize the commissioner to adjudicate property rights disputes.
(c) Where information available to the department indicates that any surface-mining operation owned or controlled by the applicant is currently in violation of this article or other environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the commissioner finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if: (1) After the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the commissioner to be adequate to reclaim the disturbed area; (2) the violations which resulted in the revocation or forfeiture have not caused irreparable damage to the environment; and (3) the commissioner is satisfied that the petitioner will comply with this article.

(d) (1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland, the commissioner may, pursuant to regulations promulgated hereunder, grant a permit to mine on prime farmland if the operator affirmatively demonstrates
that he has the technological capability to restore such
mined area, within a reasonable time, to equivalent or
higher levels of yield as nonmined prime farmland in
the surrounding area under equivalent levels of manage-
ment, and can meet the soil reconstruction standards in
subdivision (7), subsection (b), section twelve of this
article. Except for compliance with subsection (b) of this
section, the requirements of subdivision (1) of this
subsection shall apply to all permits issued after the
third day of August, one thousand nine hundred seventy-
seven.

(2) Nothing in this subsection shall apply to any
permit issued prior to the third day of August, one
thousand nine hundred seventy-seven, or to any revisions
or renewals thereof, or to any existing surface-mining
operations for which a permit was issued prior to said
date.

(e) If the commissioner finds that the overburden on
any part of the area of land described in the application
for a permit is such that experience in the state with
a similar type of operation upon land with similar
overburden shows that one or more of the following
conditions cannot feasibly be prevented: (1) Substantial
deposition of sediment in stream beds; (2) landslides; or
(3) acid-water pollution, the commissioner may delete
such part of the land described in the application upon
which such overburden exists.

§22A-3-19. Permit revision and renewal requirements;
incidental boundary revisions; require-
ments for transfer; assignment and sale of
permit rights; and operator reassignment.

(a) (1) Any valid permit issued pursuant to this article
shall carry with it the right of successive renewal upon
expiration with respect to areas within the boundaries
of the existing permit. The holders of the permit may
apply for renewal and the renewal shall be issued:
Provided, That on application for renewal, the burden
shall be on the opponents of renewal, unless it is
established that and written findings by the commis-
sioner are made that: (A) The terms and conditions of
the existing permit are not being satisfactorily met:

Provided, however, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface-mining operation is not in compliance with the applicable environmental protection standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the performance bond in effect for said operation will continue in effect for any renewal requested as required pursuant to section eleven of this article; or (E) any additional revised or updated information as required pursuant to rules and regulations promulgated by the commissioner has not been provided.

(2) If an application for renewal of a valid permit includes a proposal to extend the surface-mining operation beyond the boundaries authorized in the existing permit, that portion of the application for renewal which addresses any new land area is subject to the full standards of this article, which includes, but is not limited to: (A) Adequate bond; (B) a map showing the disturbed area and facilities; and (C) a reclamation plan.

(3) Any permit renewal shall be for a term not to exceed the period of time for which the original permit was issued. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

(4) Any renewal application for an active permit shall be on forms prescribed by the commissioner and shall be accompanied by a filing fee of two thousand dollars. The application shall contain such information as the commissioner requires pursuant to rule or regulation.

(b) (1) During the term of the permit, the permittee may submit to the commissioner an application for a
revision of the permit, together with a revised reclamation plan.

(2) An application for a significant revision of a permit shall be subject to all requirements of this article and regulations promulgated pursuant thereto.

(3) Any extension to an area already covered by the permit, except incidental boundary revisions, shall be made by application for another permit. If the permittee desires to add the new area to his or her existing permit in order to have existing areas and new areas under one permit, the commissioner may so amend the original permit: Provided, That the application for the new area is subject to all procedures and requirements applicable to applications for original permits under this article.

(c) The commissioner shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed within the time established by regulations. The commissioner may require reasonable revision or modification of the permit following review: Provided, That such revision or modification shall be based upon written findings and shall be preceded by notice to the permittee of an opportunity for hearing.

(d) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this article shall be made without the prior written approval of the commissioner.

§22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

(a) The commissioner shall establish a planning process to enable objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface-mining operations pursuant to the standards set forth in subdivisions (1) and (2) of this subsection: Provided, That such designa-
tion shall not prevent prospecting pursuant to section seven of this article on any area so designated.

(1) Upon petition pursuant to subsection (b) of this section, the commissioner shall designate an area as unsuitable for all or certain types of surface-mining operations, if it determines that reclamation pursuant to the requirements of this article is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) of this section, a surface area may be designated unsuitable for certain types of surface-mining operations, if the operations: (A) Conflict with existing state or local land use plans or programs; (B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; (C) affect renewable resource lands, including significant aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply, food or fiber products; or (D) affect natural hazard lands in which the operations could substantially endanger life and property. Such lands to include lands subject to frequent flooding and areas of unstable geology.

(3) The commissioner shall develop a process which includes: (A) The review of surface-mining lands; (B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface-mining operations; (C) a method for implementing land use planning decisions concerning surface-mining operations; and (D) proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation pursuant to this section.

(4) Determinations of the unsuitability of land for surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at federal, state and local levels.
(5) The requirements of this section shall not apply to lands on which surface-mining operations were being conducted on the third day of August, one thousand nine hundred seventy-seven, or under a permit issued pursuant to this article, or where substantial legal and financial commitments in the operations were in existence prior to the fourth day of January, one thousand nine hundred seventy-seven.

(b) Any person having an interest which is or may be adversely affected shall have the right to petition the commissioner to have an area designated as unsuitable for surface-mining operations or to have such a designation terminated. The petition shall contain allegations of fact with supporting evidence which would tend to establish the allegations. After receipt of the petition, the commissioner shall immediately begin an administrative study of the area specified in the petition. Within ten months after receipt of the petition, the commissioner shall hold a public hearing in the locality of the affected area after appropriate notice and publication of the date, time and location of the hearing. After the commissioner or any person having an interest which is or may be adversely affected has filed a petition and before the hearing required by this subsection, any person may intervene by filing allegations of fact with supporting evidence which would tend to establish the allegations. Within sixty days after the hearing, the commissioner shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface-mining operations, the commissioner shall prepare a detailed statement on: (1) The potential coal resources of the area; (2) the demand for the coal resources; and (3) the impact of the designation on the environment, the economy and the supply of coal.

(d) After the third day of August, one thousand nine hundred seventy-seven, and subject to valid existing
89 rights, no surface-mining operations, except those which
90 existed on that date, shall be permitted:

91 (1) On any lands in this state within the boundaries
92 of units of the national park system, the national wildlife
93 refuge systems, the national system of trails, the
94 national wilderness preservation system, the wild and
95 scenic rivers system, including study rivers designated
96 under section five-a of the wild and scenic rivers act,
97 and national recreation areas designated by act of
98 Congress;

99 (2) Which will adversely affect any publicly owned
100 park or places included in the national register of
101 historic sites, or national register of natural landmarks
102 unless approved jointly by the commissioner and the
103 federal, state or local agency with jurisdiction over the
104 park, the historic site or natural landmark;

105 (3) Within one hundred feet of the outside right-of-way
106 line on any public road, except where mine access roads
107 or haulage roads join such right-of-way line, and except
108 that the commissioner may permit the roads to be
109 relocated or the area affected to lie within one hundred
110 feet of the road if, after public notice and an opportunity
111 for a public hearing in the locality, the commissioner
112 makes a written finding that the interests of the public
113 and the landowners affected thereby will be protected;

114 (4) Within three hundred feet from any occupied
115 dwelling, unless waived by the owner thereof, or within
116 three hundred feet of any public building, school,
117 church, community or institutional building, public
118 park, or within one hundred feet of a cemetery; or

119 (5) On any federal lands within the boundaries of any
120 national forest: Provided, That surface coal mining
121 operations may be permitted on the lands if the
122 secretary of the interior finds that there are no
123 significant recreational, timber, economic or other
124 values which may be incompatible with the surface-
125 mining operations: Provided, however, That the surface
126 operations and impacts are incident to an underground
127 coal mine.
(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface-mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be assessed for taxation purposes according to their value and the Legislature hereby finds that the coal has no value for the duration of the designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of the coal shall forthwith notify the proper assessing authorities if the designation or prohibition is removed so that the coal may be reassessed.

§22A-3-26. Surface-mining operations not subject to article.

1 The provisions of this article do not apply to any of the following activities:

2 (a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.

3 (b) The extraction of coal as an incidental part of federal, state, county, municipal or other local government-financed highway or other construction: Provided, That the provisions of the construction contract require the furnishing of a suitable bond which provides for reclamation, wherever practicable, of the area affected by such extraction.

§22A-3-28. Special permits for reclamation of existing abandoned coal processing waste piles.

1 (a) Except where exempted by section twenty-six of this article, it shall hereafter be unlawful for any person to engage in surface mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the commissioner a permit therefor as provided in section eight of this article, unless a special permit therefor shall have been first obtained from the commissioner as provided in this section.

10 Application for a special permit to engage in surface mining as an incident to the development of land for
commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the commissioner and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A site preparation plan, prepared and certified by or under the supervision of a person approved by the commissioner, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of the coal deposit to be mined and removed from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof; and such other information as prescribed by the commissioner;

(2) A development plan for the proposed commercial, residential, industrial or civic use of said land;

(3) The name of owner of the surface of the land to be developed;

(4) The name of owner of the coal to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of coal that would be mined as a result of the proposed development of said land: Provided, That in no event may such number of acres to be mined, excluding roadways, exceed five acres; and

(6) Such other information as the commissioner may require to satisfy and assure the commissioner that the surface mining under special permit is incidental or secondary to the proposed commercial, residential, industrial or civic use of said land.

(b) There shall be attached to the application for the special permit a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section nine of this article.

The application for the special permit shall also be accompanied by a bond, or cash or collateral securities
or certificates of the same type, in the form as prescribed by the commissioner and in the minimum amount of two thousand dollars per acre, for a maximum disturbance of five acres.

The bond shall be payable to the state of West Virginia and conditioned that the applicant shall complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site preparation plan submitted with the application, the bond conditions shall be satisfied and the bond and any cash, securities or certificates furnished with said bond may be released and returned to the applicant. The filing fee for the special permit shall be five hundred dollars. The special permit shall be valid until work permitted is completed.

(c) The purpose of this section is to vest jurisdiction in the commissioner, where the surface mining is incidental or secondary to the preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, minerals must be removed, including, but not limited to, the building and construction of railroads, shopping malls, factory and industrial sites, residential and building sites and recreational areas. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the commissioner that such permit is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article shall not be applicable to the operator holding a special permit: Provided, That the commissioner shall promulgate regulations establishing applicable performance standards for operations permitted under this section.

(d) The commissioner may, in the exercise of his sound discretion, when not in conflict with the purposes and findings of this article and to bring about a more desirable land use or to protect the public and the environment, issue a special permit solely for the
91 removal of existing abandoned coal processing waste
92 piles. The commissioner shall promulgate specific
93 regulations for such operations: Provided, That a bond
94 and a reclamation plan shall be required for such
95 operations.

§22A-3-40. Consolidation of permitting, enforcement and
rule-making authority for surface-mining
operations; national pollutant discharge
elimination system; effective date of
section.

1 (a) Notwithstanding any provisions of this chapter to
2 the contrary, all powers, duties and responsibilities of
3 the chief of the division of water resources under article
4 five-a, chapter twenty of this code with respect to all
5 coal mines, preparation plants and all refuse and waste
6 therefrom subject to said article five-a, chapter twenty
7 of this code are hereby transferred to the commissioner.
8 The commissioner has authority to issue, amend,
9 transfer, renew or revoke all permits required under
10 article five-a, chapter twenty of this code with respect
11 to all coal mines, preparation plants and all refuse and
12 waste therefrom subject to said article five-a. Each
13 permit application shall be accompanied by a filing fee
14 of five hundred dollars and each renewal application
15 shall be accompanied by a filing fee of one hundred
16 dollars. The procedures for issuance, amendment,
17 transferal, renewal and revocation of such permits shall
18 be governed by regulations promulgated pursuant to
19 subsection (b) of this section. The commissioner shall
20 consolidate the various permit programs under article
21 five-a, chapter twenty of this code and article three of
22 this chapter applicable to all coal mines, preparation
23 plants and all refuse and waste therefrom. All provi-
24 sions of article five-a, chapter twenty of this code
25 heretofore applicable to coal mines, preparation plants
26 and all refuse and waste therefrom shall be continued
27 under this section.

(b) Notwithstanding any provisions of this chapter to
the contrary, the commissioner has authority to promul-
gate rules and regulations necessary or proper to
implement the provisions of article five-a, chapter
twenty of this code with respect to all coal mines, preparation plants and all refuse and waste therefrom, except that the water resources board shall have the sole authority pursuant to section three-a, article five-a, chapter twenty of this code to promulgate rules and regulations setting standards of water quality applicable to the waters of the state. To the extent feasible, the commissioner shall promulgate rules and regulations consolidating the various regulatory programs under this chapter applicable to all coal mines, preparation plants and all refuse and waste therefrom. The promulgation of such rules and regulations shall be governed by the provisions of this article.

(c) Notwithstanding any provisions of this chapter to the contrary, the commissioner has authority to enforce and shall enforce the rules and regulations promulgated under this article by the commissioner and the rules and regulations of the water resources board setting water quality standards for the waters of the state as they apply to all coal mines, preparation plants and all refuse and waste therefrom. Rules and regulations adopted by the commissioner, pursuant to the requirements of article five-a, chapter twenty of this code shall be enforceable by the commissioner under the provisions of sections seventeen and nineteen, article five-a, chapter twenty of this code, as though the regulations were promulgated by the water resources board: Provided, That the commissioner’s authority to enforce such rules and regulations under article five-a, chapter twenty of this code shall not preclude the commissioner or any person from invoking the remedies otherwise provided by article three of this chapter and shall not preclude the commissioner from enforcing the provisions of this article.

(d) Notwithstanding any provisions of this chapter to the contrary, any permit of the commissioner issued pursuant to subsection (a) of this section, or any order issued under article five-a, chapter twenty of this code, or for the purpose of implementing the “national pollutant discharge elimination system” established under the federal clean water act, shall be appealable
only to the state water resources board and such appeal shall be governed by the provisions of section fifteen, article five-a, chapter twenty of this code.

(e) This section shall become effective upon a proclamation by the governor stating that final approval of the partial transfer of the national pollutant discharge elimination system established under the federal clean water act contemplated by this section has been given by the administrator of the United States environmental protection agency.

CHAPTER 160

(Com. Sub. for H. B. 2076—By Delegates Flanigan and Carper)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article thirteen-d, chapter eleven of said code, by adding thereto a new section, designated section three-d, all relating to directing the office of community and industrial development to study and promote the development of a coal-based synthetic fuel industry; and creating a credit against tax for investment in new industrial facilities for producing coal-based liquids used to produce synthetic motor fuel and synthetic special fuel.

Be it enacted by the Legislature of West Virginia:

That section two-a, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article thirteen-d, chapter eleven of said code be amended by adding thereto a new section, designated section three-d, all to read as follows:

Chapter


11. Taxation.
CHAPTER 5B.
ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-2a. General powers of the office.

1 The office of community and industrial development shall have the authority and duty to:

2 (1) Promote and encourage the location and development of new business in the state and the maintenance and expansion of existing business;

3 (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;

4 (3) Plan and develop an effective economic information 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;

5 (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;

6 (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;

7 (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) Study and promote the development of a coal-based synthetic fuel industry in West Virginia and investigate and propose to the Legislature statutory initiatives which would encourage such development;

(10) 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;

(11) The center shall provide the governor's office of community and industrial development, the 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 Legis-
ture. 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;

(12) 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;

(13) 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;

(14) 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;

(15) 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;

(16) 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;

(17) 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;

(18) 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;

(19) 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, interme-
diate 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 federal government, the various offices and divisions of the department of commerce and other state and local governmental agencies, educational institutions, nonprofit institutions and organizations, business enterprises and others concerned with scientific and technological research development;

(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.

CHAPTER 11. TAXATION.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION AND FOR RESEARCH AND DEVELOPMENT PROJECTS.

§11-13D-3d. Amount of credit allowed and application of credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel.

(a) Credit allowed. — There shall be allowed to eligible taxpayers which have made qualified investment of at least forty million dollars in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel.
The amount of credit shall be determined as hereinafter provided in this section. Taxpayers who have not placed at least forty million dollars of qualified investment in service or use over a period of one year or less in a new industrial facility used to produce synthetic motor fuel or synthetic special fuel shall not be entitled to credit under this section.

(b) Credit amount for qualified investment purchased and placed in service or use in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel, after the thirtieth day of June, one thousand nine hundred ninety-one. — For property purchased or leased by an eligible taxpayer and placed in service or use after the thirtieth day of June, one thousand nine hundred ninety-one, as part of a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel the amount of allowable credit shall be equal to one hundred percent of the qualified investment (as determined under section four of this article), and shall reduce that portion of the taxpayer's business franchise tax under article twenty-three of this chapter, which is attributable to and the direct result of the taxpayer's qualified investment, and that portion of the taxpayer's corporation net income tax under article twenty-four of this chapter, which is attributable to and the direct result of the taxpayer's qualified investment; subject to the following conditions and limitations:

(1) The total amount of credit allowable to all persons claiming credit under this section shall not exceed ten million dollars during any fiscal year of this state. If and to the extent credit is claimed under this section in excess of ten million dollars in any fiscal year of this state the amount in excess of ten million dollars is lost. In determining which taxpayer or taxpayers loses credit under this subdivision (1), the loss of credit shall apply first to qualified investment property most recently placed in service or use, going backwards in time, until the tax commissioner determines that the total amount of credit allowed under this section is not in excess of ten million dollars.
(2) The qualified investment must result in the creation of at least ten new jobs.

(3) If, during any taxable year of the ten year tax credit allowance period, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment property is less than ten, the credit allowance for that taxable year is forfeited.

(4) Tax year time limitations for application of credit; credit forfeiture.

(A) The amount of this credit allowable shall be applied over a time period of up to ten tax years.

(B) This credit shall first be applied against tax liabilities in the manner specified in subdivision (2) of this subsection (b), beginning with the tax year during which the qualified investment was first placed in service or use in this state by the eligible taxpayer.

(C) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) of this subdivision (1) shall then be applied against the tax liabilities in the manner specified in subdivision (2) of this subsection (b) for the tax year immediately succeeding the tax year during which the qualified investment was first placed in service or use in this state and for each succeeding tax year thereafter up through the ninth tax year subsequent to the first tax year in which the qualified investment property was first placed in service or use.

(D) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) and then paragraph (C) of this subdivision shall be forfeited and shall not carry forward to any subsequent tax year.

(E) No carryback of credit to a prior tax year shall be allowed.

(5) Tax liability percentage offset limitations.

(A) This credit for qualified investment in a new
industrial facility for producing coal-based liquids used
to produce synthetic motor fuel or synthetic special fuel
shall first be applied to reduce the annual West Virginia
business franchise tax liability imposed under article
twenty-three of this chapter for the tax year by an
amount such that this credit, in combined application
with all other applicable credits allowable under articles
thirteen-c, thirteen-d and thirteen-e, of this chapter and
under chapter five-e of this code and all other tax credits
provided in this code, shall not reduce the annual
business franchise tax liability for such tax year below
fifty percent of the amount of the annual tax liability
which would otherwise be imposed for such tax year in
the absence of this credit and all credits against such
tax, except the credits set forth in section seventeen,
article twenty-three of this chapter.

(B) After application of this credit against business
franchise tax as provided in paragraph (A) of this
subdivision (5), the remaining credit for qualified
investment in a new industrial facility for producing
coal-based liquids used to produce synthetic motor fuel
or synthetic special fuel (if any) shall then be applied
to reduce the annual West Virginia corporation net
income tax liability imposed under article twenty-four
of this chapter for the tax year by an amount such that
this credit in combined application with all other
applicable credits allowable under articles thirteen-c,
thirteen-d, thirteen-f and thirteen-g of this chapter and
under sections ten, eleven, eleven-a, twelve, twenty-two
and twenty-three-a, article twenty-four of this chapter
and under chapters five-e and eighteen-b of this code
and all other tax credits provided in this code, shall not
reduce the annual corporation net income tax liability
for such tax year below fifty percent of the amount of
the annual tax liability which would otherwise be
imposed for such tax year in the absence of this credit
and all other credits against tax, except the credits set
forth in sections nine and nine-a, article twenty-four of
this chapter.

(C) After application of this credit against business
franchise tax under paragraph (A) of this subdivision
(5), and then against corporation net income tax under paragraph (B) of this subdivision (5), the remaining credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (if any) shall then be applied to further reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit shall not reduce the annual business franchise tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(D) After application of this credit against business franchise tax under paragraph (A) of this subdivision (5) and then against corporation net income tax under paragraph (B) of this subdivision (5), and then against business franchise tax under paragraph (C) of this subdivision (5), the remaining credit for qualified investment in new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (if any) shall then be applied to further reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit shall not reduce the annual corporation net income tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(c) Application for credit required. —

(1) Application required. — No credit shall be allowed or applied under this section for any investment in any new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel 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 section and receives written certification of its claim from the tax commissioner. An application for credit shall be filed, in such form as the tax commissioner shall prescribe, prior to the date when qualified investment property is first placed in service or use, and all information required by such form shall be provided. No credit shall be taken by a taxpayer applicant or prospective applicant pursuant to this section until certification has been issued by the tax commissioner.

(2) **Failure to file.** — The failure to timely apply for certification under this subsection (c) shall result in forfeiture of the credit otherwise allowable under this section.

(d) **Definitions.** — For purposes of this section:

(1) "Synthetic motor fuel" means any product suitable for use in an internal combustion engine except special fuel as defined in this section, containing at least ten percent coal-based liquids blended to meet specifications.

(2) "Synthetic special fuel" means special fuel containing at least ten percent coal-based liquids blended to meet specifications.

(e) **Report by the governor's office of community and industrial development.** — The governor's office of community and industrial development shall produce a report to the Legislature to be presented during the regular legislative session of one thousand nine hundred ninety-two. Such report shall state the identity of taxpayers who have received this credit and shall contain an analysis of the expansion and growth of facilities in this state producing coal-based liquids used to produce synthetic fuels, the expansion of commerce resulting from the creation of this credit, and the number of jobs created as a result of this credit. The report of the governor's office of community and industrial development shall not directly or indirectly reveal the amount of credit available to any particular taxpayer or taxpayer return information other than the names and addresses of taxpayers.
AN ACT to amend and reenact section fourteen, article eighteen, chapter seven 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 thirteen-a, all relating to the hotel occupancy tax; requirement of filing annual reports by convention and visitor’s bureaus; proceeds of the tax; application of the tax; providing that convention and visitor’s bureaus may be located in a region as well as a municipality or county; adding to permissible expenditures by municipalities and counties; providing for allocation of funds where a convention and visitor’s bureau is not located in a municipality, county or region; providing for allocation of funds by a municipality where more than one convention and visitor’s bureau is located in a municipality, county or region; and defining certain terms.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eighteen, chapter seven 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 thirteen-a, all to read as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-13a. Annual reports by convention and visitor’s bureaus.

§7-18-14. Proceeds of tax; application of proceeds.

§7-18-13a. Annual reports by convention and visitor’s bureaus.

1 Each year, on or before the fifteenth day of August, every convention and visitor’s bureau which receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall file with each such county or municipality a statement, including an income statement and balance sheet, showing all amounts of hotel occupancy tax appropriated to the convention and
§7-18-14. Proceeds of tax; application of proceeds.

(a) Application of proceeds. — The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of such municipality or county commission and, after appropriation thereof, shall be expended only as provided in subsections (b) and (c) of this section.

(b) Required expenditures. — At least fifty percent of the net revenue receivable during the fiscal year by a county or a municipality pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

(1) Municipalities. — If a convention and visitor's bureau is located within the municipality, county or region, the governing body of such municipality shall appropriate the percentage required by this subsection (b) to that bureau. If a convention and visitor's bureau is not located within such municipality, county or region, then the percentage appropriation required by this subsection (b) shall be appropriated as follows:

(i) Any hotel located within such municipality, county or region may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to subsection (b) of this section: Provided, That prior to appropriating any moneys to such hotel such municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.
(ii) If there is more than one convention and visitor's bureau located within a municipality, county or region, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.

(iii) The balance of net revenue required to be expended by subsection (b) of this section shall be appropriated to the regional travel council serving the area in which the municipality is located.

(2) Counties. — If a convention and visitor's bureau is located within a county or region, the county commission shall appropriate the percentage required by this subsection (b) to that convention and visitor's bureau. If a convention and visitor's bureau is not located within such county or region, then the percentage appropriation required by this subsection (b) shall be appropriated as follows:

(i) Any hotel located within such county or region may apply to such county for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such county, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to subsection (b) of this section: Provided, That prior to appropriating any moneys to such hotel such county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(ii) If there is more than one convention and visitor's bureau located within a county or region, the county commission may allocate the tax authorized by this article to one or more of such bureaus in such portion as the county commission in its sole discretion determines.

(iii) The balance of net revenue required to be expended by subsection (b) of this section shall be
appropriated to the regional travel council serving the area in which the county is located.

(3) Legislative finding. — The Legislature hereby finds that the support of convention and visitor's bureaus, hotels and regional travel councils is a public purpose for which funds may be expended. Local convention and visitor's bureaus, hotels and regional travel councils receiving funds under this subsection (b) may expend such funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by subdivisions (1) and (2) of this subsection (b).

(c) Permissible expenditures. — After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by such county or municipality, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;

(2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;

(3) The promotion of conventions;

(4) The construction, operation or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition);

(5) The promotion of the arts;

(6) Historic sites; or

(7) Beautification projects.
(d) Definitions. — For purposes of this section, the following terms are defined:

(1) Convention and visitor's bureau and visitor's and convention bureau. — "Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable, and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the municipality, county or region in which such convention and visitor's bureau or visitor's and convention bureau is located or engaged in business within.

(2) Convention center. — "Convention center" means a convention facility owned by the state, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities, and publicly owned facilities constructed or used for the accommodation and entertainment of tourist and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

(3) Fiscal year. — "Fiscal year" means the year beginning the first day of July and ending the thirtieth day of June of the next calendar year.

(4) Net proceeds. — "Net proceeds" means the gross amount of tax collections less the amount of tax lawfully refunded.

(5) Promotion of the arts. — "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

(6) Recreational facilities. — "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities,
whether of a like or different nature, that are owned by a county or municipality.

(7) Region. — "Region" means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor's bureau to promote those counties.

(8) Regional travel council. — "Regional travel council" means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.

(9) Historic site. — "Historic site" means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association, and are open from time to time to accommodate visitors.

CHAPTER 162

Be it enacted by the Legislature of West Virginia:

That article ten, 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 five-s, relating to exceptions to confidentiality of taxpayer information; and disclosure of certain taxpayer information.
§11-10-5s. Disclosure of certain taxpayer information.

(a) Purpose. — The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

(b) Exceptions to confidentiality. —

(1) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g and thirteen-h of this chapter and article one, chapter five-e of this code for any tax year beginning on or after the first day of July, one thousand nine hundred ninety-one. The categories by dollar amount of credit received shall be as follows:

(A) More than $1.00, but not more than $50,000;

(B) More than $50,000, but not more than $100,000;

(C) More than $100,000, but not more than $250,000;

(D) More than $250,000, but not more than $500,000;

(E) More than $500,000, but not more than $1,000,000;

(F) More than $1,000,000.

(2) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the following information regarding any compromise of a pending civil tax case that occurs on or after the effective date of this section in which the tax commissioner is required to seek the written recommendation of the attorney general and the attorney general has not recommended acceptance of such compromise or when the tax commissioner com-
promises any civil tax case for an amount that is more than two hundred fifty thousand dollars less than the assessment of tax owed made by the tax commissioner:

(A) The names and addresses of taxpayers that are parties to such compromise;

(B) A summary of such compromise;

(C) Any written advice or recommendation rendered by the attorney general regarding such compromise; and

(D) Any written advice or recommendation rendered by the tax commissioner's staff.

Under no circumstances may the tax return of the taxpayer nor any other information which would otherwise be confidential under any other provisions of law be disclosed pursuant to the provisions of this subsection.

(3) Notwithstanding any provision in this code to the contrary, the tax commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by such information, to believe that a criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the contrary, the tax commissioner may enter into written exchange of information agreements with the commissioners of labor, employment security and workers' compensation to disclose and receive return information: Provided, That the tax commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding further agencies with which written exchange of information agreements may be sought: Provided, however, That the tax commissioner may not promulgate emergency rules regarding further agencies with which written exchange of information agreements may be sought. Such agreements shall be published in the state register and shall only be for the purpose of
facilitating premium collection, tax collection and
facilitating licensure requirements directly enforced,
administered or collected by the respective agencies.
The provisions of this subsection shall not be construed
to preclude or limit disclosure of tax information
authorized by other provisions of this code. Any
confidential return information so disclosed shall
remain confidential in the hands of such other division
to the extent provided by section five-d of this article
and by other applicable federal or state laws.

(c) Tax expenditure reports. — Beginning on the
fifteenth day of January, one thousand nine hundred
ninety-two and every fifteenth day of January thereaf-
ther, the governor shall submit to the president of the
Senate and the speaker of the House of Delegates a tax
expenditure report. Such report shall expressly identify
all tax expenditures. Within three-years cycles, such
reports shall be considered together to analyze all tax
expenditures by describing the annual revenue loss and
benefits of the tax expenditure based upon information
available to the tax commissioner. For purposes of this
section, the term “tax expenditure” shall mean a
provision in the tax laws administered under this
article, including, but not limited to, exclusions,
deductions, tax preferences, credits and deferrals
designed to encourage certain kinds of activities or to
aid taxpayers in special circumstances: Provided, That
the tax commissioner shall promulgate rules setting
forth the procedure by which he or she will compile such
reports and setting forth a priority for the order in
which the reports will be compiled according to type of
tax expenditure.

(d) Federal and state return information confidential.
— Notwithstanding any other provisions of this section
or of this code, no return information made available to
the tax commissioner by the Internal Revenue Service
or department or agency of any other state may be
disclosed to another person in any manner inconsistent
with the provisions of Section 6103 of the Internal
Revenue Code of 1986, as amended, or of such other
states’ confidentiality laws.
AN ACT to amend and reenact section six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the additional tax on the severance, extraction and production of coal; and providing that in computing the additional tax for benefit of counties and municipalities that the tax commissioner not apply credits against said additional tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

(a) Additional coal severance tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or
preparing coal (or both severing and preparing coal), for
sale, profit or commercial use, there is hereby imposed
an additional severance tax, the amount of which shall
be equal to the value of the coal severed or prepared (or
both severed and prepared), against which the tax
imposed by section three of this article is measured as
shown by the gross proceeds derived from the sale
thereof by the producer, multiplied by thirty-five one
hundredths of one percent. The tax imposed by this
subsection shall be in addition to the tax imposed by
section three of this article, and this additional tax is
hereinafter in this section referred to as the "additional
tax on coal".

(b) This additional tax on coal is imposed pursuant to
the provisions of section six-a, article ten of the West
Virginia constitution. Seventy-five percent of the net
proceeds of this additional tax on coal shall, after
appropriation thereof by the Legislature, be distributed
by the state treasurer in the manner hereinafter
specified, to the various counties of this state in which
the coal upon which this additional tax is imposed was
located at the time it was severed from the ground.
Those counties are hereinafter in this section referred
to as the "coal-producing counties". The remaining
twenty-five percent of the net proceeds of this additional
tax on coal shall be distributed, after appropriation,
among all the counties and municipalities of this state
in the manner hereinafter specified.

(c) Such additional tax on coal shall be due and
payable, reported and remitted as elsewhere provided in
this article for the tax imposed by said section three of
this article, and all of the enforcement and other
provisions of this article shall apply to such additional
tax. In addition to the reports and other information
required under the provisions of this article and the
 tonnage reports required to be filed under the provisions
of section seventy-two, article two, chapter twenty-two
of this code, the tax commissioner is hereby granted
 plenary power and authority to promulgate reasonable
rules and regulations requiring the furnishing by
producers of such additional information as may be
necessary to compute the allocation required under the
provisions of subsection (f) of this section. The tax
commissioner is also hereby granted plenary power and
authority to promulgate such other reasonable rules and
regulations as may be necessary to implement the
provisions of this section: **Provided,** That notwithstanding
any language contained in this code to the contrary,
the gross amount of additional tax on coal collected
under this article shall be paid over and distributed
without the application of any credits against the tax
imposed by this section.

(d) In order to provide a procedure for the distribution
of seventy-five percent of the net proceeds of such
additional tax on coal to such coal-producing counties,
there is hereby created in the state treasurer's office a
special fund to be known as the "county coal revenue
fund"; and in order to provide a procedure for the
distribution of the remaining twenty-five percent of the
net proceeds of such additional tax on coal to all counties
and municipalities of the state, without regard to coal
having been produced therein, there is also hereby
created in the state treasurer's office a special fund to
be known as the "all counties and municipalities revenue
fund".

Seventy-five percent of the net proceeds of such
additional tax on coal shall be deposited in the "county
coal revenue fund" and twenty-five percent of such net
proceeds shall be deposited in the "all counties and
municipalities revenue fund", from time to time, as such
proceeds are received by the tax commissioner. The
moneys in such funds shall, after appropriation thereof
by the Legislature, be distributed to the respective
counties and municipalities entitled thereto in the
manner set forth in subsection (e) of this section.

(e) The moneys in the "county coal revenue fund" and
the moneys in the "all counties and municipalities
revenue fund" shall be allocated among and distributed
quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled thereto on that distribution date. The amount to which a coal-producing county is entitled from the “county coal revenue fund” shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the “all counties and municipalities revenue fund” shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

(f) The amount to which a coal-producing county is entitled from the “county coal revenue fund” shall be determined by: (1) Dividing the total amount of moneys in such fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter; and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter.

(g) The amount to which each county and municipality shall be entitled from the “all counties and municipalities revenue fund” shall be determined in accordance with the provisions of this subsection. For purposes of this subsection “population” shall mean the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the “all counties and municipalities revenue fund” by multiplying the total amount in
such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county shall be the county’s “base share”.

(2) Each county's “base share” shall then be subdivided into two portions. One portion shall be determined by multiplying the “base share” by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion shall be determined by multiplying the “base share” by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the “municipalities’ portion” of the county’s “base share”. The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) All counties and municipalities shall create a “coal severance tax revenue fund” which shall be the depository for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such “coal severance tax revenue funds”, in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: Provided, That in counties with population in excess of two hundred thousand at least seventy-five percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal-producing area or areas of the county, said coal-producing areas of each county to be determined generally by the state tax commissioner:
Provided, however, That a line item budgeted amount from the current levy estimated for a county shall be funded at one hundred percent of the preceding year's expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: Provided further, That said coal severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

(i) On or before the twenty-eighth day of March, one thousand nine hundred eighty-six, and each twenty-eighth day of March thereafter, each county commission or governing body of a municipality receiving such revenue shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending such revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in said special fund at the close of a fiscal year shall be reappropriated to the budget for the subsequent fiscal year. Such reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before the fifteenth day of July of the current budget year.

(j) On or before the fifteenth day of December, one thousand nine hundred eighty-six, and each fifteenth day of December thereafter, the tax commissioner shall deliver to the clerk of the Senate and the clerk of the House of Delegates a consolidated report of the special budgets, created by subsection (i) of this section, for all county commissions and municipalities as of the fifteenth day of July of the current year.

(k) The state tax commissioner shall retain for the benefit of the state from the additional taxes on coal collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the tax commissioner.
AN ACT to amend and reenact sections one, two, six and seven, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections three-c and five-b; and to amend and reenact sections two and nine, article fifteen of said chapter, all relating to the creation of a credit against the West Virginia business franchise tax and the West Virginia corporation net income tax for qualified investment of two million dollars or more in a management information services facility when such qualified investment is purchased, or leased, and placed in service or use over a period of not more than three hundred sixty-five days; setting forth legislative findings and purpose; defining terms; prescribing amount of credit allowed, application of credit, investment period limitations subject to extension by subsequent legislative amendment; limiting time during which qualified investment for a management information services facility may be purchased and placed in service or use and for which credit will be available, to the period from the first day of April, one thousand nine hundred ninety-one, to the thirty-first day of March, one thousand nine hundred ninety-three, inclusive; providing tax year time limitations for application of credit over a ten-year period; providing for forfeiture of unused credit; providing that no carryback of credit to prior years shall be allowed; providing tax liability percentage offset limitations; limiting the amount of annual credit which any taxpayer or controlled group may take in any taxable year to a maximum of one million dollars; requiring an application for credit be filed with the tax commissioner; providing a penalty for failure to file an application for credit with the tax commissioner; defining qualified investment for a management information services facility, with applica-
tion of percentages of the cost of property purchased to be determined in accordance with useful life or applicable lease term thereof; prescribing the manner for determination of the cost of property purchased or leased for management information services facilities in the case of tradeins, damaged, destroyed or stolen property, rental property, property purchased for multiple use, self-constructed property, and providing specific exclusions for investment in certain properties; providing for forfeiture of unused tax credits; providing for redetermination of credit in the case of premature disposition or cessation of use of property; providing for transfer of eligible investment to successors; requiring disclosure of the names and addresses of persons receiving the credit and the amount thereof by a bracketed amount category; requiring a report to be made to the Legislature during the regular legislative session of one thousand nine hundred ninety-two by the governor's office of community and industrial development analyzing the performance of the management information services facility credit and identifying the taxpayers taking the credit; providing for a change in the form of business of taxpayers holding qualified investment property relating to credit; providing for transfer or sale of qualified investment property to successors and acquisition of the amount of credit that remains available for successors in business, and allocation of annual credit between the transferor and the transferee in the year during which qualified investment property is transferred to a successor business; and creating a consumers sales and service tax exemption and use tax exemption for purchases directly used or consumed in operation of management information services facilities that qualifies for tax credit under section three-c, article thirteen-d of said chapter; and defining terms.

Be it enacted by the Legislature of West Virginia:

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

Article

13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization, for Research and Development Projects, Certain Housing Developments and Management Information Services Facilities.

15. Consumers Sales Tax.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION, FOR RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENTS AND MANAGEMENT INFORMATION SERVICES FACILITIES.

§11-13D-1. Legislative findings and purpose.
§11-13D-3c. Amount of credit allowed and application of credit for qualified investment in a management information services facility.
§11-13D-3b. Qualified investment for a management information services facility.
§11-13D-6. Forfeiture of unused tax credits, redetermination of credit required.

§11-13D-1. Legislative findings and purpose.

The Legislature finds that the encouragement of the location of new industry in this state; the expansion, growth and revitalization of existing industrial facilities in this state; the conduct of research and development in this state, for purposes of expanding markets for sales and uses of this state's natural resources and industrial products, the construction of residential housing and the creation or expansion of management information services facilities are all in the public interest and promote the general welfare of the people of this state.

In order to encourage capital investment in this state and thereby increase employment and economic development, there is hereby provided a tax credit for industrial expansion and revitalization in this state, for certain research and development related expenditures in this state, for certain housing and development related expenditures in this state and for the creation

(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible investment" means that amount determined under either section four of this article, for investment in a new or expanded or revitalized industrial facility, or under section five of this article, in the case of an eligible research and development project, under section five-a for a qualified housing development project, or under section five-b for a management information services facility.

(2) Eligible taxpayer.

(A) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of revitalizing an existing industrial facility in this state; or a taxpayer who purchases property or services, or both, for the purpose of conducting an eligible research and development project in this state or for the purpose of constructing a qualified housing development project in this state.

(B) An eligible taxpayer for purposes of the management information services facility credit means a taxpayer fulfilling the requirements of paragraph (C) or (D) of this subdivision which has purchased, or leased, and placed into service or use in a management information services facility, qualified investment, as defined under section five-b of this article, of two million dollars or more over a time period of not more than three hundred sixty-five consecutive days and which operates such management information services facility, without regard to whether such taxpayer is an industrial taxpayer or engages in an industrial business or operates an industrial facility as herein defined.
(C) An eligible taxpayer for purposes of the management information services facility credit is a person or entity which had no operations and owned or leased no property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia, and which is not a successor in business to any person or entity which had operations or owned or leased property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia.

A person or entity shall not constitute an eligible taxpayer for purposes of the management information services facility credit if any related person (as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended) had operations or owned or leased property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia or if any such related person is a successor in business to any person or entity which had operations or owned or leased property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia.

(D) Notwithstanding paragraph (C) of this subdivision, a person, entity, successor in business which would otherwise not constitute an eligible taxpayer under paragraph (C) of this subdivision may nevertheless constitute an eligible taxpayer for purposes of this management information services facility credit if such person, entity, successor places qualified investment into service or use in West Virginia for the purpose of establishing in this state a management information services facility that is new to West Virginia and which services do not include any management information services previously conducted by such person, entity, successor, or a related person (as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended) in West Virginia, or if such person, entity or successor places qualified investment into service or use in West Virginia in a management information services
facility for the purpose of consolidating or relocating significant existing national, regional or international management information services operations in West Virginia, and such consolidation or relocation results in the placement of at least two million dollars of qualified investment into service or use in West Virginia within the time periods described in paragraph (B) of this subdivision, and such consolidation or relocation results in the relocation of significant management information services operations into West Virginia which did not previously exist in West Virginia, and the taxpayer otherwise constitutes an eligible taxpayer under such paragraph (B). For purposes of this section, the term "regional" means an area including more than one state or portions of more than one state of the United States.

(3) "Eligible research and development project" means a research and development project engaged in or conducted within this state, by a person who is engaged in this state in the business of producing natural resources or in an industrial business when such research and development project is conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for, and increasing sales of, this state's natural resource products, or industrial products, or both.

(4) "Industrial business" means any privilege taxable under section two-b or two-m, article thirteen of this chapter, and includes a manufacturing service taxable under section two-h of said article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the term "industrial business" shall mean the business of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use, the business of generating electric power, and the business of providing a manufacturing service, which were taxable, respectively, under sections two-b, two-m and two-h, article thirteen of this chapter, on the first day of January, one thousand nine hundred eighty-five.

(5) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings
located within this state, including the land on which it
is located, and all machinery, equipment and other real
and tangible personal property located at or within such
facility used in connection with the operation of such
facility in an industrial business.

(6) "Industrial revitalization" means capital invest-
ment in an industrial facility located in this state to
replace or modernize buildings, equipment, machinery
and other tangible personal property used in connection
with the operation of such facility in an industrial
business of the taxpayer, including the acquisition of
any real property necessary to the industrial
revitalization.

(7) "Industrial expansion" means capital investment in
a new or expanded industrial facility in this state.

(8) "Industrial taxpayer" means any person subject to
business and occupation taxes under article thirteen of
this chapter, exercising any privilege taxable under
section two-b or two-m of said article thirteen, or
providing a manufacturing service taxable under
section two-h of said article thirteen: Provided, That on
and after the first day of July, one thousand nine
hundred eighty-seven, "industrial taxpayer" shall mean
any person subject to tax under section two-m, article
thirteen of this chapter; or any person subject to tax
under article thirteen-a or twenty-three of this chapter
engaging in any activity that was taxable under section
two-b, article thirteen of this chapter, on the first day
of January, one thousand nine hundred eighty-five; or
any person taxable under article twenty-three of this
chapter providing a manufacturing service that was
taxable under section two-h, article thirteen of this
chapter on the first day of January, one thousand nine
hundred eighty-five.

(9) "Management information services facility" means
a building, or any part thereof, or a complex of
buildings, or any part thereof, including the machinery
and equipment located therein, that is exclusively
dedicated to providing management information servi-
ces to the owner or operator thereof or to another person.
(10) "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, telecommunications, computation and computer processing, computer programming, electronic information, and data management activities, or any combination of such activities, when such activity, or activities, is not subject to regulation by the West Virginia public service commission and such activity, or activities, is for the purpose of managing, planning for, organizing or operating, any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business, whether such industrial or commercial business or enterprise, facility or facilities of an industrial or commercial business is located within or without this state and without regard to whether such industrial or commercial business, or enterprise, facility or facilities of an industrial or commercial business is owned by the provider of the management information services or by a "related person", as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended.

(11) "Manufacturing service" means a privilege that would be taxable under section two-b, article thirteen of this chapter, if title to the raw materials used in the manufacturing process was vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(12) Subject to subdivision (15) below, "property purchased for an eligible research and development project" means real property, and improvements thereto, and tangible personal property, but only if such real or personal property is constructed or purchased on or after the first day of July, one thousand nine hundred eighty-five, for use as a component part of an eligible research and development project which is located within this state on or after the first day of July, one thousand nine hundred eighty-five. This term includes only tangible personal property with respect to which depreciation or amortization, in lieu of depreciation, is allowable in determining the personal income tax or
corporation net income tax liability of the purchaser
under article twenty-one or twenty-four of this chapter.
Property acquired by written lease for a term of ten
years or longer, if used as a component part of an
eligible research and development project, shall be
included within this definition.

(13) Subject to subdivision (15) below, "property
purchased for industrial expansion" means real prop­
erty, and improvements thereto, and tangible personal
property, but only if such property was constructed, or
purchased, on or after the first day of July, one thousand
nine hundred sixty-nine, for use as a component part of
a new or expanded industrial facility as defined in
subdivision (5) of this subsection located within this
state. This term includes only tangible personal prop­
erty with respect to which depreciation, or amortization
in lieu of depreciation, is allowable in determining the
personal income tax or corporation net income tax
liability of the industrial taxpayer under articles
twenty-one or twenty-four of this chapter, and has a
useful life, at the time such property is placed in service
or use in this state, of four years or more. Property
acquired by written lease, for a primary term of ten
years or longer, if used as a component part of a new
or expanded industrial facility, shall be included within
this definition.

(14) Subject to subdivision (15) below, "property
purchased for industrial revitalization" means real
property, and improvements thereto, and new tangible
personal property, but only if such property was
constructed, or purchased, on or after the first day of
July, one thousand nine hundred eighty-one, for use as
a component part of an ongoing industrial facility as
defined in subdivision (5) of this subsection located
within this state. This term includes only tangible
personal property with respect to which depreciation is
allowable in determining the personal income tax or
corporation net income tax liability of the industrial
taxpayer under article twenty-one or twenty-four of this
chapter, and has a useful life at the time the property
is placed in service or use in this state of four years or
more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of an industrial revitalization, shall be included within this definition.

(15) "Property purchased for industrial expansion", "property purchased for industrial revitalization", "property purchased for an eligible research and development project", "property purchased for a qualified housing development project" and "property purchased or leased for a management information services facility" shall not include:

(A) 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;

(B) Motor vehicles licensed by the department of motor vehicles;

(C) Airplanes;

(D) Off-premise transportation equipment;

(E) Property which is primarily used outside this state; and

(F) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his industrial business in this state, or which property was previously designated "property purchased for industrial expansion", or "property purchased for industrial revitalization", or "property purchased for an eligible research and development project", or "property purchased for a qualified housing development project", and used to qualify for business and occupation tax credit for industrial expansion or revitalization, or for an eligible research and development project, or for a qualified housing development project, or property which was subject to or gave rise to the management information services facility credit in the hands of the transferor, except that successors in business shall have successor credit available pursuant to section seven of this article.
(16) Subject to subdivision (15) above, property purchased for a qualified housing development project means real property, and improvements thereto, and tangible personal property incorporated into real property, whether or not attached thereto, but only if such real or tangible personal property was constructed, or purchased, on or after the first day of July, one thousand nine hundred eighty-six, for use as a component part of a housing development project, as defined in section five-a of this article, located within this state.

(17) Subject to subdivision (15) above, "property purchased or leased for a management information services facility" means tangible personal property purchased from a West Virginia vendor in West Virginia or leased through or from a West Virginia vendor for a primary lease term of three years or more. For purposes of this section the term "tangible personal property" shall include prewritten or "canned" computer software, "custom" software and computer programming services which result in the production of custom software: Provided, That the term "property purchased or leased for a management information services facility" shall not include:

(A) Land or building or any part thereof whether leased or purchased;

(B) Natural resources in place;

(C) Property, 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;

(D) Property purchased or leased or placed in service or use prior to the first day of April, one thousand nine hundred ninety-one, or property purchased or leased or placed in service or use after the thirty-first day of March, one thousand nine hundred ninety-three; or

(E) Property purchased for use in a management information services facility when such property is not purchased for the purpose of either:

(i) Expanding an existing management information
services facility in West Virginia pursuant to a relocation or consolidation of significant national, regional or international management information services operation to West Virginia; or

(ii) Establishing in this state a management information services facility that is new to West Virginia.

(18) Property shall be deemed to have been purchased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the taxpayer prior to the specified date;

(B) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to such date; or

(C) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(19) “Taxpayer” means any person taxable under article thirteen of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, “taxpayer” shall mean any person taxable under article thirteen, thirteen-a or twenty-three of this chapter.

§11-13D-3c. Amount of credit allowed and application of credit for qualified investment in a management information services facility.

(a) Credit allowed. — There shall be allowed to eligible taxpayers a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in a management information services facility. The amount of credit shall be determined as hereinafter provided in this section.

(b) Investment period limitations subject to extension upon legislative amendment. — It is the finding of the
Legislature that certain tax credits heretofore enacted have not effectively fulfilled the intended legislative purpose of increasing employment and economic growth and development in this state. Therefore, the time period over which qualified investment property may be purchased or leased and placed in service or use by eligible taxpayers at a management information services facility is expressly limited, for purposes of this credit, to two years under paragraph (C), subdivision (17), subsection (b), section two of this article, subsection (c) of this section, and paragraph (B), subdivision (6), subsection (c), section five-b of this article. If the Legislature subsequently finds that this credit for a management information services facility effectively fulfills the legislative purpose for which it was enacted, the Legislature may, in its discretion, extend, by statutory amendment, the time period over which qualified investment may be purchased, or leased, and placed in service or use.

(c) Credit amount for qualified investment purchased and placed in service or use in a management information services facility after the thirty-first day of March, one thousand nine hundred ninety-one and prior to the first day of April, one thousand nine hundred ninety-three. — For property purchased or leased by an eligible taxpayer and placed in service or use after the thirty-first day of March, one thousand nine hundred ninety-one, and prior to the first day of April, one thousand nine hundred ninety-three, for use as a component part of a management information services facility, the amount of allowable credit shall be equal to one hundred percent of the qualified investment, as determined under section five-b of this article, and shall reduce the business franchise tax under article twenty-three of this chapter and the corporation net income tax under article twenty-four of this chapter, subject to the following conditions and limitations:

(1) Tax year time limitations for application of credit, credit forfeiture. —

(A) The amount of this credit allowable shall be applied over a time period of up to ten tax years.
(B) This credit shall first be applied against the tax liabilities in the manner specified in subdivision (2) of this subsection (c) beginning with the tax year during which the qualified investment was first placed in service or use in this state by the eligible taxpayer.

(C) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) of this subdivision (1) shall then be applied against the tax liabilities in the manner specified in subdivision (2) of this subsection (c) for the tax year immediately succeeding the tax year during which the qualified investment was first placed in service or use in this state and for each succeeding tax year thereafter up through the ninth tax year subsequent to the first tax year in which the qualified investment property was first placed in service or use.

(D) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) and then paragraph (C) of this subdivision shall be forfeited and shall not carry forward to any subsequent tax year.

(E) No carryback of credit to a prior tax year shall be allowed.

(2) Tax liability percentage offset limitations. —

(A) This credit for qualified investment in a management information services facility shall first be applied to reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit, in combined application with all other applicable credits allowable under articles thirteen-c, thirteen-d and thirteen-e of this chapter and under chapter five-e of this code and all other tax credits provided in this code, shall not reduce the annual business franchise tax liability for such tax year below fifty percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.
(B) After application of this credit against business franchise tax as provided in paragraph (A) of this subdivision (2), remaining credit for qualified investment in a management information services facility, if any, shall then be applied to reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit in combined application with all other applicable credits allowable under articles thirteen-c, thirteen-d, thirteen-f and thirteen-g of this chapter and under sections ten, eleven, eleven-a, twelve, twenty-two and twenty-three-a, article twenty-four of this chapter and under chapters five-e and eighteen-b of this code and all other tax credits provided in this code, shall not reduce the annual corporation net income tax liability for such tax year below fifty percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(C) After application of this credit against business franchise tax under paragraph (A) of this subdivision (2), and then against corporation net income tax under paragraph (B) of this subdivision (2); remaining credit for qualified investment in a management information services facility, if any, shall then be applied to further reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit shall not reduce the annual business franchise tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(D) After application of this credit against business franchise tax under paragraph (A) of this subdivision (2) and then against corporation net income tax under paragraph (B) of this subdivision (2), and then against
business franchise tax under paragraph (C) of this subdivision (2); remaining credit for qualified investment in a management information services facility, if any, shall then be applied to further reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit shall not reduce the annual corporation net income tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(d) Maximum annual credit allowance. — (1) Notwithstanding any other provision of this section, no taxpayer may take or apply more than one million dollars of this credit against all taxes, in the aggregate, against which this credit may apply in any taxable year, and no related person or persons as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended, may, in the aggregate, take or apply more than one million dollars of this credit against all taxes, in the aggregate, against which this credit may apply in any taxable year.

(2) Notwithstanding any other provision of this section, the total amount of credit certified under subsection (e) for all taxpayers shall not exceed five million dollars per year. The tax commissioner shall allocate this credit to eligible taxpayers in the order that such taxpayers are certified under subsection (e) of this section: Provided, That no taxpayer or any related person to such taxpayer (as amended in section 267(b) of the Internal Revenue Code of 1986, as amended), shall be allocated more than five million dollars.

(e) Certification of credit required. —

(1) Application required. — No credit shall be allowed or applied under this section for any investment in any management information services facility 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 section and receives written certification of its claim from the tax commissioner. An application for credit shall be filed, in such form as the tax commissioner shall prescribe, prior to the first date when qualified investment property is first placed in service or use, and whether such property will be placed in service during the same tax year or over a period of two or more successive tax years. All information required by such form shall be provided. No credit shall be taken by a taxpayer applicant or prospective applicant pursuant to this section and the exemption from tax set forth under subsection (nn), section nine, article fifteen of this chapter shall not be available to a taxpayer applicant or prospective applicant until certification has been issued by the tax commissioner.

(2) Failure to file. — The failure to timely apply for certification under this subsection (e) shall result in the forfeiture of the credit otherwise allowable under this section.

(f) Forfeiture for reductions of employment. —

(1) With the annual return for the tax imposed by article twenty-three of this chapter filed for the taxable year in which the qualified investment is first placed in service or use in this state, and for each succeeding taxable year thereafter during which the taxpayer seeks to apply this credit against tax, the taxpayer shall file a statement with the tax commissioner certifying that no West Virginia jobs have been lost or terminated and no decrease of working hours or layoffs of employees holding West Virginia jobs have resulted from the making of the qualified investment upon which this credit is based or from the establishment or operation of the management information services facility upon which this credit is based.

(2) The taxpayer shall forfeit all annual credit otherwise available under this section during any year when West Virginia jobs have been lost or terminated or decreases of working hours or layoffs of employees holding West Virginia jobs have occurred as a result of
the making of the qualified investment upon which this
credit is based or the establishment or operation of the
management information services facility upon which
this credit is based, and the exemption from tax set
forth in subsection (nn), section nine, article fifteen of
this chapter shall not be available to the taxpayer
during such year of forfeiture.

(3) The tax commissioner shall conduct such audits or
reviews of each taxpayer in any year a credit is asserted
under this section to verify the accuracy of a taxpayer's
statement certifying that no West Virginia jobs have
been lost or terminated and that no decrease of working
hours or layoffs of employees holding West Virginia jobs
have resulted from the making of qualified investments
upon which this credit is based or from the establish­
ment or operation of the management information
services facility upon which this credit is based. Such
audits shall also verify that all other requirements
applicable to the allowance under a credit under this
section continue to be met by the taxpayer.

(g) Information disclosure. — Providing that such
disclosure can be made without directly or indirectly
revealing the amount of credit available to any partic­
ular taxpayer or taxpayer return information other than
the name and address of the taxpayer, and notwith­
standing any other provision of this code to the contrary,
the tax commissioner shall publish in the state register
the name and address of every taxpayer receiving this
credit allowed under this section by the thirty-first day
of December, one thousand nine hundred ninety-two,
and annually thereafter by the thirty-first day of
December of each year. The tax commissioner shall
publish in the state register the amount of the credit
asserted, by amount category, for each taxpayer
asserting such credit. The categories by dollar amount
of credit received shall be as follows:

(1) More than $1.00 but not more than $50,000;
(2) More than $50,000 but not more than $100,000;
(3) More than $100,000 but not more than $250,000;
(4) More than $250,000 but not more than $500,000;
and

(5) More than $500,000 but not more than $1,000,000.

(h) Report by the governor's office of community and industrial development. — The governor's office of community and industrial development shall produce a report to the Legislature to be presented during the regular legislative session of one thousand nine hundred ninety-two. Such report shall state the identity of taxpayers who have received this management information services facility credit, and shall contain an analysis of the expansion and growth of management information services facilities in the state of West Virginia, the expansion of commerce resulting from the creation of this credit, and the number of jobs created as a result of this credit. The report of the governor's office of community and industrial development shall not directly or indirectly reveal the amount of credit available to any particular taxpayer or taxpayer return information other than the names and addresses of taxpayers.

§11-13D-5b. Qualified investment for a management information services facility.

(a) General. — The qualified investment in property purchased or leased for use as a component part of a management information services facility shall be the applicable percentage of the cost of each property purchased for a management information services facility, which is placed in service or use in this state, by the eligible taxpayer during the tax year as determined under this section.

(b) Applicable percentage. — For the purposes of subsection (a), the applicable percentage for any property shall be determined under the following table:

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<thead>
<tr>
<th>If useful life or applicable lease term is:</th>
<th>The applicable percentage is:</th>
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<tr>
<td>3 yrs. or more but less than 6 yrs........</td>
<td>33-1/3%</td>
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<tr>
<td>6 yrs. or more but less than 8 yrs........</td>
<td>66-2/3%</td>
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<tr>
<td>8 yrs. or more ................................</td>
<td>100%</td>
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The useful life of any property for purposes of this section shall be the actual economic useful life determined as of the date such property is first placed in service or use in this state by the taxpayer, determined for financial accounting purposes in accordance with generally accepted principles of accounting.

(c) Cost. — For purposes of subsection (a), the cost of each property purchased for a management information services facility shall be the fair market value or the actual cost, whichever is less, and in no event shall the cost exceed the fair market value, furthermore the cost shall be determined under the following rules:

(1) Trade-ins. — Cost shall not include the value of property given in trade or exchange for the property purchased for a management information services facility.

(2) Damaged, destroyed or stolen property. — If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

(3) Rental property. — The cost of tangible personal property acquired by lease for a primary lease term of three or more years shall be seventy-five percent of the rent reserved for the shorter of:

(A) The first ten years of the primary lease term; or

(B) The primary lease term.

Such cost of leased tangible personal property shall then be multiplied by the applicable percentage determined under subsection (b) of this section based upon the shorter of the first ten years of the primary lease term or the primary lease term in order to determine qualified investment in such leased property.

(4) Property purchased for multiple use. — Investment in property purchased for use in a management information services facility together with some other use shall not qualify for purposes of this credit.

(5) Self-constructed property. — In the case of self-
constructed property, the cost thereof shall be the amount properly charged to the capital account for purposes of depreciation for federal income tax purposes.

(6) Specific exclusions. —

(A) Investment in land or buildings, whether purchased or leased, shall not qualify for purposes of this management information services facility credit.

(B) Investment by purchase or lease in natural resources in place; and investment by purchase or lease in property, 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, shall not qualify for purposes of this management information services facility credit.

(C) Investment in property purchased, or leased, or placed in service or use prior to the first day of April, one thousand nine hundred ninety-one, or after the thirty-first day of March, one thousand nine hundred ninety-three, shall not qualify for purposes of this management information services facility credit.

(D) Investment in property not purchased, or leased, either for the purpose of expanding an existing management information services facility in West Virginia pursuant to a national, regional or international relocation or consolidation of significant management information services in West Virginia; or for the purpose of establishing in this state a management information services facility that is new to West Virginia, shall not qualify for purposes of this management information services facility credit.

§11-13D-6. Forfeiture of unused tax credits, redetermination of credit required.

(a) Disposition of property or cessation of use. — If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section four, five, five-a or five-b of this article; or
(2) Ceases to be used in the new or expanded or revitalized industrial business, or in the eligible research and development project, or in the qualified housing development project, or in a management information services facility of the taxpayer in this state prior to the end of its useful life, as determined under said section four, five, five-a or five-b, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section four, five-a or five-b, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business or management information services business of the taxpayer. The taxpayer shall then file a reconciliation statement with its annual business franchise tax return for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen, or both, of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter or any one or combination of such articles of this chapter”.

(b) Cessation of operation of industrial facility or eligible research and development project, qualified housing development project or management information services facility. — If during any taxable year, the taxpayer ceases operation of an industrial facility or a management information services facility in this state, or of an eligible research and development project, or a qualified housing development project, for which credit was allowed under this article, or article thirteen-c of this chapter prior to its repeal, before expiration
of the useful life of the property with respect to which tax credit has been allowed under this article or article thirteen-c of this chapter prior to its repeal, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section four, five, five-a or five-b, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business or management information services business of the taxpayer. The taxpayer shall then file a reconciliation statement with its annual business franchise tax return for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen, or both, of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter, or any one or combination of such articles of this chapter”.


(a) Mere change in form of business. — Property shall not be treated as disposed of under section six of this article by reason of a mere change in the form of conducting the business as long as the property is retained in a similar industrial business or management information services business activity in this state and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the industrial facility or facilities transferred or to the eligible research and development project or management information services facility, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.
(b) \textit{Transfer or sale to successor}. — Provided that the tax commissioner gives prior approval for a transfer or sale, property shall not be treated as disposed of under section six by reason of any transfer or sale to a successor business which continues to operate the industrial facility or management information services facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each taxable year subsequent to the taxable year of the transferor during which the transfer occurred, and, for the year of transfer, an amount of annual credit for such year in the same proportion as the number of days remaining in the transferor's taxable year bears to the total number of days in such taxable year, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years. In determining whether or not to approve a disposition pursuant to this subsection, the tax commissioner shall take into account the legislative findings and purpose contained in section one of this article in making such decision.

\section*{ARTICLE 15. CONSUMERS SALES TAX.}

\hspace{1em} §11-15-2. Definitions.

\hspace{1em} §11-15-9. Exemptions.

\hspace{1em} §11-15-2. Definitions.

For the purpose of this article:

(a) "Persons" means any individual, partnership, association, corporation, state or its political subdivisions or agency of either, guardian, trustee, committee, executor or administrator.

(b) "Tax commissioner" means the state tax commissioner.

(c) "Gross proceeds" means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted.
(d) “Sale”, “sales” or “selling” includes any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor’s business and is made to the transferee or his agent for consumption or use or any other purpose.

(e) “Vendor” means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property.

(f) “Ultimate consumer” or “consumer” means a person who uses or consumes services or personal property.

(g) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or 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; and

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.

(o) "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 removal or demolition of a 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 build-
ing 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,
 Improvements which are capital improvements to a
building or structure or to real property.

(F) The term "capital improvement" means improve-
ments 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 transmis-
sion or other encoded symbolic information transfers
and shall include commercial broadcast radio, commer-
cial 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 reclama-
tion, waste disposal or environmental activities asso-
ciated therewith.

(u) "Management information services facility" means
a building, or any part thereof, or a complex of
buildings, or any part thereof, including the machinery
and equipment located therein, that is exclusively
dedicated to providing management information serv-
ces to the owner or operator thereof or to another person.

(v) "Management information services" means, and is
limited to, data processing, data storage, data recovery
and backup, programming recovery and backup,
telecommunications, computation and computer process-
ing, computer programming, electronic information,
and data management activities, or any combination of
such activities, when such activity, or activities, is not
subject to regulation by the West Virginia public service
commission and such activity, or activities, is for the
purpose of managing, planning for, organizing, or
operating, any industrial or commercial business, or any
enterprise, facility or facilities of an industrial or
commercial business, whether such industrial or
commercial business or enterprise, facility or facilities
of an industrial or commercial business is located within
or without this state and without regard to whether such
industrial or commercial business, or enterprise, facility
or facilities of an industrial or commercial business is
owned by the provider of the management information
services or by a "related person", as defined in Section
267(b) of the Internal Revenue Code of 1986, as
amended.

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;

(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 1986, 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 1986, 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 1986, as amended;

(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 1986, 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 1986, 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 1986, 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 1986, 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; or

(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 1986, 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, equipment, supplies and materials used or consumed in the activities for which such organizations qualify as tax exempt organizations under the Internal Revenue Code by these organizations and shall not apply to purchases of
gasoline or special fuel;

(g) Sales of property or services to persons engaged in this state in the business of manufacturing, transportation, transmission, communication or in the production of natural resources: 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 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 governmental 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: Provided further, That the exemption for government contractors in the
preceding proviso shall expire on the first day of October, one thousand nine hundred ninety, subject to the transition rules set forth in section eight-c of this article;

(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 a 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 article, 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 1986, 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 keypunching, 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 1986, 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 1986, 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
(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 exemptions 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;

(ll) 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;

(mm) Sales of aircraft repair, remodeling and maintenance services when such services are to an aircraft operated by a certified 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; and

(nn) Sales of tangible personal property and services
to a person entitled to claim the tax credit for invest-
ment in certain management information services
facilities allowed under section three-c, article thirteen-
d of this chapter, pursuant to the issuance of a manage-
ment information services tax credit certification by the
tax commissioner in accordance with subsection (e),
section three-c, article thirteen-d of this chapter, when
such property or services are directly used or consumed
by the purchaser in the operation of the management
information services facility, as defined in section two
of this article for which credit is allowed under section
three-c, article thirteen-d of this chapter. Tangible
personal property, or services, directly used or con-
sumed in the operation of a management information
services facility includes only: (1) Computer processing
and telecommunications equipment; (2) data storage and
input/output devices; (3) disaster recovery services; (4)
supplies; (5) application, telecommunication and operat-
ing system software; (6) repair and maintenance of any
of the aforesaid items; and (7) other tangible personal
property or services directly used or consumed in the
operation of a management information services facility:
Provided, That the property is purchased or leased after
the thirty-first day of March, one thousand nine hundred
ninety-one. This exemption shall not apply to tangible
personal property, or services, that are not directly used
or consumed in the operation of a management informa-
tion services facility, or to gasoline or special fuel:
Provided, however, That nothing in this paragraph shall
be construed to limit, exclude or preclude the applica-
tion or availability of any other exemption set forth in
this section, or elsewhere in this code, which might
otherwise apply to any sale of tangible personal property
or services.
AN ACT to amend and reenact sections eight-a, eight-b, eight-c, eight-e and eight-f, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twenty-three-a, twenty-three-b, twenty-three-c, twenty-three-e and twenty-three-f, article twenty-four of said chapter, all relating to requiring certification by the West Virginia division of culture and history for historic preservation tax credit against personal income tax and corporation net income tax; removing fee authorization for the state tax department; providing for a credit carryforward and carryback; extending the grandfather clause in the sunset provision to applications for certification by the United States secretary of the interior filed prior to the sunset date; and extending the sunset date until the year one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

That sections eight-a, eight-b, eight-c, eight-e and eight-f, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections twenty-three-a, twenty-three-b, twenty-three-c, twenty-three-e and twenty-three-f, article twenty-four of said chapter be amended and reenacted, all to read as follows:

Article

ARTICLE 21. PERSONAL INCOME TAX.
§11-21-8a. Credit for qualified rehabilitated building investment.
§11-21-8b. Definitions.
§11-21-8c. Procedures.
§11-21-8e. Carryback, carryforward.
§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:

2 *Certified historic structures.* — For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia division of culture and history and designated by the national park service, United States department of the interior as “certified historic structures,” and further defined as a “qualified rehabilitated building,” as defined under §47(c)(1), Title 26 of the United States Code, as amended.

§11-21-8b. Definitions.

1 (a) "Certified historic structure" means any building located in this state that is listed individually in the national register of historic places or located in a registered historic district, reviewed by the West Virginia division of culture and history, and certified by the national park service as being of historic significance to the district.

2 (b) "Certified rehabilitation" means any rehabilitation of a certified historic building that is reviewed by the West Virginia division of culture and history, and certified by the national park service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

3 (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.

4 (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 provi-
sions 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 rehabilitation of a building that results in such
building being a "qualified rehabilitated building"
within the meaning of §47(c)(1), Title 26 of the United
States Code, and amendments thereto, 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

§11-21-8e. Carryback, carryforward.

Any unused portion of the credit for qualified
rehabilitated buildings investment authorized by section
eight-a of this article which may not be taken in the
taxable year to which the credit applies shall qualify for
carryback and carryforward treatment subject to the
identical general provisions under §39, Title 26 of the
United States Code, as amended: Provided, That the
amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year.

§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-four, 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 rehabilitation projects for which a completed Part 2 (Description of Rehabilitation) of the historic preservation certification application was filed with the West Virginia division of culture and history prior to that date and subsequently approved in accordance with section eight-c of this article, the credit shall continue to be allowed pursuant to this article.

ARTICLE 24. CORPORATION NET INCOME TAX.

§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 as defined in §47(c)(2), Title 26 of the United States Code, as amended. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia division of culture and history and designated by the national park service, United States department of the interior as "certified historic building", and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of the United States Code, as amended.
§11-24-23b. Definitions.

(a) "Certified historic structure" means any building located in this state that is listed individually in the national register of historic places or located in a registered historic district, reviewed by the West Virginia division of culture and history and certified by the national park service as being of historic significance to the district.

(b) "Certified rehabilitation" means any rehabilitation of a certified historic structure that is reviewed by the West Virginia division of culture and history, and certified by the national park service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

(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 rehabilitation of a building that results in such building being a “qualified rehabilitated building” within the meaning of §47(c)(1), Title 26 of the United States Code, and amendments thereto, 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 the Code of Federal Regulations, Part 1.

§11-24-23e. Carryback, carryforward.

Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section twenty-three-a of this article which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: Provided, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year.

§11-24-23f. Termination of credit by law.

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-four, 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 rehabilitation projects for which a completed Part 2 (Description of Rehabilitation) of the historic preservation certification application was filed with the West Virginia division of culture and history prior to that date and subsequently approved in accordance with section twenty-three-c of this article, the credit shall continue to be allowed pursuant to this article.
CHAPTER 166
(S. B. 310—By Senators Burdette, Mr. President, and Boley,)
[By Request of the Executive]

[Passed February 18, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-nine; preserving the prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


1 (a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and 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-one, 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 ninety, or thereafter, but no amendment to the laws of the United States made on or after the first day of January,
(b) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-one shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety, to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety, prior law shall be fully preserved.

CHAPTER 167
(S. B. 632—Originating in the Committee on Finance)

[Passed March 8, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto three new sections, designated sections five-a, twenty-seven and twenty-eight; to amend and reenact sections three-a and seven, article twenty-four of said chapter; to further amend said article by adding thereto two new sections, designated sections seven-b and twenty-four; and to amend article two, chapter thirty-one-a by adding thereto a new section, designated section fifteen, all relating to imposing the business franchise tax and corporation net income tax on out-of-state financial organizations engaging in certain activities in this state; defining the term “financial organization” and amending the terms “business income” and “commercial domicile”; providing credit for franchise tax and income tax paid to another state; and requiring corporations and partnerships doing business or owning or maintaining property in this state to file a notice of business activities report required by the commissioner of banking to prepare a report to the governor, Legislature and tax commissioner.
Be it enacted by the Legislature of West Virginia:

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

Chapter
11. Taxation.
31A. Banks and Banking.

CHAPTER 11. TAXATION.

Article

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Meaning of terms; specific terms defined.
§11-23-5. Apportionment of tax base.
§11-23-5a. Special apportionment rules — Financial organizations.
§11-23-27. Credit for franchise tax paid to another state.

§11-23-3. Meaning of terms; specific terms defined.

1 (a) General. — When used in this article, or in the administration of this article, terms defined in this section shall have the meanings ascribed to them herein unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.

7 (b) Terms defined. —

8 (1) Business income. — The term “business income” means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition
of the property or the rendering of services in connection
therewith constitute integral parts of the taxpayer's
regular trade or business operations.
(2) **Capital.** — The term "capital" of a taxpayer shall
mean:

(A) **Corporations.** — In the case of a corporation,
except an electing small business corporation, the
average of the beginning and ending year balances of
the sum of the following entries from Schedule L of
Federal Form 1120, prepared following generally
accepted accounting principles and as filed by the
taxpayer with the Internal Revenue Service for the
taxable year:

(i) The value of all common stock and preferred stock
of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) The amount of retained earnings, appropriated
and unappropriated; and

(iv) Less the cost of treasury stock.

(B) **S Corporations.** — In the case of an electing small
business corporation, the average of the beginning and
ending year balances of the sum of the following entries
from Schedule L of Federal Form 1120S, prepared
following generally accepted accounting principles and
as filed by the taxpayer with the Internal Revenue
Service for the taxable year:

(i) The value of all common stock and preferred stock
of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and
unappropriated;

(iv) The amount of shareholders' undistributed taxable
income;

(v) The amount of the accumulated adjustments
account;

(vi) The amount of the other adjustments account; and
49  (vii) Less the cost of treasury stock.
50  (C) *Partnerships.* — In the case of a partnership, the
51  average of the beginning and ending year balances of
52  the value of partner's capital accounts from Schedule L
53  of Federal Form 1065, prepared following accepted
54  accounting principles and as filed by the taxpayer with
55  the Internal Revenue Service for the taxable year.
56  (D) *Additional items in capital.* — The term "capital"
57  for purposes of this article shall include such adjust-
58  ments thereto as the tax commissioner deems necessary
59  to properly reflect capital and such additional items
60  from the accounts of the taxpayer as the tax commis-
61  sioner may by regulation prescribe, which fairly
62  represent the net equity of the taxpayer as defined in
63  accordance with generally accepted accounting
64  principles.
65  (E) *Allowance for certain government obligations and
66  obligations secured by residential property.* — As to both
67  corporations and partnerships, capital shall be multi-
68  plied by a fraction equal to one minus a fraction:
69  (i) The numerator of which is the average of the
70  monthly beginning and ending account balances during
71  the taxable year (account balances to be determined at
72  cost in the same manner that such obligations, invest-
73  ments and loans are reported on Schedule L of the
74  Federal Form 1120 or Federal Form 1065) of the
75  following:
76  (I) Obligations and securities of the United States, or
77  of any agency, authority, commission or instrumentality
78  of the United States and any other corporation or entity
79  created under the authority of the United States
80  Congress for the purpose of implementing or furthering
81  an objective of national policy;
82  (II) Obligations of this state and any political subdi-
83  vision of this state;
84  (III) Investments or loans primarily secured by
85  mortgages, or deeds of trust, on residential property
86  located in this state and occupied by nontransients; and
(IV) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer as shown on Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

(3) Commercial domicile. — The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed: Provided, That the commercial domicile of a financial organization, which is subject to regulation as such, shall be at the place designated as its principal office with its regulating authority.

(4) Commissioner or tax commissioner. — The terms “commissioner” or “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) Compensation. — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Corporation. — The term “corporation” includes any corporations, S corporation, joint-stock company and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) Delegate. — The term “delegate” in the phrase “or his delegate”, when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulations promulgated thereunder.

(8) Doing business. — The term “doing business”
means any activity of a corporation or partnership
which enjoys the benefits and protection of the govern-
ment and laws of this state, except the activity of
agriculture and farming, which shall mean the produc-
tion of food, fiber and woodland products (but not
timbering activity) by means of cultivation, tillage of the
soil and by the conduct of animal, livestock, dairy,
apiary, equine or poultry husbandry, horticulture, or
any other plant or animal production and all farm
practices related, usual or incidental thereto, including
the storage, packing, shipping and marketing, but not
including any manufacturing, milling or processing of
such products by persons other than the producer
thereof.

The activity of agriculture and farming shall mean
such activity, as above defined, occurring on not less
than five acres of land and the improvements thereon,
used in the production of the aforementioned activities,
and shall mean the production of at least one thousand
dollars of products per annum through the conduct of
such principal business activities as set forth in section
ten, article one-a, chapter eleven of this code.

(9) Domestic corporation. — The term "domestic
corporation" means a corporation organized under the
laws of this state, and certain corporations organized
under the laws of the state of Virginia before the
twentieth day of June, one thousand eight hundred
sixty-three. Every other corporation is a foreign
corporation.

(10) Federal Form 1120. — The term "Federal Form
1120" means the annual federal income tax return of
any corporation made pursuant to the United States
Internal Revenue Code of 1986, as amended, or in
successor provisions of the laws of the United States, in
respect to the taxable income of a corporation, and filed
with the federal Internal Revenue Service. In the case
of a corporation that elects to file a federal income tax
return as part of an affiliated group, but files as a
separate corporation under this article, then as to such
corporation Federal Form 1120 means its pro forma
Federal Form 1120.
(11) **Federal Form 1065.** — The term "Federal Form 1065" means the annual federal income tax return of a partnership made pursuant to Section 6031 of the United States Internal Revenue Code of 1986, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a partnership, and filed with the federal Internal Revenue Service.

(12) **Fiduciary.** — The term "fiduciary" means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(13) **Financial organization.** — The term "financial organization" means:

(A) A holding company or a subsidiary thereof. As used in this section "holding company" means a corporation registered under the federal bank holding company act of 1956 or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in section 408(a)(1)(F) of the federal national housing act (12 U.S.C. 1730(a)(1)(F));

(B) A regulated financial corporation or a subsidiary thereof. As used in this section "regulated financial corporation" means:

(1) An institution, the deposits, shares or accounts of which are insured under the federal deposit insurance act, or by the federal savings and loan insurance corporation;

(2) An institution that is a member of a federal home loan bank;

(3) Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

(4) A credit union incorporated and organized under the laws of this state;

(5) A production credit association organized under 12 U.S.C. 2071;
(6) A corporation organized under 12 U.S.C. 611 through 631 (an edge act corporation); or

(7) A federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101); or

(C) A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:

(1) Making, acquiring, selling or servicing loans or extensions of credit. Loans and extensions of credit include:

(I) Secured or unsecured consumer loans;

(II) Installment obligations;

(III) Mortgages or other loans secured by real estate or tangible personal property;

(IV) Credit card loans;

(V) Secured and unsecured commercial loans of any type; and

(VI) Loans arising in factoring.

(2) Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit (as defined by the Federal Reserve Board in 12 C.F.R. 225.25(b)(5)).

(3) Operating a credit card business.

(4) Rendering estate or trust services.

(5) Receiving, maintaining or otherwise handling deposits.

(6) Engaging in any other activity with an economic effect comparable to those activities described in item (1), (2), (3), (4) or (5) of this subparagraph.

(14) Fiscal year. — The term "fiscal year" means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.
(15) **Includes and including.** — The terms "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(16) **Parent and subsidiary corporations.** — A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the "parent corporation" and the corporation which is so owned by the parent is defined to be a "subsidiary corporation".

(17) **Partnership and partner.** — The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship or an unincorporated organization which under Section 761 of the Internal Revenue Code of 1986, as amended, and is not treated as a partnership for the taxable year for federal income tax purposes. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization which is a partnership.

(18) **Person.** — The term "person" includes any corporation or partnership.

(19) **Pro forma return.** — The term "pro forma return" when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(20) **Sales.** — The term "sales" means all gross receipts of the taxpayer that are "business income", as defined in this section.

(21) **State.** — The term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any foreign country or political subdivision thereof.

(22) **Stock.** — The term "stock" includes shares in a
corporation, association or joint-stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. "Stock owned by a corporation" shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) **Taxable year.** — The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year (short taxable year) under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(24) **Taxable in another state.** — The term "taxable in another state" for purposes of apportionment under this article, means a taxpayer who:

(A) Is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

(B) Would be subject to a net income tax if such other state imposed such a tax.

(25) **Taxpayer.** — The term "taxpayer" means any person (as defined in this section) subject to the tax imposed by this article.

(26) **This code.** — The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(27) **This state.** — The term "this state" means the state of West Virginia.

(28) **Treasury stock.** — The term "treasury stock" means shares of a corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not been canceled or restored to the status of authorized but unissued shares. Treasury stock is deemed to be issued shares, but not outstanding shares.

§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 communications 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.—
159 (1) Sales of tangible personal property are in this state if:

161 (i) 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, 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

176 (ii) 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.

179 (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.

185 (m) Allocation of other sales. — Sales, other than sales of tangible personal property, are in this state if:

187 (1) The income-producing activity is performed in this state;

189 (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; or

194 (3) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable
(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 transactions 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: *Provided, That the conduct of the business of a financial organization shall constitute 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.

(3) Notwithstanding any other provisions of this section, financial organizations shall use only the special apportionment rules set forth in section five-a of this article.

(q) Effective date. — The amendments to this section made by this article shall apply to all taxable years ending after the effective date of this article. The provisions of paragraph (3), subsection (p) of this section shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one.
§11-23-5a. Special apportionment rules — Financial organizations.

(a) General. — The Legislature hereby finds that the general formula set forth in section five of this article for apportioning the tax base of corporations and partnerships taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section five of this article may not be used to apportion the tax base of such financial organizations which shall use only the apportionment formula and methods set forth in this section.

(b) Financial organizations with business activities partially within and partially without this state. — A financial organization not having its commercial domicile in this state shall apportion its tax base to this state as provided in this subsection if it regularly engages in business in this state.

(1) Nexus presumptions and exclusions. — A financial organization is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars. However, gross receipts from the following types of property (as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property) shall not be a factor in determining whether the owner is engaging in business in this state:

(A) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company;

(B) An interest in a loan backed security representing ownership or participation in a pool of promissory notes.
or certificates of interest that provide for payments in
relation to payments or reasonable projections of
payments on the notes or certificates;

(C) An interest in a loan or other asset from which
the interest is attributed to a consumer loan, a commer-
cial loan or a secured commercial loan, and in which the
payment obligations were solicited and entered into by
a person that is independent, and not acting on behalf,
of the owner;

(D) An interest in the right to service or collect income
from a loan or other asset from which interest on the
loan is attributed as a loan described in the previous
paragraph, and in which the payment obligations were
solicited and entered into by a person that is independ-
ent, and not acting on behalf, of the owner; and

(E) Any amounts held in an escrow or trust account
with respect to property described above.

(2) Definitions. — For purposes of this subsection:

(A) "Deposit" means:

(i) The unpaid balance of money or its equivalent
received or held by a financial organization in the usual
course of business and for which it has given or it is
obligated to give credit, either conditionally or uncon-
ditionally, to a commercial, checking, savings, time or
thrift account whether or not advance notice is required
to withdraw the credit funds, or which is evidenced by
a certificate of deposit, thrift certificate, investment
certificate, or certificate of indebtedness, or other
similar name, or a check or draft drawn against a
deposit account and certified by the financial organiza-
tion, or a letter of credit or a traveler's check on which
the financial organization is primarily liable: Provided,
That without limiting the generality of the term "money
or its equivalent", any such account or instrument must
be regarded as evidencing the receipt of the equivalent
of money when credited or issued in exchange for checks
or drafts or for a promissory note upon which the person
obtaining any such credit or instrument is primarily or
secondarily liable or for a charge against a deposit
account or in settlement of checks, drafts or other instruments forwarded to such bank for collection;

(ii) Trust funds received or held by such financial organization, whether held in the trust department or held or deposited in any other department of such financial organization;

(iii) Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other (including funds held as dealers reserves) or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness;

(iv) Outstanding drafts (including advice or authorization to charge a financial organization's balance in another such organization), cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

(v) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if such entity is engaged in soliciting and holding such balances in the regular course of its business.

(B) "Sales" means:
For purposes of apportionment, the “sales” of a financial organization shall mean the gross receipts described in the gross receipts factor in this subsection, regardless of their source.

(3) Commercial domicile -apportionment or credit. — Financial organizations which do not have their commercial domicile in West Virginia shall use the apportionment rules set forth in this section. Financial organizations with their commercial domicile in West Virginia may not apportion their tax base, but shall allocate all capital to West Virginia without apportionment: Provided, That any financial organizations with their commercial domicile in West Virginia shall be allowed the credit against their business franchise tax liability as described in section twenty-seven of this article.

(4) Apportionment rules. —

(A) General method. —

If a financial organization not having its commercial domicile in this state is engaging in business both within and without this state, the portion of its capital attributable to such business, which is derived from sources within this state, shall be determined by apportionment in accordance with this subsection. The apportioned capital shall be determined by multiplying capital by the special gross receipts factor as defined in this subsection. Neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six, article twenty-four of this chapter.

(B) Special gross receipts factor. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year.

Numerator. — The numerator of the gross receipts factor shall include, in addition to items otherwise
includable in the sales factor under section five of this article, the following:

(i) Gross receipts from the lease or rental of real or tangible personal property (whether as the economic equivalent of an extension of credit or otherwise) if the property is located in this state;

(ii) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if such security property is located in this state. In the event that such security property is also located in one or more other states, such receipts shall be presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be promulgated by the tax commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this state;

(iii) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

(iv) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: Provided, That such receipts are presumed to be from sources in this state and such presumption may be overcome by reference to factors described in rules to be promulgated by the tax commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this state;

(v) Interest income and other receipts from a financial organization's syndication and participation loans, under the rules set forth in items (i) through (iv) above;

(vi) Interest income and other receipts, including service charges, from financial institution credit card
and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this state or if the billings for any such receipts are regularly sent to an address in this state;

(vii) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. In the case of merchants located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(viii) Gross receipts from the performance of services which are attributed to this state if:

(I) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state; except that, at the taxpayer's election, receipts from loan-related fees which are either: (a) "Pooled" or aggregated for collective financial accounting treatment; or (b) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(II) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (a) "Pooled" or aggregated for collective financial accounting treatment; or (b) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(III) The service receipt is a brokerage fee and the account holder is a resident of this state;

(IV) The service receipts are fees related to estate or
trust services and the estate’s decedent was a resident of this state immediately before death; or the grantor who either funded or established the trust is a resident of this state; or

(V) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of such service is received in this state;

(ix) Gross receipts from the issuance of travelers checks and money orders if such checks and money orders are purchased in this state; and

(x) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer’s commercial domicile.

**Denominator. —** The denominator of the receipts factor shall include all of the taxpayer’s receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(c) **Method of filing. —** Financial organizations subject to apportionment under subsection (b) of this section shall file only separate tax returns, and may not file on a consolidated or any other basis: Provided, That financial organizations which are members of an affiliated group may file on a consolidated basis if all members of the affiliated group have their commercial domicile in this state.

(d) **Effective date. —** The provisions of this section shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one.

§11-23-27. **Credit for franchise tax paid to another state.**

Effective for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, and notwithstanding any provisions of this code to the contrary, any financial organization having its commercial domicile in this state shall be allowed a
credit against the tax imposed by this article for any taxable year for taxes paid to another state or political subdivision thereof. That credit shall be equal in amount to the lesser of:

(a) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state or political subdivision thereof, and which tax was based upon or measured by the financial organization's capital and was paid with respect to the same taxable year; or

(b) The portion of the tax actually paid that the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the law of such other state or political subdivision.

Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in this section, and any refunds of such taxes, made or received by such financial organization with respect to the taxable year, but after the due date of the annual return required by this article for the taxable year, including any extensions, shall likewise be accounted for in the taxable year in which such additional payment is made or such refund is received by the financial organization.


(a) Except as provided by subsection (b) of this section, for each taxable year every corporation and partnership that carries on any business activity or owns or maintains property in West Virginia for the taxable year shall file a business activity report with the tax commissioner. The report must be filed on or before the fifteenth day of the fourth month after the end of the corporation or partnership's taxable year. The filing of a report shall not be a factor in determining whether a corporation or partnership is subject to taxation by this state.

(b) A corporation or partnership is not required to file
13 a report under this section if:
14 (1) During the taxable year for which a report is due, the corporation or partnership is registered to engage in business in West Virginia in accordance with the provisions of article twelve of this chapter;
15 (2) A tax return was filed for that taxable year for any of the taxes subject to the provisions of article ten, chapter eleven of this code;
16 (3) The corporation or partnership is a type of organization expressly exempted from taxation by West Virginia or federal statute or regulation; or
17 (4) The activities or interests in property owned in this state by the corporation or partnership consist solely of activities or property expressly exempted from taxation by West Virginia or federal statute or regulation.
18 (c) Until a report is filed in compliance with this section, a corporation or partnership may not pursue in the courts of this state any claim not relating to tax liability:
19 (1) That arose under West Virginia law; or
20 (2) On a contract that is executed under West Virginia law, if the claim arose or the contract was executed before or during the taxable year for which a report should have been filed. However, the court in which such a claim is filed may allow the claim to be pursued if the corporation or partnership:
21 (A) Establishes that it was not required to file a report under subsection (b);
22 (B) Files a report for each year for which a report is due;
23 (C) Files a tax return for each year for which a return is due; or
24 (D) Provides adequate security, including a bond, in an amount sufficient to cover all tax liabilities, including additions to tax, penalties and interest.
25 (d) As used in this section, carrying on an activity or
maintaining property in West Virginia includes, but is not limited to, any of the following:

1. Maintaining an office or other place of business in West Virginia;
2. The presence of employees, agents, representatives or independent contractors in West Virginia, if they are conducting business on behalf of the corporation or partnership, regardless of whether the individual or person is residing or regularly stationed in West Virginia;
3. Owning or maintaining real property, tangible personal property, or intangible property that is in West Virginia; or
4. Any activity of a financial organization described in item (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) or (x) of paragraph (B), subdivision (4), subsection (b), section five-a of this article.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.
§11-24-7b. Special apportionment rules — Financial organizations.
§11-24-24. Credit for income tax paid to another state.

§11-24-3a. Specific terms defined.

For purposes of this article:
1. (1) Business income. — The term “business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer’s regular trade or business operations.

2. (2) Commercial domicile. — The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed: Provided, That the commercial domicile of a financial organization, which is subject to regulation as such, shall be at the place designated as its principal
office with its regulating authority.

(3) **Compensation.** — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) **Corporation.** — The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

(5) **Delegate.** — The term "delegate" in the phrase "or his delegate", when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulations promulgated thereunder.

(6) **Domestic corporation.** — The term "domestic corporation" means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

(7) **Engaging in business.** — The term "engaging in business" or "doing business" means any activity of a corporation which enjoys the benefits and protection of government and laws in this state.

(8) **Federal Form 1120.** — The term "Federal Form 1120" means the annual federal income tax return of any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.
(9) **Fiduciary.** — The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(10) **Financial organization.** — The term “financial organization” means:

(A) A holding company or a subsidiary thereof. As used in this section “holding company” means a corporation registered under the federal bank holding company act of 1956 or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in section 408(a)(1)(F) of the federal national housing act (12 U.S.C. 1730(a)(1)(F));

(B) A regulated financial corporation or a subsidiary thereof. As used in this section “regulated financial corporation” means:

(1) An institution, the deposits, shares or accounts of which are insured under the federal deposit insurance act, or by the federal savings and loan insurance corporation;

(2) An institution that is a member of a federal home loan bank;

(3) Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

(4) A credit union incorporated and organized under the laws of this state;

(5) A production credit association organized under 12 U.S.C. 2071;

(6) A corporation organized under 12 U.S.C. 611 through 631 (an edge act corporation); or

(7) A federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101); or

(C) A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:
(1) Making, acquiring, selling or servicing loans or extensions of credit. Loans and extensions of credit include:

(I) Secured or unsecured consumer loans;

(II) Installment obligations;

(III) Mortgages or other loans secured by real estate or tangible personal property;

(IV) Credit card loans;

(V) Secured and unsecured commercial loans of any type; and

(VI) Loans arising in factoring.

(2) Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit (as defined by the Federal Reserve Board in 12 C.F.R. 225.25(b)(5)).

(3) Operating a credit card business.

(4) Rendering estate or trust services.

(5) Receiving, maintaining or otherwise handling deposits.

(6) Engaging in any other activity with an economic effect comparable to those activities described in item (1), (2), (3), (4) or (5) of this subparagraph.

(11) Fiscal year. — The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(12) Includes and including. — The terms "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(13) Nonbusiness income. — The term "nonbusiness income" means all income other than business income.

(14) Person. — The term "person" is to be deemed
(15) *Pro forma return.* — The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an affiliated group.

(16) *Public utility.* — The term “public utility” means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

(17) *Sales.* — The term “sales” means all gross receipts of the taxpayer that are “business income”, as defined in this section.

(18) *State.* — The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(19) *Taxable year.* — The term “taxable year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(20) *Tax.* — The term “tax” includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(21) *Tax commissioner.* — The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(22) *Taxpayer.* — The term “taxpayer” means a corporation subject to the tax imposed by this article.

(23) *This code.* — The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(24) *This state.* — The term “this state” means the state of West Virginia.
(25) West Virginia taxable income. — The term “West Virginia taxable income” means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in section six of this article: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its “West Virginia taxable income” shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of sections seven and seven-b of this article.


(a) General. — Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term “net income” means the taxpayer’s federal taxable income adjusted as provided in section six.

(b) “Taxable in another state” defined. — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to such tax.

(c) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, the entire net income of such taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer shall be deemed to have taken place in their entirety within this state if such taxpayer is not “taxable in another state”: Provided, That the business activities of a financial organization having its commercial domicile in this state shall be deemed to take place entirely in this state,
notwithstanding that such organization may be “taxable in another state”: Provided, however, That the income from the business activities of a financial organization not having its commercial domicile in this state shall be apportioned according to the applicable provisions of this article.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and such taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4): Provided, That to the extent such items constitute business income of the taxpayer, they shall not be so allocated but they shall be apportioned to this state according to the provisions of subsection (e) of this section and to the applicable provisions of section seven-b of this article.

(1) Net rents and royalties. —

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state; or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property
everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) **Capital gains.** —

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale; or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, from sales of natural resources severed in this state shall be allocated to this state if they are nonbusiness income.

(3) **Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.**

(4) **Patent and copyright royalties.** —

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that
it is employed in production, fabrication, manufacturing
or other processing in the state or to the extent that a
patented product is produced in the state. If the basis
of receipts from patent royalties does not permit
allocation to states or if the accounting procedures do
not reflect states of utilization, the patent is utilized in
the state in which the taxpayer's commercial domicile
is located.

(C) A copyright is utilized in a state to the extent that
printing or other publication originates in the state. If
the basis of receipts from copyright royalties does not
permit allocation to states or if the accounting proce-
dures do not reflect states of utilization, the copyright
is utilized in the state in which the taxpayer's commer-
cial domicile is located.

(5) Corporate partner's distributive share. —

(A) Persons carrying on business as partners in a
partnership, as defined in section 761 of the Internal
Revenue Code of 1986, as amended, are liable for income
tax only in their separate or individual capacities.

(B) A corporate partner's distributive share of income,
gain, loss, deduction or credit of a partnership shall be
modified as provided in section six of this article for
each partnership. Such distributive share shall then be
allocated and apportioned as provided in section seven
of this article, using the corporation's proportionate
share of the partnership's property, payroll and sales
factors. The sum of that portion of the distributive share
allocated and apportioned to this state shall then be
treated as distributive share allocated to this state; and
that portion of distributive share allocated or apporti-
one outside this state shall be treated as distributive
share allocated outside this state, unless the taxpayer
requests or the tax commissioner, under subsection (h)
of this section requires that such distributive share be
treated differently.

(e) Business activities partially within and partially
without this state; apportionment of business income. —
All net income, after deducting those items specifically
allocated under subsection (d), shall be apportioned to
this state by multiplying such net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four, reduced by the number of factors, if any, having no denominator.

(1) 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 the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) 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 annual rental rate. The term "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 property and includes:

(A) 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.

(B) 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.

(3) 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.

(4) Leasehold improvements. — Leasehold improve-
ments shall, for purposes of the property factor, be
treated as property owned by the taxpayer regardless
of whether the taxpayer 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.

(5) 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.

(6) 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 for
compensation, 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.

(7) 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 amounts paid directly to employees are included in the payroll factor. Amounts considered as 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.

(8) Employee. — The term “employee” means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) Compensation. — Compensation is paid or accrued in this state if:

(A) The employee's service is performed entirely within this state; or

(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual’s service within this 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

(C) Some of the service is performed in this state and:

(i) 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
(ii) 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 communications 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.

(10) 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, 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.

(11) Allocation of sales of tangible personal property. —

(A) Sales of tangible personal property are in this state if:

(i) 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, 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

(ii) 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.

(B) 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) of this section) shall be excluded from the denominator of the sales factor.

(12) Allocation of other sales. — Sales, other than sales of tangible personal property are in this state if:

(A) The income-producing activity is performed in this state; or

(B) 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; or

(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in subsection (b), section seven-b of this article.

(13) Financial organizations and other taxpayers with business activities partially within and partially without
this state. — Notwithstanding anything contained in this section to the contrary, in the case of financial organizations and other taxpayers, not having their commercial domicile in this state, the rules of this subsection shall apply to the apportionment of income from their business activities except as expressly otherwise provided in subsection (b), section seven-b of this article.

(f) 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 transactions 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: Provided, That the conduct of the business of a financial organization shall constitute an income-producing activity.

(g) 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.

(h) Other methods of allocation and apportionment. —

(1) General. — If the allocation and apportionment provisions of subsections (d) and (e) of this section 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 or more 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 income. 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) Alternative method for public utilities. — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, as an alternative to the other methods provided for in paragraph (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) 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 paragraph (1) or (2) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsections (d) and (e) 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.

§11-24-7b. Special apportionment rules — Financial organizations.

(a) General. — The Legislature hereby finds that the general formula set forth in section seven of this article for apportioning the business income of corporations taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section seven of this article may not be used to apportion the business income of such financial organizations, which shall use only the apportionment formula and methods set forth in this section.

(b) Financial organizations with business activities partially within and partially without this state. — A financial organization not having its commercial domicile in this state shall apportion the business income component of its federal taxable income (as adjusted by section six of this article) to this state as provided in this subsection if it regularly engages in business in this state.

(1) Nexus presumptions and exclusions. — A financial organization is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars. However, gross receipts from
the following types of property (as well as those contacts
with this state reasonably and exclusively required to
evaluate and complete the acquisition or disposition of
the property, the servicing of the property or the income
from it, the collection of income from the property, or
the acquisition or liquidation of collateral relating to the
property) shall not be a factor in determining whether
the owner is engaging in business in this state:

(A) An interest in a real estate mortgage investment
conduit, a real estate investment trust or a regulated
investment company;

(B) An interest in a loan backed security representing
ownership or participation in a pool of promissory notes
or certificates of interest that provide for payments in
relation to payments or reasonable projections of
payments on the notes or certificates;

(C) An interest in a loan or other asset from which
the interest is attributed to a consumer loan, a commer-
cial loan or a secured commercial loan, and in which the
payment obligations were solicited and entered into by
a person that is independent, and not acting on behalf,
of the owner;

(D) An interest in the right to service or collect income
from a loan or other asset from which interest on the
loan is attributed as a loan described in the previous
paragraph, and in which the payment obligations were
solicited and entered into by a person that is independ-
ent, and not acting on behalf, of the owner; and

(E) Any amounts held in an escrow or trust account
with respect to property described above.

(2) Definitions. — For purposes of this subsection:

(A) "Deposit" means:

(i) The unpaid balance of money or its equivalent
received or held by a financial organization in the usual
course of business and for which it has given or it is
obligated to give credit, either conditionally or uncon-
ditionally, to a commercial, checking, savings, time or
thrift account whether or not advance notice is required
to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable: Provided, That without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable or for a charge against a deposit account or in settlement of checks, drafts or other instruments forwarded to such bank for collection;

(ii) Trust funds received or held by such financial organization, whether held in the trust department or held or deposited in any other department of such financial organization;

(iii) Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other (including funds held as dealers reserves) or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness;
(iv) Outstanding drafts (including advice or authorization to charge a financial organization's balance in another such organization), cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

(v) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if such entity is engaged in soliciting and holding such balances in the regular course of its business.

(B) "Sales" means:

For purposes of apportionment, the "sales" of a financial organization shall mean the gross receipts described in the gross receipts factor in this subsection, regardless of their source.

(3) Commercial domicile — apportionment or credit. — Financial organizations which do not have their commercial domicile in West Virginia shall use the apportionment rules set forth in this section. Financial organizations with their commercial domicile in West Virginia may not apportion their business income, but shall report all net income to West Virginia without apportionment: Provided, That any financial organizations with their commercial domicile in West Virginia shall be allowed the credit against their corporation net income tax liability as described in section twenty-four of this article.

(4) Apportionment rules. —

(A) General method. —

If a financial organization not having its commercial domicile in this state is engaging in business both within and without this state, the portion of its net income arising from such business, which is derived from sources within this state, shall be determined by apportionment in accordance with this subsection. The apportioned net income shall be determined by multiplying net income by the special gross receipts factor as
defined in this subsection. Neither the numerator nor
the denominator of the gross receipts factor shall
include receipts from obligations described in para-
graphs (A), (B), (C) and (D), subdivision (1), subsection
(f), section six of this article.

(B) Special gross receipts factor. — The gross receipts
factor is a fraction, the numerator of which is the total
gross receipts of the taxpayer from sources within this
state during the taxable year and the denominator of
which is the total gross receipts of the taxpayer
wherever earned during the taxable year.

Numerator. — The numerator of the gross receipts
factor shall include, in addition to items otherwise
includable in the sales factor under section seven of this
article, the following:

(i) Receipts from the lease or rental of real or tangible
personal property (whether as the economic equivalent
of an extension of credit or otherwise) if the property
is located in this state;

(ii) Interest income and other receipts from assets in
the nature of loans which are secured primarily by real
estate or tangible personal property if such security
property is located in the state. In the event that such
security property is also located in one or more other
states, such receipts shall be presumed to be from
sources within this state, subject to rebuttal based upon
factors described in rules to be promulgated by the tax
commissioner, including the factor that the proceeds of
any such loans were applied and used by the borrower
entirely outside of this state;

(iii) Interest income and other receipts from consumer
loans which are unsecured or are secured by intangible
property that are made to residents of this state,
whether at a place of business, by traveling loan officer,
by mail, by telephone or other electronic means or
otherwise;

(iv) Interest income and other receipts from commer-
cial loans and installment obligations which are unse-
cured or are secured by intangible property if and to
the extent that the borrower or debtor is a resident of
or is domiciled in this state: *Provided*, That such receipts
are presumed to be from sources in this state and such
presumption may be overcome by reference to factors
described in rules to be promulgated by the tax
commissioner, including the factor that the proceeds of
any such loans were applied and used by the borrower
entirely outside of this state;

(v) Interest income and other receipts from a financial
organization's syndication and participation in loans,
under the rules set forth in items (i) through (iv) above;

(vi) Interest income and other receipts, including
service charges, from financial institution credit card
and travel and entertainment credit card receivables
and credit card holders' fees if the borrower or debtor
is a resident of this state or if the billings for any such
receipts are regularly sent to an address in this state;

(vii) Merchant discount income derived from financial
institution credit card holder transactions with a
merchant located in this state. In the case of merchants
located within and without this state, only receipts from
merchant discounts attributable to sales made from
locations within this state shall be attributed to this
state. It shall be presumed, subject to rebuttal, that the
location of a merchant is the address shown on the
invoice submitted by the merchant to the taxpayer;

(viii) Receipts from the performance of services which
are attributed to this state if:

(I) The service receipts are loan-related fees, including
loan servicing fees, and the borrower resides in this
state, except that, at the taxpayer's election, receipts
from loan-related fees which are either: (a) "Pooled" or
aggregated for collective financial accounting treat-
ment; or (b) manually written as nonrecurring extraor-
dinary charges to be processed directly to the general
ledger may either be attributed to a state based upon
the borrowers' residences or upon the ratio that total
interest sourced to that state bears to total interest from
all sources;
(II) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (a) "Pooled" or aggregated for collective financial accounting treatment; or (b) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(III) The service receipt is a brokerage fee and the account holder is a resident of this state;

(IV) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death, or the grantor who either funded or established the trust is a resident of this state; or

(V) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of such service is received in this state;

(ix) Gross receipts from the issuance of travelers checks and money orders if such checks and money orders are purchased in this state; and

(x) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

Denominator. — The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(c) Method of filing. — Financial organizations subject to apportionment under subsection (b) of this section shall file only separate tax returns, and may not file on a consolidated or any other basis: Provided, That financial organizations which are members of an
affiliated group may file on a consolidated basis if all
members of the affiliated group have their commercial
domicile in this state.

(d) Effective date. — The provisions of this section shall
apply to all taxable years beginning on or after the first
day of January, one thousand nine hundred ninety-one.

§11-24-24. Credit for income tax paid to another state.

Effective for taxable years beginning on or after the
first day of January, one thousand nine hundred ninety-
one, and notwithstanding any provisions of this code to
the contrary, any financial organization, the business
activities of which take place, or are deemed to take
place, entirely within this state, shall be allowed a credit
against the tax imposed by this article for any taxable
year for taxes paid to another state or political subdi-
vision thereof. That credit shall be equal in amount to
the lesser of:

(a) The taxes such financial organization shall actually
have paid, which payments were made on or before the
filing date of the annual return required by this article,
to any other state or political subdivision thereof, and
which tax was based upon or measured by the financial
organization's net income and was paid with respect to
the same taxable year; or

(b) The amount of such tax the financial organization
would have paid if the rate of tax imposed by this article
is applied to the tax base determined under the laws of
such other state or political subdivision.

Any additional payments of such tax to other states,
or to political subdivisions thereof, by a financial
organization described in this section, and any refunds
of such taxes, made or received by such financial
organization with respect to the taxable year, but after
the due date of the annual return required by this
article for the taxable year, including any extensions,
shall likewise be accounted for in the taxable year in
which such additional payment is made or such refund
is received by the financial organization.

CHAPTER 31A. BANKS AND BANKING.
ARTICLE 2. DEPARTMENT OF BANKING.


On or before the fifteenth day of January, one thousand nine hundred ninety-two and biennially thereafter, the commissioner shall prepare a report to be submitted to the governor, the president of the Senate, the speaker of the House of Delegates and the commissioner of the tax division. Such report shall detail the effect on credit availability and cost of credit to consumers within this state resulting from the imposition of the business franchise tax provided for in article twenty-three, chapter eleven of this code and the corporation net income tax provided for in article twenty-four, chapter eleven of this code on out-of-state financial organizations engaging in the transaction of business that was not taxed prior to the taxable year beginning the first day of January, one thousand nine hundred ninety-one.

CHAPTER 168

(S. B. 328—By Senators Burdette, Mr. President, and Boley,)
[By Request of the Executive]

[Passed February 18, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter, relating to updating the meaning of certain terms used in the West Virginia business franchise tax act and the West Virginia corporation net income tax act by bringing 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-nine; preserving the prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:
That section three-a, 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 section three, article twenty-four of said chapter be amended and reenacted, all to read as follows:


ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3a. Meaning of terms; general rule.

1. (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 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-one, 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 ninety, 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-one, shall be given effect.

(b) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-one shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety, to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety, prior law shall be fully preserved.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
meaning as when used in a comparable context in the
claws 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-one, 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 ninety, 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-one, shall be given any
effect.

(b) The term "Internal Revenue Code of 1986" means
the Internal Revenue Code of the United States enacted
by the "Federal Tax Reform Act of 1986" and includes
the provisions of law formerly known as the Internal
Revenue Code of 1954, as amended, and in effect when
the "Federal Tax Reform Act of 1986" was enacted, that
were not amended or repealed by the "Federal Tax
Reform Act of 1986". Except when inappropriate, any
references in any law, executive order, or other
document:

(1) To the Internal Revenue Code of 1954 shall include
reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 shall include
a reference to the provisions of law formerly known as
the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section
enacted in the year one thousand nine hundred ninety-
one shall be retroactive and shall apply to taxable years
beginning on or after the first day of January, one
thousand nine hundred ninety, to the extent allowable
under federal income tax law. With respect to taxable
years that begin prior to the first day of January, one
thousand nine hundred ninety, prior law shall be fully
preserved.
AN ACT to amend and reenact section one, article thirteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six, chapter twenty-nine of said code, all relating to extending the preference rating of veterans to veterans who have served in campaigns, expeditions or conflicts for which a campaign badge has been authorized and received; awarding five points to certain veterans; awarding an additional five points to certain other veterans; defining terms; and redefining the term "veteran".

Be it enacted by the Legislature of West Virginia:

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

Chapter
29. Miscellaneous Boards and Officers.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATIONS ON NONPARTISAN MERIT BASIS.

§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

1 For positions in any department or agency in which positions are filled under civil service or any job classification system, a preference of five points in addition to the regular numerical score received on examination shall be awarded to all veterans having qualified for appointment by making a minimum
passing grade; and to all veterans awarded the purple heart, or having a compensable service-connected disability, as established by any proper veterans' bureau or department of the federal government, an additional five points shall be allowed.

For the purpose of this article, "veteran" shall mean any person who has served in the armed forces of the United States during the Spanish American War, World War I, World War II, the Korean Conflict, the Southeast Asian Conflict or in a campaign, expedition or conflict for which a campaign badge has been authorized and received by such person, and who has been honorably discharged from such service.

Such awards shall be made for the benefit and preference in appointment of all veterans who have heretofore or who shall hereafter take such examinations, but shall not operate to the detriment of any person heretofore appointed to a position in such department or agency.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

*§29-6-2. Definition of terms.

As used in this article, unless the context indicates otherwise, the term:

(a) "Administrator" means any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated;

(b) "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, division, section or office;

*Clerk's Note: This section was also amended by H. B. 2834 (Chapter 170), which passed subsequent to this act.
(c) "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service;

(d) "Board" means the state personnel board created by section six of this article;

(e) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of compensation and benefits may be equitably applied to each position in the group;

(f) "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class;

(g) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the board of regents;

(h) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system;

(i) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

(j) "Director" means the head of the division of personnel as appointed by section seven of this article;

(k) "Council" means the state personnel advisory council created in section nine-a of this article;

(l) "Division" means the division of personnel herein created;

(m) "Policymaking position" means a position in which the person occupying it: (1) Acts as an advisor to, or formulates plans for the implementation of broad goals for, an administrator or the governor; (2) is in charge of a major administrative component of the agency; and (3) reports directly and is directly accountable to an administrator or the governor;
(n) "Position" means a particular job which has been classified based on specifications;

(o) "Secretary" means the secretary of the department of administration created in section two, article one, chapter five-f of this code;

(p) "Specification" means a description of a class of position which defines the class, provides examples of work performed and the minimum qualifications required for employment; and

(q) "Veteran" means any person who has served in the armed forces of the United States of America during World War I (April 6, 1917-November 11, 1918), World War II (December 7, 1941-December 31, 1946), the Korean Conflict (June 27, 1950-January 31, 1955), the Vietnam Conflict (August 5, 1964-May 7, 1975), or in a campaign, expedition or conflict for which a campaign badge has been authorized and received by such person, and who has received a discharge under honorable conditions from such service.

CHAPTER 170

(Com. Sub. for H. B. 2834—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 8, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, five, six, nine and ten, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections forty-two and seventy-one, article twenty-one, chapter eleven; to further amend said article twenty-one by adding thereto three new sections, designated sections twelve-b, sixty-one and sixty-two; to amend and reenact section twelve, article twenty-four of said chapter eleven; to amend and reenact section one, article one-f, chapter fifteen; to amend and reenact section four, article three, chapter
Be it enacted by the Legislature of West Virginia:

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

Chapter

9A. Veterans' Affairs.

11. Taxation.

15. Public Safety.

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

18. Education.

21A. Unemployment Compensation.

29. Miscellaneous Boards and Officers.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.


§9A-1-2. Veterans' council; administration of division.

§9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal.

§9A-1-5. Compensation of director; veterans' affairs officers, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.


1 A state agency to be known as the "West Virginia division of veterans' affairs" is hereby created and established within the department of military affairs and public safety for the purpose of aiding, assisting, counseling and advising, and looking after the rights and interests of, all persons known as veterans who have served in the armed forces of the United States in the army, navy, marine corps, air force or coast guard as
defined by the laws of the United States and whose separation therefrom has been other than dishonorable and who are citizens and residents of this state, and the widows, dependents and orphans, who are or have become citizens and residents of this state, or all persons known as veterans who have served in the armed forces of the United States in the army, navy, marine corps, air force or coast guard as defined by the laws of the United States and whose separation therefrom has been other than dishonorable.

§9A-1-2. Veterans' council; administration of division.

There shall be a "veterans' council" which shall consist of seven members who shall be citizens and residents of this state, who have served in and been honorably discharged or separated under honorable conditions from the armed forces of the United States and whose service was within a time of war as defined by the laws of the United States, either Public Law No. 2 — 73rd Congress or Public Law No. 346 — 78th Congress, and any and all amendments thereto. At least one member of the council shall be a veteran of World War II, at least one member of the council shall be a veteran of the Korean Conflict and at least two members of the council shall be veterans of the Vietnam era. The members of the veterans' council shall be selected with special reference to their ability and fitness to effectuate the purposes of this article.

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 veterans' council should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the veterans' council shall continue to exist until the first day of July, one thousand nine hundred ninety-four.

The West Virginia division of veterans' affairs shall be administered by a director, and such veterans' affairs officers, assistants and employees as may be deemed advisable.
§9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal.

1 It shall be the duty and function of the veterans' council to determine the general administrative policies of the division, to select at their first meeting in each fiscal year commencing on the first day of July a chairman to serve one year, to promulgate such rules and regulations as may be necessary, to examine into the efficiency of the division from time to time, to exercise general supervision over the operations of the division, to advise the governor and the Legislature with respect to legislation affecting the interests of veterans, their widows, dependents and orphans, to make annual reports to the governor respecting the service of the division, and to prescribe the duties of the director. Such director shall have the same eligibility and qualifications prescribed for members of the veterans' council. The governor shall appoint a director for a term of six years, by and with the advice and consent of the Senate. Before making such appointment, the governor shall request the council of the West Virginia division of veterans' affairs to furnish a full and complete report concerning the qualifications and suitability of the proposed appointee. The director shall be subject to removal by the governor for cause, but shall have upon his own request an open hearing before the governor on the complaints or charges lodged against him. The action of the governor shall be final. The director ex officio shall be the executive secretary of the veterans' council, keep the minutes of each meeting, and be in charge of all records of the division.

§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.

1 The director shall receive a salary of thirty-two thousand dollars per annum and necessary traveling expenses incident to the performance of his or her duties. The salaries of the veterans' affairs officers,
assistants and employees shall be fixed by the veterans’ council. The members of the veterans’ council shall receive no salary, but each member shall receive twenty-five dollars for each day actually in attendance at a meeting and actual expenses and traveling expenses incurred in the performance of duties as a council member under this article. The requisition for such expenses and traveling expenses shall be accompanied by a sworn and itemized statement, which shall be filed with the auditor and permanently preserved as a public record. The veterans’ council shall hold its initial meeting on the call of the governor, and thereafter shall meet on the call of its chairman, except as otherwise provided. With the exception of the first three meetings of the veterans’ council, none of which shall be of a duration longer than two weeks each, for organizational purposes, the veterans’ council shall meet not more than once every two months at such times as may be determined by and upon the call of the chairman for a period of not more than two days, unless there should be an emergency requiring a special meeting or for a longer period and so declared and called by the governor or by the chairman with the approval of the governor. A majority of the members of the veterans’ council shall constitute a quorum for the conduct of official business.


The members of the veterans’ council, the director, and the veterans’ affairs officers, shall take and subscribe to the oath prescribed by article four, section five of the state constitution, before entering on their duties. Their oaths shall be filed with the secretary of state.


The division of veterans’ affairs of West Virginia shall:

(1) Assist veterans, their widows, dependents and orphans within the state, in properly presenting their claims before the United States veterans’ administration, its administrator, or any federal agency, the state of West Virginia, or any of the several states of the
Ch. 170] VETERANS 1591

United States, when the claims arise out of service with
the armed forces of the United States as defined in
section one of this article;

(2) Contact all veterans' organizations in this state
through their duly elected or appointive officers to
effectuate the purposes of this article and aid in the
efficiency of the operations of the division;

(3) Render all possible and proper advice, assistance
and counsel to veterans, their families, and their
widows, dependents and orphans, within the state, and
furnish them information on compensation, allowances,
pensions, insurance, rehabilitation, hospitalization,
education, vocational training, or refresher or retraining
courses in education or training, employment, loans or
aid for the purchase, acquisition or construction of
homes, farms, farm equipment and business property,
preference in the purchase of property and preference
in employment, as provided or may be provided by any
federal act, any federal agency, this state or other states;

(4) Make careful inquiry into all claims presented for
payment out of the state treasury from any appropriation
made for the benefit of veterans, their widows,
dependents and orphans.


The director shall be the executive and administrative
head of the division, and as such shall have the power
and duty, subject to the provisions of section four hereof,
to:

(a) Supervise and put into effect the purposes and
provisions of this article and the rules and regulations
for the government of the division;

(b) Prescribe methods pertaining to investigations and
reinvestigations of all claims, and to the rights and
interests of all veterans, their widows, dependents and
orphans;

(c) Prescribe uniform methods of keeping all records,
and case records of the veterans, their widows, depend-
ents and orphans;
(d) Sign and execute, in the name of the state by "West Virginia division of veterans' affairs," and by and with the consent of the veterans' council, any contract or agreement with the federal government or its agencies, other states, subdivisions of this state, corporations, associations, partnerships or individuals;

(e) Supervise the fiscal affairs and responsibilities of the division;

(f) Organize the division to comply with the requirements of this article and with the standards required by any federal act or any federal agency;

(g) Establish such regional or area offices throughout the state as may be necessary to promote efficiency and economy in administration;

(h) Make such reports as will comply with the requirements of any federal act or federal agency and the provisions of this article;

(i) Cooperate with the federal and state governments for the more effective attainment of the purposes of this article;

(j) Keep a complete and accurate record of all proceedings; record and file all contracts and agreements, and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office and the division;

(k) Prepare for the veterans' council the annual reports to the governor of the condition, operation and functioning of the division;

(l) Exercise any other powers necessary and proper to standardize the work; to expedite the service and business; to assure fair consideration of the rights and interests, and claims of veterans, their widows, dependents and orphans, and to promote the efficiency of the division;

(m) Invoke any legal, equitable or special remedies for the enforcement of his orders or the provisions of this article;
52  (n) Appoint the veterans’ affairs officers and heads of
53  divisions of the division, and of regional or area offices,
54  and employ such assistants and employees as may be
55  necessary for the efficient operation of the division; and
56  (o) Delegate to all or any of his appointees, assistants
57  or employees all powers and duties vested in the
director, except the power to sign and execute contracts
58  and agreements, but the director shall be responsible for
59  the acts of such appointees, assistants and employees.

CHAPTER 11. TAXATION.

Article

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12b. Combat pay exempt.
§11-21-42. Military incentive tax credit.
§11-21-61. Extension of time for performing certain acts due to Desert
    Shield service.
§11-21-62. Income taxes of members of armed forces on death.
§11-21-71. Requirement of withholding tax from wages.

§11-21-12b. Combat pay exempt.

1  Combat pay received for Desert Shield service, as
2  defined in section sixty-one of this article, which is
3  exempt from federal income tax, under Section 112 of
4  the Internal Revenue code, shall be exempt from the tax
5  imposed by this article.

§11-21-42. Military incentive tax credit.

1  Every employer entitled to receive a tax credit against
2  his West Virginia personal income tax liability as
3  provided in article two-c, chapter twenty-one-a of this
4  code shall receive the credit for the period and in the
5  amount specified in said article two-c. The state tax
6  commissioner shall provide by appropriate rule or
7  regulation for the reporting, filing and application of
8  claims of the tax credit provided for in a manner in
9  conformity with the legislative purpose as declared in
10  section two, article two-c, chapter twenty-one-a of this
11  code.
§11-21-61. Extension of time for performing certain acts due to Desert Shield service.

(a) General rule. — For purposes of applying this article and article ten of this chapter with respect to the tax liability (including any interest, penalty, additional amount, or addition to tax) of any individual who performed Desert Shield services, the period during which such individual performed such services, and the next one hundred eighty days thereafter, shall be disregarded in determining whether any of the acts referred to in subsection (b) were performed within the time prescribed therefor.

(b) Time for performing certain acts postponed by reason of Desert Shield service. — Whenever the general rule specified in subsection (a) applies, it shall apply to determine:

Whether any of the following acts was performed within the time prescribed therefor;

(A) Filing any return of income under this article (except income tax withheld at source);

(B) Payment of any income tax due under this article (except income tax withheld at source), or any installment thereof or of any other liability to this state in respect thereof;

(C) Filing a petition for reassessment or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(D) Allowance of a credit or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(E) Filing a claim for credit or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(F) Appealing any appealable decision of the tax commissioner to the courts of this state, or for appealing
to the supreme court of appeals a circuit court decision affirming, in whole or in part, the decision of the tax commissioner;

(G) Assessment of any tax (including any penalty, additional amount or addition to tax);

(H) Giving or making any notice or demand for the payment of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax), or with respect to any liability to this state in respect of any such tax;

(I) Collection by the tax commissioner, by levy or otherwise, of any liability in respect of any tax administered under article ten of this chapter;

(J) Bringing suit by any officer on behalf of this state, in respect of any liability in respect of any tax administered under article ten of this chapter;

(K) Any other act required or permitted under article nine or ten of this chapter or under any article of this chapter administered under said article ten, or specified in regulations promulgated under this section by the tax commissioner, in conformity with the provisions of article three, chapter twenty-nine-a of this code.

(c) Treatment of individuals performing Desert Shield services.

(1) In general. — Any individual who performed Desert Shield service shall be entitled to the benefits of this section.

(2) Desert Shield service. — For purposes of this section, the term “Desert Shield service” means any service in a unit of the armed forces of the United States (as defined in Section 7701(a)(15) of the Internal Revenue Code of 1986) or in support of any such unit if:

(A) Such service is performed in the area designated by the President of the United States as the “Persian Gulf Desert Shield Area”;

(B) Such service is performed during any portion of
the period beginning the second day of August, one thousand nine hundred ninety, and ending on the date on which any portion of the area referred to in subparagraph (A) is designated a combat zone pursuant to Section 112 of the Internal Revenue Code of 1986; or

(C) Such service is performed during any portion of the period that there is in effect a designation by the President of the United States that the "Persian Gulf Desert Shield Area" is a combat zone, pursuant to Section 112 of the Internal Revenue code.

(3) Hospitalization. — An individual shall be treated as performing Desert Shield services during any period of continuous qualified hospitalization attributable to an injury received while performing Desert Shield service. The term "qualified hospitalization" means:

(A) Any hospitalization outside the United States; and

(B) Any hospitalization inside the United States, except that not more than five years of hospitalization may be taken into account under this subparagraph (B); and this subparagraph shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (a) of this section.

(d) Special rules.

(1) Application to spouse. — The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than two years after the date designated by the President of the United States, under Section 112 of the Internal Revenue Code, as the date of termination of combatant activities in the Persian Gulf Desert Shield area.

(2) Missing status. — The period of service referred to in subsection (c) shall include the period during which an individual entitled to benefits under subsection (a) is in missing status, within the meaning of Section 6013(f)(3) of the Internal Revenue Code of 1986.
Ch. 170] VETERANS 1597

112 (e) Exceptions.

113 (1) Jeopardy assessments or collection. — Notwith-
standing the provisions of subsection (a), if the tax
commissioner determines that collection of the amount
of any tax would be jeopardized by delay, the provisions
of subsection (a) shall not operate to stay the assessment
of such amount, or the collection of such amount by levy
or otherwise as authorized by law. There shall be
excluded from any amount assessed or collected pursu-
ant to this subsection the amount of interest, penalty,
additional amount and addition to the tax, if any, in
respect of the period disregarded under subsection (a).

114 (2) Action taken before ascertainment of rights to
benefits. — The assessment or collection of any tax
administered under article ten of this chapter may be
made, begun or prosecuted in accordance with law,
without regard to the provisions of subsection (a), unless
prior to such assessment, collection, action or proceeding
it is ascertained that the person concerned is entitled to
the benefits of subsection (a).

115 (3) Notwithstanding the provisions of paragraphs (1)
and (2), the provision of this subsection shall be applied
in conformity with the Soldiers' and Sailors' Civil Relief
Act.

116 (f) Effective Date. — The provisions of this section shall
be retroactive to the second day of August, one thousand
nine hundred ninety.

§11-21-62. Income taxes of members of armed forces on
death.

1 (a) General rule. — In the case of any individual who
dies while in active service as a member of the armed
forces of the United States, if such death occurred while
serving in a combat zone (as determined under Section
112 of the Internal Revenue Code of 1986) or as a result
of wounds, disease or injury incurred while so
serving:

8 (1) Any tax imposed by this article shall not apply
with respect to the taxable year in which falls the date
of his or her death, or with respect to any prior taxable
year ending on or after the first day he or she served
in a combat zone after the first day of August, one
thousand nine hundred ninety; and

(2) Any tax under this article for taxable years
preceding those specified in paragraph (1) which is
unpaid at the date of his or her death (including interest,
additions to tax and additional amounts) shall not be
assessed and if assessed the assessment shall be abated
and if the assessment has been collected, the amount
collected shall be credited or refunded as an
overpayment.

(b) Individuals in missing status. — For purposes of
this section, in the case of an individual who was in a
missing status within the meaning of Section
6013(f)(3)(A) of the Internal Revenue Code of 1986, the
date of such individual's death shall be treated as being
not earlier than the date on which a determination of
such individual's death is made under section 556, Title
37 of the United States Code. Subsection (a)(1) shall not
apply for any taxable year beginning more than two
years after the date designated under Section 112 of the
Internal Revenue code as the date of termination of
combatant activities in a combat zone.

(c) Certain military or civilian employees of the United
States dying as a result of injuries sustained overseas.

(1) In general. — In the case of any individual who dies
while a military or civilian employee of the United
States, if such death occurs as a result of wounds or
injury which were incurred while the individual was a
military or civilian employee of the United States and
which were incurred outside the United States in a
terroristic or military action, any tax imposed by this
article shall not apply:

(A) With respect to the taxable year in which falls the
date of such individual's death; and

(B) With respect to any prior taxable year in the
period beginning with the last taxable year ending
before the taxable year in which the wounds or injury
were incurred.
(2) **Terroristic or military action.** — For purposes of paragraph (1), the term "terroristic or military action" means any action which is terroristic or military action for purposes of Section 692 of the Internal Revenue Code of 1986.

(d) **Effective date.** — The provisions of this section shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety.

§11-21-71. Requirement of withholding tax from wages.

(a) **General.** — Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the tax commissioner, with due regard to the West Virginia withholding exemption of the employee. This section shall not apply to payments by the United States for service in the armed forces of the United States: Provided, That the tax commissioner may execute an agreement with the secretary of the treasury, as provided in 5 United States Code, §5517, for the mandatory withholding of tax under this section on pay to members of the national guard while participating in exercises or performing duty under 32 United States Code, §502, and on pay to members of the ready reserve while participating in scheduled drills or training periods or serving on active duty for training under 10 United States Code, §270(a).

(b) **Withholding exemptions.** — For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number
of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) With respect to any taxable year beginning after the thirty-first day of December, one thousand nine hundred eighty-six, the amount of each West Virginia exemption shall be two thousand dollars whether the individual is a resident or nonresident.

(c) Exception for certain nonresidents. — If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the tax commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

(d) Effective date. — The provisions of this section, as amended in the year one thousand nine hundred eighty-seven, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

ARTICLE 24. CORPORATION NET INCOME TAX.

PART I.
DEFINITIONS, IMPOSITION OF TAX AND RATE, AND EXEMPTIONS.

§11-24-12. Military incentive tax credit.

Every employer entitled to receive a tax credit against its West Virginia corporate income tax liability as provided in article two-c, chapter twenty-one-a of this code shall receive the credit for the period and in the amount specified in said article two-c of this chapter. The state tax commissioner shall provide by appropriate rule or regulation for the reporting, filing and application of claims for the tax credit provided for in a manner in conformity with the legislative purpose as declared in section two, article two-c, chapter twenty-one-a of this code.
CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1. Leave of absence for public officials and employees for drills, parades, etc.

All officers and employees of the state, or subdivisions or municipalities thereof, who shall be members of the national guard or any military reserve unit of the United States armed services, shall be entitled to leave of absence from their respective offices or employments without loss of pay, status or efficiency rating, on the days during which they shall be engaged in drills, parades or other duty, during business hours ordered by proper authority, or for field training or active service of the state for a maximum period of thirty days in any one calendar year. The term "without loss of pay" means that the officer or employee shall continue to receive his normal salary or compensation, notwithstanding the fact that such officer or employee may have received other compensation from federal or state sources during the same period. Benefits of this section shall accrue to individuals ordered or called to active duty by the president for twenty-four working days after they report for active service.

CHAPTER 17A.

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

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.

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
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 retitle of that motor vehicle,
except that the tax shall be paid by the person when the
title to the vehicle has been transferred either in this
or another state from 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, recrea-
tional 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.

(e) Notwithstanding any other provisions of this section, military service personnel stationed outside West Virginia, or their dependents who possess a motor vehicle with valid registration, shall be exempt from the provisions of this article for a period of nine months from the date that such military service personnel returns to this state or the date such military service
personnel's dependent returns to this state whichever is later.

CHAPTER 18. EDUCATION.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.

§18-19-1. Appropriation to provide educational opportunities.
§18-19-2. Eligibility of applicant for benefits; application forms; preference.
§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

§18-19-1. Appropriation to provide educational opportunities.

For the purpose of providing educational opportunities for the children of those who served in the army, navy or marine corps of the United States during the world war from April sixth, one thousand nine hundred seventeen, to July second, one thousand nine hundred twenty-one, or served in the armed forces of the United States of America at any time between December first, one thousand nine hundred forty-one, and the declaration of peace by the Congress of the United States, or served in the armed forces of the United States of America at any time between June twenty-seventh, one thousand nine hundred fifty, and January thirty-first, one thousand nine hundred fifty-five, or served in the armed forces of the United States of America at any time between August fifth, one thousand nine hundred sixty-four, and May seventh, one thousand nine hundred seventy-five, all dates inclusive, and who were killed in action or have died or may hereafter die from disease or disability resulting from such war service, there shall be appropriated from the state fund general revenue the sum of at least five thousand dollars for each fiscal year commencing July first and ending on June thirty of each year of the next biennium to be used for the benefit of such children while attending state education or training institutions. This benefit also shall be given to children of a service member killed during hostile actions as defined by the agency administering this section. The term "children" as used in this article shall include any child of a veteran who has been legitimized.
§18-19-2. Eligibility of applicant for benefits; application forms; preference.

To be eligible for the benefits of this article, said children must be at least sixteen and not more than twenty-two years of age and have had their domiciles in this state for at least twelve months preceding their application for said benefits. Such application shall be made to, and upon forms provided by, the West Virginia division of veterans affairs, which division shall determine the eligibility of those who make such application and the yearly amount to be allotted each applicant, which amount in the discretion of the division may vary from year to year, but shall not exceed the sum of five hundred dollars in any one year. In selecting those to receive the benefits of this article, preference shall be given those who are otherwise financially unable to secure said educational opportunities and to those whose parent was domiciled in this state during the period of such parent’s war service.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

No tuition fees shall be charged such applicants attending any state education or training institution, and the funds herein appropriated shall be expended by said West Virginia division of veterans affairs only for matriculation fees, board, room rent, books, supplies and other necessary living expenses of such children. Said division is charged with the duty of disbursing the funds herein provided and shall draw its requisitions upon the auditor for that purpose. In the discretion of said division, such requisitions may be made payable to said education or training institutions or to those furnishing to said children board, room rent, books, supplies and other necessary living expenses, the division being first satisfied as to the correctness and amounts of such expenditures. Should any child withdraw from any such institution, all allowances to such child shall cease. No member or employee of said division shall receive any
18 additional compensation for the services herein re-
19 quired.

CHAPTER 21A.
UNEMPLOYMENT COMPENSATION.

ARTICLE 2C. MILITARY INCENTIVE PROGRAM.


This article shall be known and may be cited as the
"Military Incentive Program Act of 1991."

§21A-2C-2. Declaration of legislative intent and purpose.

The Legislature of West Virginia hereby recognizes
that disabled veterans and economically disadvantaged
veterans of the Vietnam era and of the Korean conflict,
members of the West Virginia national guard and the
reserve forces of the United States have made sacrifices
which merit preferential employment treatment in both
the public and private sectors. Economically disadvan-
taged and disabled veterans traditionally suffer a
disproportionately higher unemployment rate than that
of nonveterans of similar age and skills. Members of the
West Virginia national guard and reserve forces of the
United States who are called upon to leave their jobs to
perform military obligations are frequently placed in
conflict with their employers and as such are frequently
discriminated against by prospective employers. It is the
intent and purpose of the Legislature to encourage the
employment of these veterans and members of the guard
and reserve forces in the private sector by providing tax
credits for private sector employers who employ
economically disadvantaged Vietnam era and Korean
conflict veterans, disabled veterans, unemployed
members of the West Virginia national guard and
unemployed members of the reserve forces of the United
States generally.

For the purposes of this article:

(a) “Active duty” means full-time duty in the armed forces, other than duty for training in the reserves or national guard. Any period of duty for training in the reserves or national guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in line of duty, is considered “active duty.”

(b) “Economically disadvantaged” means a person who:

(1) Receives, or is a member of a family which receives, cash welfare payments under a federal, state or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the six months prior to application which, in relation to family size, was not in excess of the higher of:

(i) The poverty level determined in accordance with criteria established by the federal office of management and budget; or

(ii) Seventy percent of the lower living standard income level;

(3) Is receiving food stamps pursuant to the food stamp act of one thousand nine hundred seventy-seven;

(4) Is a foster child on behalf of whom state or local government payments are made; or

(5) Is an adult handicapped individual whose own income meets the requirements of subdivisions (1) and (2) of this subsection, but who is a member of a family whose income does not meet such requirements.

(c) “Korean conflict veteran” means a person who served in the armed services of the United States at least one day during the period of time beginning the twenty-seventh day of June, one thousand nine hundred fifty, and extending through the thirty-first day of January, one thousand nine hundred fifty-five.
(d) "National guard member" means a member of any component of the West Virginia national guard.

(e) "Reserve member" means a member of any component of the reserve forces of the United States.

(f) "Veteran" means a member of the United States armed forces who:

(1) Served on active duty for a period of more than one hundred eighty days and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty because of a service-connected disability.

(g) "Vietnam era veteran" means a person who served in the armed services of the United States at least one day during the period of time beginning the fifth day of August, one thousand nine hundred sixty-four, and extending through the seventh day of May, one thousand nine hundred seventy-five.

§21A-2C-4. Tax credit; eligibility; amount.

(a) Each person, partnership or corporation which employs an economically disadvantaged Vietnam era or Korean conflict veteran or any disabled veteran, or an unemployed member of the West Virginia national guard or a member of the reserve forces of the United States for a continuous period of one year, except as otherwise provided in this article, shall be entitled to an appropriate tax credit for each such individual so employed. In the case of a person or partnership so employing such individuals, the tax credit provided for in this section shall be applied against the employer's personal income tax liability. In the case of a corporation so employing such individuals, the tax credit provided for in this section shall be applied against the corporation's corporate net income tax liability. This tax credit shall be nonassignable and may not exceed an employer's total tax liability with respect to the specific tax against which the tax credit is required to be applied.

(b) The amount of the tax credit allowed under
subsection (a) of this section shall be an amount equal
to the following:

(1) For each economically disadvantaged Vietnam era
or Korean conflict veteran employed as described in
subsection (a), the amount of the tax credit allowed shall
be thirty percent of the employee's wage base. For the
purposes of this section, the employee's wage base is the
first five thousand dollars in wages or compensation
actually paid to the employee by the employer;

(2) For each disabled veteran employed as described
in subsection (a), the amount of the tax credit allowed
shall be a percentage equal to the percentage of
disability suffered by the veteran multiplied by the
employee's wage base. The employee's wage base is the
same as provided in subdivision (1) of this subsection.
The percentage of disability referred to in this subdi-
vision means the percentage of compensation for service
connected disability as determined by the United States
department of veterans affairs; and

(3) For each member of the West Virginia national
guard or member of the reserve forces of the United
States employed as described in subsection (a), the
amount of the tax credit allowed shall be twenty-five
percent of the employee's wage base. For the purpose
of this section, the employee's wage base is the first five
thousand dollars in wages or compensation actually paid
to the employee by the employer.

§21A-2C-5. Restrictions and limitations regarding tax
credit.

(a) An employer may not claim a tax credit provided
for in this article for any individual employed for less
than a continuous period of one year, unless:

(1) The individual voluntarily leaves employment with
the employer;

(2) The individual becomes totally disabled and unable
to continue his employment; or

(3) The individual is terminated for good cause shown.

In the event that the individual is employed for less
than a one continuous year period due to circumstances
enumerated in subdivision (1), (2) or (3) above, the employer shall be entitled to a partial tax credit in a proportional amount corresponding to the ratio of the time period during which the veteran was actually employed to the one-year period required for a full tax credit multiplied by the amount of the full tax which would have accrued to the employer had the individual’s employment continued for a full year.

(b) An employer may not claim tax credit provided for in this article for any individual who is employed and displaces a person already employed. In addition, no tax credit may be claimed for the employment of any individual for whom the employer is receiving job training payments from either the federal or state government. Nothing in this section prohibits an employer from receiving tax credits from both the federal and state governments under similar targeted jobs programs if the employer is otherwise qualified to receive both.

§21A-2C-6. Program administration.

1 The program established by this article shall be conducted primarily under the direction of the employment services section of the bureau of employment programs or its successor agency and the West Virginia national guard. Reserve forces units may also verify through approved vouchers, eligibility of reserve members to participate in this program. Each individual who qualifies under this article for participation in this program shall be given, upon request, a voucher certifying that the individual is eligible for participation in the program described in this article. The voucher shall be in a form prescribed by the commissioner of employment programs and the adjutant general, and they may conduct such investigations and collect such data as they deem necessary to ensure that each individual applying for the voucher is actually qualified for participation in the program.

When an employer employs an eligible individual who presents the voucher herein provided for, the employer

*Clerk’s Note: This section was also amended by S. B. 132 (Chapter 16), which passed prior to this act.
shall submit the voucher along with basic information to the issuing agency as may be required for participation in this program. Each year, the issuing agency shall certify to the state tax commissioner a list of employers who may be qualified to receive a tax credit under this program. In order to receive the appropriate tax credit, an employer must file for the tax credit provided for under this article as required by section forty-two, article twenty-one, chapter eleven of this code or by section twelve, article twenty-four, chapter eleven of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS

ARTICLE 6. CIVIL SERVICE SYSTEM.

*§29-6-2. Definition of terms.

1 As used in this article, unless the context indicates otherwise, the term:

3 (a) "Administrator" means any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated;

3 (b) "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, division, section or office;

3 (c) "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service;

3 (d) "Board" means the state personnel board created by section six of this article;

3 (e) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experi-

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*Clerk's Note: This section was also amended by S. B. 69 (Chapter 169), which passed prior to this act.
ience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of compensation and benefits may be equitably applied to each position in the group;

(f) "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class;

(g) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the higher education governing boards;

(h) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system;

(i) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

(j) "Director" means the head of the division of personnel as appointed by section seven of this article;

(k) "Council" means the state personnel advisory council created in section nine-a of this article;

(l) "Division" means the division of personnel herein created;

(m) "Policymaking position" means a position in which the person occupying it (1) acts as an advisor to, or formulates plans for the implementation of broad goals for an administrator or the governor, (2) is in charge of a major administrative component of the agency and (3) reports directly and is directly accountable to an administrator or the governor;

(n) "Position" means a particular job which has been classified based on specifications;

(o) "Secretary" means the secretary of the department of administration created in section two, article one, chapter five-f of this code;

(p) "Specification" means a description of a class of position which defines the class, provides examples of
work performed and the minimum qualifications required for employment;

(q) "Veteran" means any person who has served in the armed forces of the United States of America during World War I (April 6, 1917-November 11, 1918), World War II (December 7, 1941-December 31, 1946), the Korean Conflict (June 27, 1950-January 31, 1955), the Vietnam Conflict (August 5, 1964-May 7, 1975), or in a campaign, expedition or conflict for which a campaign badge has been authorized and received by such person, and who has received a discharge under honorable conditions from such service.

CHAPTER 171
(Com. Sub. for S. B. 443—By Senator Holliday)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article two, chapter three 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 twenty-two-a; to amend and reenact section one, article three, chapter seventeen of said code; and to amend and reenact section eight, article two, chapter seventeen-b of said code, all relating to the registration of voters; increasing motor vehicle registration fees; creating the combined voter registration and driver's license fund; specifying how the proceeds of such fund are to be expended; setting forth procedure for registration in the office of the clerk of the county commission; authorizing the clerk to change registration records; establishing duties of clerk during biennial checkups; removing the mandate that clerks establish certain temporary registration offices and the requirements therefor; permitting clerks to establish certain temporary registration offices; clerk to solicit public service advertising of registration offices; when clerk to cancel registrations; certification to the secretary of state; authorizing county commission to direct clerk to
increase availability of registration; requiring the division of motor vehicles and the department of public safety to provide voter registration forms to persons seeking a driver's license, a renewal or a correction thereof; authorizing employees of such division or department to administer oaths; when completed forms to be forwarded to appropriate county clerks; establishing the effective date of registration; authorizing the secretary of state to promulgate rules; requiring that fifty cents of every driver's license fee be paid into the combined voter registration and driver's license fund; and increasing the fee for the issuance of a driver's license by fifty cents.

Be it enacted by the Legislature of West Virginia:

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

Chapter

3. Elections.
17. Roads and Highways.
17B. Motor Vehicle Operators' and Chauffeurs' Licenses.

CHAPTER 3. ELECTIONS.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

§3-2-22a. Registration at driver's license facilities.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

1 The clerk or any deputy clerk of the county commission shall register any qualified person as a voter. The clerk or deputy shall first require valid identification and proof of age, and inquire and attempt to establish
whether the voter resides within the limits of a municipality using the map provided by the municipality in accordance with section five, article one of this chapter. The clerk or deputy clerk shall have the person registering fill in and complete the prescribed voter registration form for county-state permanent registration. If the person resides within the limits of a municipality for which a separate registration file is kept, the clerk or deputy shall also have the person complete the form for municipal registration. The registrant shall sign the form or forms under oath or affirmation. The clerk, upon proper proof, may alter, amend, correct or cancel the registration record of any voter. Such registration or alteration, amendment, correction or cancellation of registration records shall be carried on throughout the year.

During the biennial checkup period of every even-numbered year, the clerk or deputy clerk shall visit every public or private institution, excluding hospitals, in which reside aged, infirm, disabled or chronically ill persons, and every high school to register qualified voters. The clerk may establish temporary registration offices, to register qualified persons or to alter, amend, correct or cancel such registration records. The clerk of the county commission shall solicit public service advertising of such registration offices and times on radio, television and newspapers serving that county.

Within fifteen days following receipt of a death certificate from the state or local registrar of vital statistics or the publication in a newspaper of the county of an obituary clearly identifying a deceased person by name, residence and age, the clerk of the county commission shall cancel the voter registration, if any, of the person shown to be deceased by such certificate or obituary.

Sixty days prior to a general election, the clerk of the county commission shall review each death certificate received and shall cancel the voter registration, if any, of each deceased person whose voter registration has not previously been canceled. By the forty-fifth day prior to a general election each clerk of a county commission
shall certify to the secretary of state that he or she has
performed the duty required by this paragraph.

If found necessary, the county commission may order
and direct the clerk of the county commission to
maintain additional office hours in the evening or at
other proper times and places for accommodation of
voter registration.

§3-2-22a. Registration at driver's license facilities.

(a) Commencing on the first day of July, one thousand
nine hundred ninety-one, the division of motor vehicles
and the department of public safety shall provide each
qualified elector who applies in person for the issuance,
renewal or correction of any type of driver's license or
identification, in accordance with the provisions of
article two, chapter seventeen-b of this code, the
opportunity to complete a voter registration form
regardless of that person's voting precinct or county of
residence in the state.

(b) For purposes of this section, each employee
authorized by the division of motor vehicles or depart-
ment of public safety to provide voter registration forms
is hereby authorized to administer the oath prescribed
on the form.

(c) Completed voter registration forms received by the
division of motor vehicles or by the department of public
safety shall be forwarded to the secretary of state on a
weekly basis, and the secretary of state shall then
forward the registrations to the appropriate county
clerk's office on a weekly basis. Upon receipt of a voter
registration form, the county clerk shall determine if the
form meets the requirements for registration. If the
county clerk finds that the form meets the requirements
for registration, the registration shall be deemed to be
effective on the date that it was made at the division of
motor vehicles or department of public safety. If it does
not meet the requirements, the county clerk shall
immediately notify the applicant of the information
required and the registration shall be deemed to be
effective on the date that the additional information is
received by the county clerk.
(d) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the state treasury to the credit of a special revenue fund to be known as the “combined voter registration and driver’s licensing fund”, which is hereby created. The moneys so credited to such fund may be used by the secretary of state solely for:

1. Printing and distribution of combined driver’s license application and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver’s license applications.

2. Postage and mailing costs of returning completed voter registrations to the appropriate state or county election official.

3. Postage and mailing costs incurred by the clerk of the county commission for sending a receipt of voter registration to each person who registers to vote using the combined licensing and voter registration procedure.

4. Employment of personnel solely for the purpose of issuing driver’s licenses and offering voter registration services or the payment of the portion of such personnel costs apportioned to such duties.

5. Start-up costs associated with preparing the computer programming relating to increased licensing fees and the collection thereof.

The secretary of state is authorized to expend or distribute funds to the respective agencies and counties for the reimbursement of actual costs incurred for the purposes set forth in this subsection.

(e) The secretary of state may promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of this registration program.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 3. STATE ROAD FUND.
§17-3-1. What constitutes fund; payments into fund; use of money in fund.

There shall be a state road fund, which shall consist of the proceeds of all state license taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees imposed upon all owners, chauffeurs, operators and dealers in automobiles or other motor driven vehicles; all sums of money which may be donated to such fund; all proceeds derived from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the "Better Roads Amendment" to the constitution of this state, adopted in the month of November, one thousand nine hundred sixty-four, except that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the state road fund; all moneys and funds appropriated to it by the Legislature; and all moneys allotted or appropriated by the federal government to this state for road construction and maintenance pursuant to any act of the Congress of the United States; the proceeds of all taxes imposed upon and collected from any person, firm or corporation and of all taxes or charges imposed upon and collected from any county, district or municipality for the benefit of such fund; the proceeds of all judgments, decrees or awards recovered and collected from any person, firm or corporation for damages done to, or sustained by, any of the state roads or parts thereof; all moneys recovered or received by reason of the violation of any contract respecting the building, construction or maintenance of any state road; all penalties and forfeitures imposed, recovered or received by reason thereof; and any and all other moneys and funds appropriated to, imposed and collected for the benefit of such fund, or collected by virtue of any statute and payable to such fund: Provided, That notwithstanding any provisions of this code to the contrary, fifty cents of every license fee paid pursuant to the provisions of subdivision (2), subsection (a), section eight, article two, chapter seventeen-b of this code shall be paid to the special fund established pursuant to the provisions of subsection (d), section twenty-two-a, article two, chapter three of this code.
41 When any money is collected from any of the sources aforesaid, it shall be paid into the state treasury by the officer whose duty it is to collect and account for the same, and credited to the state road fund, and shall be used only for the purposes named in this chapter, that is to say: (a) To pay the principal and interest due on all state bonds issued for the benefit of said fund, and set aside and appropriated for that purpose; (b) to pay the expenses of the administration of the road department; and (c) to pay the cost of maintenance, construction, reconstruction and improvement of all state roads.

CHAPTER 17B. MOTOR VEHICLE OPERATORS’ AND CHAUFFEURS’ LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses; fees.

(1) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver’s 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’s license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, such license.

(2) The fee for the issuance of a driver’s license shall be ten dollars and fifty cents. Fifty cents of each such fee shall be deposited in the “combined voter registration and driver’s licensing fund”, established pursuant to the provisions of section twenty-two-a, article two, chapter three of this code. The one-time only additional
fee for adding a motorcycle endorsement to a driver's license shall be five dollars. The fee for issuance of a motorcycle-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 of this chapter.

(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 revocations based on such convictions shall be marked on licenses which are hereafter issued.

CHAPTER 172

(S. B. 89—By Senators Hawse, Blatnik, Anderson and Minard)

[Passed February 25, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section three, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licenses; fees; general restrictions; and creating a West Virginia wine retailers license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SALE OF WINES.
§60-8-3. Licenses; fees; general restrictions.

(a) Except as to farm wineries as defined by section five-a, article one of this chapter, no person may engage in business in the capacity of a distributor, retailer or private wine restaurant without first obtaining a license from the commissioner, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed simultaneously as a distributor and a retailer, as a distributor and a private wine restaurant, or as a retailer and a private wine restaurant.

(b) The commissioner shall collect an annual fee for licenses issued under this article, as follows:

(1) Twenty-five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers or delivers wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five hundred dollars as herein provided.

(2) One hundred fifty dollars per year for a retailer's license.

(3) Fifty dollars per year for a wine tasting license.

(4) Fifty dollars for each sales representative of or employed by a licensed distributor.

(5) Two hundred fifty dollars per year for a private wine restaurant license, and each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of two hundred fifty dollars as herein provided.

(6) Twenty-five dollars per year for a West Virginia wine retailers license, and each separate retail outlet from which a West Virginia wine retailer sells West Virginia wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five dollars as herein provided. The holder of such a license may sell no wines
except those produced by West Virginia farm wineries as defined by section five-a, article one of this chapter. Except for the amount of the license fee and the restriction to sales of West Virginia wines, a West Virginia wine retailer is subject to all other provisions of this article which are applicable to a retailer as defined in section two of this article.

(c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by article seven of this chapter.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: Provided, however, That any delicatessen licensed in both such capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A retailer under this article may also hold a wine tasting license authorizing such retailer to serve complimentary samples of wine in moderate quantities for tasting. Such retailer shall organize a winetaster's club, which has at least fifty duly elected or approved dues paying members in good standing. Such club shall meet on the retailer's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail
establishment. A retailer's license may be issued only to
the proprietor or owner of a bona fide grocery store or
wine specialty shop.

(h) The commissioner may issue a special license for
the retail sale of wine at any festival or fair which is
endorsed or sponsored by the governing body of a
municipality or a county commission. Such special
license shall be issued for a term of no longer than ten
consecutive days and the fee therefor shall be two
hundred fifty dollars regardless of the term of the
license unless the applicant is the manufacturer of said
wine on a farm winery as defined in section five-a,
article one of this chapter, in which event the fee shall
be twenty-five dollars. The application for such license
shall contain such information as the commissioner may
reasonably require and shall be submitted to the
commissioner at least thirty days prior to the first day
when wine is to be sold at such festival or fair. A farm
winery licensed under this subsection may exhibit,
conduct tastings, not to exceed a reasonable serving, and
may sell wine only for consumption off the premises of
such festival or fair. A special license issued other than
to a farm winery may be issued to a "wine club" as
defined hereinbelow. The festival or fair committee or
the governing body shall designate a person to organize
a club under a name which includes the name of the
festival or fair and the words "wine club". The license
shall be issued in the name of the wine club. A licensee
may not commence the sale of wine as provided for in
this subsection until the wine club has at least fifty dues
paying members who have been enrolled and to whom
membership cards have been issued. Thereafter, new
members may be enrolled and issued membership cards
at any time during the period for which the license is
issued. A wine club licensed under the provisions of this
subsection may sell wine only to its members, and in
portions not to exceed eight ounces per serving. Such
sales shall take place on premises or in an area cordoned
or segregated so as to be closed to the general public,
and the general public shall not be admitted to such
premises or area. A wine club licensee under the
provisions of this subsection shall be authorized to serve
complimentary samples of wine in moderate quantities for tasting.

A license issued under the provisions of this subsection and the licensee holding such license shall be subject to all other provisions of this article and the rules, regulations and orders of the commissioner relating to such special license: Provided, That the commissioner may by rule, regulation, or order provide for certain waivers or exceptions with respect to such provisions, rules, regulations, or orders as the circumstances of each such festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of section twelve of this article: Provided, however, That under no circumstances shall the provisions of subsection (c) or (d), section twenty of this article be waived nor shall any exception be granted with respect thereto.

A license issued under the provisions of this subsection and the licensee holding such license shall not be subject to the provisions of subsection (g) of this section.

(i) A license to sell wine granted to a private wine restaurant under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

(j) With respect to subsections (h) and (i) of this section, the commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code with regard to the form of the applications, the suitability of both the applicant and
location of the licensed premises and such other legislative rules deemed necessary to carry the provisions of such subsections into effect.

(k) The commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to allow restaurants to serve West Virginia wine with meals, but not to sell the wine by the bottle. Each restaurant so licensed shall be charged a fee less than that charged for a wine license to a retail outlet, such fees to be set forth in the aforementioned rules promulgated pursuant to this subsection.

(l) The commissioner shall establish guidelines to permit West Virginia wines to be sold in state stores.

(m) Farm wineries as defined in section one-a of this article may advertise off premises as provided in section seven, article twenty-two of chapter seventeen and in any other media, including, but not limited to, newspaper, radio, television, magazines and direct mail solicitation.

CHAPTER 173

(H. B. 2809—By Delegates Brown and Cerra)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and six, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the women's commission; continuation within the department of health and human resources; composition of ex officio commission members; continuation of commission; powers and duties; commission administrative personnel; power to accept funds; and annual report.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN'S COMMISSION.

§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.


§29-20-4. Power of commission to accept funds.

§29-20-6. Annual report.

*§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.

The West Virginia commission on the status of women is hereby abolished, and there is hereby continued within the department of health and human resources the West Virginia women's commission, to consist of eighteen members, seven of whom shall be ex officio members, not entitled to vote: The attorney general, the state superintendent of schools, the commissioner of labor, the commissioner of the bureau of human resources of the department of health and human resources, the director of the human rights commission, the director of the division of personnel, and the chancellor of the board of directors of the state college system. Each ex officio member may designate one representative employed by his or her department to meet with the commission in his or her absence. The governor shall appoint the additional eleven members, by and with the advice and consent of the Senate, from among the citizens of the state. The governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning the first day of July, one thousand nine hundred seventy-seven, three to serve for a term of one year, four to serve for a term of two years, and the remaining four to serve for a term of three years. The successors of the members initially appointed as provided herein shall be appointed for a term of three years each in the same manner as the members initially

*Clerk's Note: This section was also amended by S. B. 97 (Chapter 156), which passed prior to this act.
appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor.

No member may receive any salary for his or her services, but each may be reimbursed for actual and necessary expenses incurred in the performance of his or her duties out of funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.

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-two, to allow for the completion of an audit by the joint committee on government operations.


It is the duty of the commission:

(a) To review and study the status of women in this state;

(b) To recommend methods of overcoming discrimination against women in public and private employment and in the exercise of their civil and political rights;

(c) To promote more effective methods for enabling women to develop their skills, to continue their education and to be retrained;

(d) To strengthen home life by directing attention to critical problems confronting women as wives, mothers, homemakers and workers;

(e) To make surveys in the fields of, but not limited to, education, social services, labor laws and employment policies, law enforcement, health, new and expanded services of benefit to women, legal rights, family relations and volunteer services;
(f) To secure appropriate recognition of women's accomplishments and contributions to this state;

(g) To disseminate information for the purpose of educating the public as to the existence and functions of the commission and as to matters of general beneficial interest to women; and

(h) To advise, consult and cooperate with other offices of the department of health and human resources and other agencies of state government, and to receive assistance therefrom, in the development of activities and programs of beneficial interest to women and on matters relating generally to women.


The commission may, consistent with state personnel procedures and with the approval of the secretary of the department of health and human resources or his or her designee, appoint an executive director, who shall act as the chief administrative officer of the commission, in addition to such other duties as he or she may be assigned. The commission may also, consistent with state personnel procedures and with the approval of the secretary of the department of health and human resources or his or her designee, appoint such other personnel as may be deemed necessary to accomplish its objectives. All persons so employed shall be paid from funds received by the department of health and human resources or the commission under section four of this article.

§29-20-4. Power of commission to accept funds.

The commission, or the department of health and human resources on behalf of the commission, may accept gifts, grants and bequests of funds from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions; make and sign any agreements and do and perform any acts that may be necessary to carry out the purposes of this article.

§29-20-6. Annual report.
The commission shall, with the approval of the secretary of the department of health and human resources or his or her designee, submit an annual report to the Legislature and the governor, including recommendations based on its studies.

CHAPTER 174
(S. B. 187—By Senator Chafin)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a, one-b, two, five, nine and thirteen, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article five of said chapter; and to further amend said article by adding thereto a new section, designated section one-j, relating to providing workers' compensation coverage for certain corporate or associational officers, partners, and owners of sole proprietorships as employees; eliminating the restriction to only corporate employers who wish to temporarily come into the state but who choose to subscribe to the workers' compensation fund; elections to forego such coverages; exemptions to such elections for certain officers engaged in dual capacities for the employer; notices to be given to the commissioner of such elections; providing elective workers' compensation coverage for elected officials; methods of calculation of premiums for executive officers, partners, and sole owners both for for-profit entities and for not-for-profit entities; methods of calculation of premiums for elected officials; definitions; furnishing of confidential information to the division of workers' compensation by the state tax commissioner and by the division of unemployment compensation; specifying the types of information that may be so furnished; authorizing the commissioner to encourage employers to engage in loss prevention programs, programs for maintaining a safe workplace, and wellness programs; changing the types of penalties that
may be imposed upon defaulted or terminated employers; forbidding the waiver of penalties and interest on delinquent premiums and premium deposits; establishing a system and method for penalty premium rate of one hundred ten percent of base or modified premiums, whichever is higher, under certain circumstances of default and termination; providing for reinstatement agreements and conditions thereon; providing for requirements on employers entering into reinstatement agreements to abide by the conditions thereof and to maintain their accounts in good standing; clarifying that the commissioner may file a lien against an employer despite the filing of an application for reinstatement or the entering into of a reinstatement agreement; providing for requirements that employers filing applications for reinstatement keep their accounts in good standing and the consequences for failures to so; providing for the method of determining the premium rates for subscribers to the second injury fund and the factors to be used in doing so; clarifying that the commissioner may require a premium deposit from self-insured employers; allowing the commissioner to limit the modifications of such second injury fund premiums based upon the employer's experience in using the second injury fund; making clear the intention of the Legislature regarding the respective responsibilities of the employer and the second injury fund for the payment of charges related to the last injury leading to a second injury life award; relating to the application of a rate of interest of eighteen percent upon past due premium and premium deposit; compounding of such rate of interest except for interest to be charged under a reinstatement agreement; relating to procedures before the office of chief administrative law judge with regard to certain requests for permanent total disability awards or for second injury life awards including remands to the commissioner for initial decisions, staying the protests then under consideration, continuing in effect the decision protested during the remand proceedings, and for resumption of action by the office of chief administrative law judge following the commissioner's decision on remand; removing the
requirement that the appeal board make findings of fact and conclusions of law in certain cases; and making other reconciling changes.

Be it enacted by the Legislature of West Virginia:

That sections one, one-a, one-b, two, five, nine and thirteen, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article five of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section one-j, all to read as follows:

Article 2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

§23-2-1a. Employees subject to chapter.

§23-2-1b. Special provisions as to premiums.

§23-2-2. Commissioner to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.

§23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

§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.

§23-2-13. Interest on past due payments; reinstatement agreements.

§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

(a) The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing
another person or persons for the purpose of carrying
on any form of industry, service or business in this state,
are employers within the meaning of this chapter and
are hereby required to subscribe to and pay premiums
into the workers' compensation fund for the protection
of their employees and shall be subject to all require-
ments of this chapter and all rules and regulations
prescribed by the commissioner with reference to rate,
classification and premium payment: Provided, That
such rates will be adjusted by the commissioner to
reflect the demand on the compensation fund by the
covered employer.

(b) The following employers are not required to
subscribe to the fund, but may elect to do so:

(1) Employers of employees in domestic services; or

(2) Employers of five or fewer full-time employees in
agricultural service; or

(3) Employers of employees while said employees are
employed without the state except in cases of temporary
employment without the state; or

(4) Casual employers. An employer is deemed to be a
casual employer when the number of his employees does
not exceed three and the period of employment is
temporary, intermittent and sporadic in nature and does
not exceed ten calendar days in any calendar quarter;
or

(5) Churches; or

(6) Employers engaged in organized professional
sports activities, including employers of trainers and
jockeys engaged in thoroughbred horse racing.

(c) Notwithstanding any other provision of this
chapter to the contrary, whenever there are churches in
a circuit which employ one individual clergyman and
the payments to such clergyman from such churches
constitute his full salary, such circuit or group of
churches may elect to be considered a single employer
for the purpose of premium payment into the workers'
compensation fund.
(d) Employers who are not required to subscribe to the workers' compensation fund may voluntarily choose to subscribe to and pay premiums into the fund for the protection of their employees and in such case shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of such employers to choose to subscribe to and to pay premiums into the fund shall not impose any liability upon them other than such liability as would exist notwithstanding the provisions of this chapter.

(e) Any foreign corporation employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may choose to pay into the workers' compensation fund the premiums herein provided for, and at the time of making application to the commissioner, such employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the commissioner. At the time of making application such employer shall deposit with the state compensation commissioner to the credit of the workers' compensation fund the amount required by section five of this article, which amount shall be returned to the employer if his application be rejected by the commissioner. Upon notice to such employer of the acceptance of his application by the commissioner, he shall be an employer within the meaning of this chapter and subject to all of its provisions.

(f) Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits hereunder shall, at the time of making application to the commissioner, in addition to other requirements of this chapter, furnish such commissioner with a certificate from the secretary of state, where such certificate is necessary, showing that it has complied
with all the requirements necessary to enable it legally
to do business in this state and no application of such
foreign corporation employer shall be accepted by the
commissioner until such certificate is filed.

(g) The following employers may elect not to provide
coverage to certain of their employees under the
provisions of this chapter:

(1) Employers of employees who are officers of and
stockholders in a corporation qualifying for special tax
treatment under subchapter S of the Internal Revenue
Code of the United States may elect not to provide
coverage to such employees; or

(2) If an employer is a partnership, sole proprietorship, association, or corporation, such employer may
elect not to include as an "employee" within this chapter,
any member of such partnership, the owner of the sole
proprietorship, or any corporate officer or member of
the board of directors of the association or corporation.
The officers of a corporation or an association shall
consist of a president, a vice-president, a secretary, and
a treasurer, each of whom shall be elected by the board
of directors at such time and in such manner as may
be prescribed by the bylaws. Such other officers and
assistant officer as may be deemed necessary may be
elected or appointed by the board of directors or chosen
in such other manner as may be prescribed by the
bylaws and, if so elected, appointed, or chosen, such
employer may elect not to include any such officer or
assistant officer as an "employee" within the meaning
of this chapter: Provided, That except for those persons
who are members of the board of directors or who are
the corporation's or association's president, vice-presi
dent, secretary, and treasurer and who may be excluded
by reason of their aforementioned positions from the
benefits of this chapter even though their duties,
responsibilities, activities, or actions may have a dual
capacity of work which is ordinarily performed by an
officer and also of work which is ordinarily performed
by a worker, an administrator, or an employee who is
not an officer, no such other officer or assistant officer
who is elected or appointed shall be excluded by election
from coverage or be denied the benefits of this chapter merely because he or she is such an officer or assistant officer if, as a matter of fact:

(A) He or she is engaged in a dual capacity of having the duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a worker, administrator, or employee who is not an officer;

(B) He or she is engaged ordinarily in performing the duties of a worker, an administrator, or an employee who is not an officer and receives pay therefor in the capacity of an employee; or

(C) If he or she is engaged in an employment palpably separate and distinct from his or her official duties as an officer of the association or corporation.

(h) In the event of election under subsection (g) of this section, the employer shall serve upon the commissioner written notice naming the positions not to be covered and shall not include such “employee’s” remuneration for premium purposes in all future payroll reports, and such partner, proprietor or corporate or executive officer shall not be deemed an employee within the meaning of this chapter after such notice has been served.

§23-2-1a. Employees subject to chapter.

(a) Employees subject to this chapter are all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service or work in which they are engaged, including, but not limited to:

(1) Persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state;

(2) Every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every appointed official or officer thereof while performing his or her official duties;
(3) Checkweighmen employed according to law;

(4) All members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines; and

(5) All forest fire fighters who, under the supervision of the department of natural resources or his or her designated representative, assist in the prevention, confinement and suppression of any forest fire.

(b) The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this state relating to the employment of minors, or that he or she obtained his or her employment by misrepresenting his or her age.

§23-2-lb. Special provisions as to premiums.

(a) Except as provided for in subsection (b) of this section, every executive officer of an association or of a corporation, any member of a partnership or owner of a sole proprietorship which has not elected to forego coverage under this chapter for such officer, member or owner shall pay premiums based upon the actual salary paid to such employee up to an amount sufficient to qualify such employee to receive the maximum level of benefits, but in no event shall the basis for premium be less than the salary necessary to provide such employee with the minimum level of benefits.

(b) Every executive officer of a not-for-profit association or of a not-for-profit corporation which has not elected to forego coverage under this chapter for such officer, member or owner shall pay premiums based upon the actual salary paid to such employee up to an amount sufficient to qualify such employee to receive the maximum level of benefits, but in no event shall the basis for premium be less than one hundred dollars.

(c) Every elected official or officer, whether full time
or part time and including members of the Legislature, whose governmental entity elects coverage under this chapter for such elected official or officer, shall pay or have paid for him or her premiums based upon the actual salary paid to such elected official or officer up to an amount sufficient to qualify such elected official or officer to receive the maximum level of benefits, but in no event shall the basis for premium be less than the salary necessary to provide such elected official or officer with the minimum level of benefits. For the purposes of this subsection, an elected official or officer shall include a person appointed to an elected position to complete a term for that elected position.

(d) The premium and actual expenses in connection with governmental agencies and departments of the state of West Virginia shall be paid out of the state treasury from appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments.

(e) County commissions, municipalities, other political subdivisions of the state, county boards of education, emergency service organizations organized as aforesaid and volunteer fire departments or companies shall provide for the funds to pay their prescribed premiums into the fund and such premiums and premiums of state agencies and departments, including county boards of education, shall be paid into the fund in the same manner as herein provided for other employers subject to this chapter.

(f) County commissions and municipalities are hereby authorized to pay all or any part of the premiums prescribed for such emergency service organizations organized as aforesaid and such duly incorporated volunteer fire departments or companies as may provide services within the county or municipality.

§23-2-2. Commissioner to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.
(a) Every employer shall furnish the commissioner, upon request, all information required by him or her to carry out the purposes of this chapter. The commissioner, or any person employed by the commissioner for that purpose, shall have the right to examine under oath any employer or officer, agent or employee of any employer.

(b) Notwithstanding the provisions of any other statute, specifically, but not exclusively, sections five and five-b, article ten, chapter eleven of this code, and section eleven, article ten, chapter twenty-one-a of this code the commissioner of the bureau of employment programs may receive the following information:

(1) Upon written request to the state tax commissioner: The names, addresses, places of business and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses' workers and employees, if otherwise collected, and the quarterly and annual gross wages or other compensation paid to the workers and employees of such businesses reported pursuant to the requirement of withholding of tax on income.

(2) Upon written application to the division of unemployment compensation: In addition to the information that may be released to the division of workers' compensation for the purposes of this chapter under the provisions of chapter twenty-one-a of this code, the names, addresses and other identifying information of all employing units filing reports and information pursuant to section eleven, article ten, chapter twenty-one-a of this code as well as information contained in those reports regarding the number and names, addresses, and social security numbers of employees employed and the gross quarterly wages paid by each employing unit to each identified employee.

(c) All information acquired by the division of workers' compensation pursuant to subsection (b) of this
section shall be used only for auditing premium payments and registering businesses under the single point of registration program as defined in section two, article one, chapter eleven of this code. The division of workers' compensation, upon receiving the business franchise registration certificate information made available pursuant to subsection (b) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of this article. Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein or elsewhere authorized in this code, or who divulges or makes known in any manner any of the aforementioned information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for not more than one year, or both, together with cost of prosecution.

(d) Reasonable costs of compilation and production of any information made available pursuant to subsection (b) of this section shall be charged to the division of workers' compensation.

(e) Information acquired by the commissioner pursuant to subsection (b) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.

§23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

(a) For the purpose of creating a workers' compensation fund, each employer who is required to subscribe to the fund or who elects to subscribe to the fund shall pay premiums calculated as a percentage of the employer's payroll at the rate determined by the commissioner and then in effect. At the time each employer subscribes to the fund, the application required by the commissioner shall be filed and a premium deposit equal to the first
quarter's estimated premium payment shall be remitted. The minimum quarterly premium to be paid by any employers shall be ten dollars.

(1) Thereafter, premiums shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the total earnings of all employees during the preceding quarter.

(2) At the time each premium is paid, every subscribing employer shall make a payroll report to the commissioner for the preceding quarter. The report shall be on the form or forms prescribed by the commissioner, and shall contain all information required by the commissioner.

(3) After subscribing to the fund, each employer shall remit with each payroll report and premium payment, an amount calculated to be sufficient to maintain a premium deposit equal to the previous quarter's premium payment: Provided, That the commissioner may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. The premium deposit shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when an employer becomes delinquent.

(4) All premiums and premium deposits required to be paid by this chapter shall be paid by the employers to the workers' compensation commissioner, who shall maintain record of all sums so received. On and after the first day of October, one thousand nine hundred ninety-one, any such sum mailed to the commissioner shall be deemed to be received on the date the envelope transmitting it is postmarked by the United States postal service. All sums received by the commissioner shall be deposited in the state treasury to the credit of the workers' compensation fund in the manner now prescribed by law.

(5) The commissioner may encourage employer efforts to create and maintain safe workplaces, to encourage
(b) Failure of an employer to timely pay premium, to timely file a payroll report, or to maintain an adequate premium deposit, shall cause the employer’s account to become delinquent. No employer will be declared delinquent or be assessed any penalty therefor if the commissioner determines that such delinquency has been caused by delays in the administration of the fund. The commissioner shall, in writing, within sixty days of the end of each quarter notify all delinquent employers of their failure to timely pay premiums, to timely file a payroll report, or to maintain an adequate premium deposit. The notification shall demand the filing of the delinquent payroll report and payment of delinquent premiums, and/or payment of an amount sufficient to maintain the premium deposit, before the end of the third month following the end of the preceding quarter. The notification shall also require payment of interest on the delinquent premium payment and/or premium deposit pursuant to section thirteen of this article.

(c) Whenever the commissioner notifies an employer of the delinquent status of his or her account, the notification shall explain the legal consequence of subsequent default by employers required to subscribe to the fund, and the effects of termination of any electing employer’s account.

(d) Failure by the employer, who is required to subscribe to the fund and who fails to resolve his or her delinquency within the prescribed period, shall place the account in default and shall deprive such defaulting employer of the benefits and protection afforded by this chapter, including section six of this article, and he or she shall be liable as provided in section eight of this article. The defaulting employer’s liability under section eight of this article shall be retroactive to twelve o’clock p.m., of the last day of the month following the end of
the quarter for which the delinquency occurs. The
commissioner shall notify the defaulting employer of the
method by which the employer may be reinstated with
the fund. The commissioner shall also notify the
employees of such employer by written notice as
hereinafter provided for in this section.

(e) Failure by any employer, who voluntarily elects to
subscribe, to resolve his or her delinquency within the
prescribed period shall automatically terminate the
election of such employer to pay into the workers'
compensation fund and shall deprive such delinquent
employer of the benefits and protection afforded by this
chapter, including section six of this article, and he or
she shall be liable as provided in section eight of this
article. The defaulting employer's liability under section
eight of this article shall be retroactive to twelve o'clock
p.m., of the last day of the month following the end of
the quarter for which the delinquency occurs.

(f) (1) Except as provided for in subdivision (3) of this
subsection, any employer who is required to subscribe
to the fund and who is in default on the effective date
of this section or who subsequently defaults, and any
employer who has elected to subscribe to the fund and
whose account is terminated prior to the effective date
of this section or whose account is subsequently termi­
nated, shall be restored immediately to the benefits and
protection of this chapter only upon the filing of all
delinquent payroll and other reports required by the
commissioner and payment into the fund of all unpaid
premiums, an adequate premium deposit, and accrued
interest. Interest shall be calculated as provided for by
section thirteen of this article. In addition, for every
defaulter or terminated employer whose default or
termination lasts longer than two quarters or who has
defaulted or been terminated for more than two
quarters out of the preceding eight consecutive quarters,
then upon any such employer's restoration to the
benefits and protection of this chapter, for the next eight
quarters, including the quarter in which such restora­
tion occurs, the employer shall pay premiums to the
commissioner at a penalty rate. The applicable penalty
premium rate shall be determined by first calculating the employer's premium under the provisions of section four of this article, but including any applicable experience modification, and then multiplying that premium by one hundred ten percent.

The commissioner shall not have the authority to waive either accrued interest or the imposition of the penalty premium rate. Any employer whose default or termination does not last longer than two quarters or who has not defaulted in more than two quarters out of the preceding eight consecutive quarters shall not have a penalty premium rate imposed. The provisions of section seventeen of this article apply to any action or decision of the commissioner under this section. For purposes of section four of this article, the extra ten percent of premium constituting the penalty shall not be used in determining any entitlement to experience modification of the employer's premium rate for future years.

(2) The commissioner shall have the authority to restore a defaulted or terminated employer under a reinstatement agreement. Such reinstatement agreement shall require the payment in full of all premiums, premium deposits, past accrued interest, and future interest calculated pursuant to the provisions of section thirteen of this article. The reinstatement agreement shall not permit any modification or waiver of the penalty premium rate provided for in subdivision (1) of this subsection. Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement agreement, the commissioner is authorized to file a lien against the employer as provided for by section five-a of this article. Applications for reinstatement shall: (A) Be made upon forms prescribed by the commissioner; (B) include a report of the gross payroll of the employer during the entire period of delinquency and default, which payroll information shall be verified by the employer or its authorized agent; and (C) include a payment equal to one half of one percent of the gross payroll during the period of delinquency and default but not to exceed the amount of the entire liability due and
owing for the period of delinquency and default, or one hundred dollars, whichever amount shall be greater. An employer who applies for reinstatement shall be entitled to the benefits and protection of this chapter on the day the application is received by the commissioner: 

Provided, That if the commissioner reinstates an employer subject to the terms of a repayment agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the repayment agreement or to timely file current premiums or to otherwise maintain its account in good standing or, if the repayment agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of the repayment period shall cause the repayment agreement to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(3) Any employer who fails to maintain his or her account in good standing with regard to subsequent premiums and premium deposits prior to the final resolution of an application for reinstatement as provided for in subdivision (1) of this subsection shall cause the reinstatement application to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent. The commissioner may then make and continue with any of the collection efforts provided for by section five-a of this article even if the employer files another reinstatement application.

(g) No employee of an employer required by this chapter to subscribe to the workers' compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer's account is either delinquent or in default.

(h) (1) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during
any period of delinquency not resolved in accordance
with the provisions of this article, or subsequent failure
to comply with the terms of the repayment agreement.

(2) Upon withdrawal from the fund or termination of
election of any employer, he or she shall be refunded the
balance due him or her of his or her deposit, after
deducting all amounts owed by him or her to the
workers' compensation fund, and the commissioner shall
notify the employees of such employer of said termina-
tion in such manner as he or she may deem best and
sufficient.

(3) Notice to employees in this section provided for
shall be given by posting written notice that the
employer is delinquent under the compensation law of
West Virginia, and in the case of employers required by
this chapter to subscribe and pay premiums to the fund,
that the delinquent employer is liable to his or her
employees for injury or death, both in workers' compen-
sation benefits and in damages at common law or by
statute; and in the case of employers not required by this
chapter to subscribe and pay premiums to the fund, but
voluntarily electing to do so as herein provided, that
neither the employer nor the employees of such em-
ployer are protected by said laws as to any injury or
death sustained after the date specified in said notice.
Such notice shall be in the form prescribed by the
commissioner and shall be posted in a conspicuous place
at the chief works of the employer, as the same appear
in records of the commissioner. If said chief works of
the employer cannot be found or identified, then said
notices shall be posted at the front door of the courthouse
of the county in which said chief works are located,
according to the records in the commissioner's office.
Any person who shall, prior to the reinstatement of said
employer, as hereinbefore provided for, or prior to sixty
days after the posting of said notice, whichever shall
first occur, remove, deface, or render illegible said
notice, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not to exceed five
hundred dollars, and said notice shall state this
provision upon its face. The commissioner may require
any sheriff, deputy sheriff, constable or other official of
the state of West Virginia, who may be authorized to
serve civil process, to post such notice and to make
return thereof of the fact of such posting to the
commissioner, and any failure of such officer to post any
notice within ten days after he or she shall have received
the same from the commissioner, without just cause or
excuse, shall constitute a willful failure or refusal to
perform a duty required of him or her by law within
the meaning of section twenty-eight, article five, chapter
sixty-one of this code. Any person actually injured by
reason of such failure shall have an action against said
official, and upon any official bond he or she may have
given, for such damages as such person may actually
have incurred, but not to exceed, in the case of any
surety upon said bond, the amount of the penalty of said
bond. Any official posting said notice as herein required
shall be entitled to the same fee as is now or may
hereafter be provided for the service of process in suits
instituted in courts of record in the state of West
Virginia, which fee shall be paid by the commissioner
out of any funds at his or her disposal, but shall be
charged by him or her against the account of the
employer to whose delinquency such notice relates.

§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 ensure the payment
of compensation to injured employees and the depend­
ents 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 ensure such payments, may, upon a finding of such facts by the 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 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 ensure 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 as self-insurance premium contributions:

(A) A sum sufficient to pay the employer's proper proportion of the expenses of the administration of this chapter;

(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;

(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; and

(D) A sum sufficient to maintain as an advance deposit an amount equal to the previous quarter's payment of each of the foregoing three factors.

(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
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 hereaft-
ter 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 commis-
sioner shall establish a rate for each industrial group or
class based upon the total expected second injury fund
base rate premium for that industrial group or class and
shall further modify such rate for individual employers
based upon the ratio of the individual employer's record
of actual second injury awards to the average cost of
second injury awards for all employers in that industrial
group or class. The commissioner may limit such
modifications. Actual second injury awards shall mean
awards made under this chapter on and after the first
day of January, one thousand nine hundred ninety-one,
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: 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: Provided
further, That for the period from the first day of
January, one thousand nine hundred ninety-one, through
the thirtieth day of June, one thousand nine hundred
ninety-two, inclusive, the commissioner shall consider
second injury premium based on a percentage of the
base rates assigned to each industrial group or class.

(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 be liable to pay compen-
sation or expenses arising from or necessitated by the
second injury, and such compensation and expenses
shall be charged against such employer: Provided, That
in addition to such compensation and expenses, and
after the completion of the payments therefor, the
employee shall be paid the remainder of the compensa-
tion and expenses that would be due for permanent total
disability from the second injury reserve of the surplus
fund. Such additional 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 and such
additional compensation and expenses shall not be
charged against such employer.

(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 pay-
ments 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 provi-
sions 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 section: 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 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.

§23-2-13. Interest on past due payments; reinstatement agreements.

Payments unpaid on the date on which due and payable, as prescribed by the commissioner, shall immediately begin bearing interest at the rate of eighteen percent per annum. This same rate of interest shall be applicable to all reinstatement agreements entered into by the commissioner pursuant to section five of this article on and after the effective date of this section. Interest shall be compounded quarterly until payment plus accrued interest is received by the commissioner: Provided, That on and after the date of execution of a reinstatement agreement, for determining future interest on any past due premium, premium deposit, and past compounded interest thereon, any reinstatement agreement entered into by the commissioner shall provide for a simple rate of interest for the future interest. Interest collected pursuant to this section shall be paid into the workers' compensation fund: Provided, however, That in no event shall the rate of interest charged a political subdivision of the state or a volunteer fire department pursuant to this section exceed ten percent per annum.

ARTICLE 5. REVIEW.

§23-5-1j. Requests for permanent total disability awards and second injury life awards following objections to decisions by the commissioner; remands to the commissioner; development of the record.

§23-5-3. Appeal to board; procedure; remand and supplemental hearing.

§23-5-1j. Requests for permanent total disability awards and second injury life awards following objections to decisions by the commissioner; remands to the commissioner; development of the record.

(a) If, following an objection to any decision of the commissioner, any party to a claim pending before the office of judges requests that a claimant be awarded a
permanent total disability award or a second injury life award or if the administrative law judge on his or her own motion believes that the record is incomplete on the issue of whether a claimant should be issued a permanent total disability award or a second injury life award, then the administrative law judge shall enter an order remanding the claim to the commissioner. An order directing that a claim be remanded shall be interlocutory in nature and shall not be appealable under section three of this article to the appeals board created pursuant to section two of this article. Upon remand, the commissioner may exercise the authority granted to him or her by this chapter to determine whether or not the claimant is entitled to a permanent total disability award or a second injury life award. The commissioner shall act upon any matter remanded to him or her pursuant to this section in a speedy and timely manner and in no event longer than one hundred twenty days. Following the commissioner's decision, any party to the claim may file an objection to the decision pursuant to the other provisions of this article.

(b) During the pendency of the remand proceedings before the commissioner, the original decision from which the objection was taken shall remain in effect and action on the protest held in abeyance pending the commissioner's action on the remand order. Upon the entry of a decision on the issue of whether a permanent total disability award or a second injury life award is to be made, the claim shall be returned to the office of judges for such further proceedings as may be required on that first objection. If a further objection is made pursuant to subsection (a) of this section to the commissioner's decision on the issue of whether a permanent total disability award or a second injury life award is to be made, then such proceedings on such objection shall be made part of the proceedings on the first objection.

§23-5-3. Appeal to board; procedure; remand and supplemental hearing.

Any employer, employee, claimant or dependent, who shall feel aggrieved at any final action of the commis-
tioner 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, in which case it need not make findings of fact or conclusions of law, or enter such order or make such
award as the commissioner or administrative law judge
should have made, stating in writing its reasons
therefor, 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 administra-
tive 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 commis-
sioner 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 state-
ments 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
CHAP. 175

An Act to amend and reenact sections seven and eight, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three; by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two; by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four; and as last amended and reenacted by chapter one hundred ninety-four, acts of the Legislature, one thousand nine hundred eighty-three, all relating to the greater Huntington park and recreation district; financing and financial powers; law enforcement; and severing the relationship of the village of Barboursville from the district.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three, by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two, by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four, and as last amended and reenacted by chapter one hundred ninety-four, acts of the
Legislature, regular session, one thousand nine hundred eighty-three, be amended and reenacted, all to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§7. Financing and financial powers.

§8. Law enforcement.

§7. Financing and financial powers.

1 The park district shall have the following powers to:

2 (1) Make charges to the public for services offered or goods sold by the park district.

(a) Charges for services may be in the forms of, but not limited to: Admission and entrance fees; exclusive use and rental fees; user fees; license and permit fees; equipment rental; program maintenance fees; instructor fees; special accommodation fees; amusement fees; restricted membership fees; and cemetery service fees.

(b) Charges for goods sold may be in the forms of, but not limited to: Beverages and foods; novelties and gifts; clothing; athletic equipment and supplies; cemetery plots, crypts, monuments, memorials, markers, vaults and any other forms of merchandise sold in connection with the burial of the dead; and other items that may pertain to the operation and maintenance of the park district.

2 (2) Annually levy on each one hundred dollars of the assessed valuation of the property taxable in said park district, within the corporate boundaries of the city of Huntington according to the last assessment thereof for state and county purposes, as follows:

On Class I property, one and one-half cents; on Class II property, three cents; on Class IV property, six cents. The park district may levy a lesser amount, in which case the above levies shall be reduced proportionately. These levies shall be made at the time and in the manner provided by article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; except that the levies shall be included in the maximum rates for the city of Huntington as established by law.
33 After the park district has made the levy, it shall certify to the finance director of the city of Huntington the amount of said levy, and the finance director shall thereupon extend the levy upon the tax tickets, and all levies made by the park district shall be collected by the finance director who shall occupy a fiduciary relationship with the park district, and then such levy funds shall be paid to the park district upon written order of the park district signed by the president of the park district and countersigned by the secretary of the park district.

44 Levies for support, maintenance and operation.

3 In order to ensure adequate support for the maintenance and operation of the park district the following governing authorities shall, upon written request by the park district levy annually as follows within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the property taxable in the area served by it according to the last assessment for state and county purposes, amounts not exceeding the following amounts for fiscal year beginning the first day of July, one thousand nine hundred eighty-three:

(a) The county commission of Cabell County, for the first year of the act and annually thereafter: Class I, .433 cents; Class II, .866 cents; Class III and Class IV, 1.73 cents.

(b) The county commission of Wayne County, for the first year of the act and annually thereafter: Class I, .0066 cents; Class II, .0132 cents; Class III and Class IV, .0266 cents.

(c) The board of education of the county of Cabell shall provide funds available to the board through special and excess levies for the first year of the act and annually thereafter: Class I, .433 cents; Class II, .866 cents; Class III and Class IV, 1.73 cents.

(d) The city of Huntington, for the first year of the act and annually thereafter: Class I, one and three-tenths cents; Class II, two and six-tenths cents; Class III
and IV, five and two-tenths cents.

(e) The town of Milton, for the first year of the act and annually thereafter: Class I, one and three-tenths cents; Class II, two and six-tenths cents; Class III and IV, five and two-tenths cents.

In addition to the aforesaid amounts which, upon written request by said board, the governing authorities shall levy, each such governing authority may support the park district with any other general or special revenues or excess levies. All income realized by the operation of the park district from any sources other than the above levies shall be used by the board of directors for support of the park district.

All money collected or appropriated by the foregoing governing authorities for park district purposes shall be deposited in a special account of the park district and shall be disbursed by that board for the purpose of operating such park district.

(4) Assess the cost of improvements to or construction of streets, sidewalks, sewers, curbs, alleys, public ways or easements, or portions thereof, upon the abutting property owners whose property lies within the park district. Such assessments shall require approval of a majority of the commissioners present and voting, and shall be commenced and conducted in such manner as is prescribed by article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(5) The municipalities of Huntington, Milton and the counties of Cabell and Wayne are hereby empowered, and authorized to issue, in the manner prescribed by law, revenue bonds or general obligation bonds, for the purpose of raising funds to establish, construct, improve, extend, develop, maintain or operate, a system of public parks and recreational facilities for the city or counties, or to refund any bonds of the city or counties, the proceeds of which were expended in the establishing, constructing, improving, extending, developing, maintaining or operating of such public park and recreation system or any part thereof. Any bonds issued for any
of the purposes stated in this section shall contain in the title or subtitle thereto the words "public park and recreation bonds", in order to identify the same, and shall be of such form, denomination and maturity and shall bear such rate of interest as shall be fixed by ordinance of the governing body of the city or counties. The governing body may provide for the issuance of bonds for other lawful purposes of the city or counties in the same ordinance in which provision shall be made for the issuance of bonds under the provisions of this section. The park district shall pay all of the costs and expenses of any election which shall be held to authorize the issuance of public park and recreation bonds only. The costs and expenses of holding an election to authorize the issuance of public park and recreation bonds and bonds for other city or county purposes shall be paid by the park district and the city or counties respectively, in the proportion that the public park and recreation bonds bear to the total amount of bonds authorized.

Whenever the governing body of the city or counties and the requisite majority of the legal votes cast at the election thereon shall authorize in the manner prescribed by law, the issuance of bonds for the purpose of establishing, constructing, improving, extending, developing, maintaining or operating, or any combination of the foregoing, a system of public parks and recreational facilities for the city or counties, or for refunding any outstanding bonds, the proceeds of which were applied to any of said purposes, said bonds shall be issued and delivered to the park district to be by it sold in the manner prescribed by law, and the proceeds thereof shall be paid into the treasury of the park district, and the same shall be applied and utilized by the park district for the purposes prescribed by the ordinance authorizing the issuance of such bonds. In any ordinance for the issuance of bonds for such purposes, it shall be a sufficient statement of the purposes for creating the debt to specify that the same is for the purpose of establishing, constructing, improving, extending, developing, maintaining or operating, or any combination of the foregoing, a public park and recreation system for
the city or counties, without specifying the particular establishment, construction, improvement, extension, development, maintenance or operation contemplated; but an ordinance for refunding bonds shall designate the issue and the number of bonds which it is proposed to refund.

(6) Sue and be sued; make contracts and guarantees; incur liabilities; borrow or lend money for any time period deemed advisable by the commission, sell, mortgage, lease, exchange, transfer or otherwise dispose of its property; or pledge its property as collateral or security for any time period deemed advisable by the commission.

(7) Create trusts of such kind as will expedite the efficient management of the property and other assets owned or controlled by the park district. The trustee, whether individual or corporate, in any such trust shall have a fiduciary relationship with the park district and may be removed by the park district for good cause shown or for a breach of the fiduciary relationship with the park district.

§8. Law enforcement.

(a) The park district is authorized and empowered to employ as many park rangers as the park district shall deem proper and necessary. Park rangers shall have the power to make arrest for violations of ordinances promulgated by the park district upon the property under the jurisdiction of the park district. Park rangers may not carry a gun without obtaining a license therefor as required by law.

(b) Police officers employed by the city of Huntington, town of Milton, members of the West Virginia division of public safety and sheriff's deputies in Cabell and Wayne counties are hereby authorized and empowered to make arrests for violations of ordinances promulgated by the park district upon property within the park district which is under the jurisdiction of the park district; and all of the foregoing officers of the law, except members of the Huntington police department, are hereby authorized and empowered to make arrests
for violations of ordinances promulgated by the park
district upon property under the jurisdiction of the park
district which is outside of the park district.

(c) For violations of park district ordinances, jurisdic-
tion of all warrants relating thereto to be issued is
hereby granted to such courts as have criminal jurisdic-
tion of misdemeanors committed upon property which
is owned or controlled by the park district.

CHAPTER 176
(Com. Sub. for H. B. 2207—By Delegate Pettit)

[Passed February 25, 1991: in effect from passage. Approved by the Governor.]

AN ACT directing the commissioner of highways to issue a
permit to certain users of two highways in the city of
Weirton and allowing the increasing of gross weight
limitations on certain roads in the city of Weirton, West
Virginia.

Be it enacted by the Legislature of West Virginia:

SIZE, WEIGHT AND LOAD LIMITATIONS ON CERTAIN ROADS IN
WEIRTON, WEST VIRGINIA.

§1. Authority of the commissioner of the division of
highways to increase weight limitations upon
highways within the city of Weirton, West
Virginia.

If the commissioner of the division of highways
determines that the design, construction and safety of
the highways within the city of Weirton, West Virginia,
may be increased without undue damage, the commis-
sioner may increase them. The commissioner shall then
set new gross weight limitations applicable to said
highways or portions thereof.

The commissioner may not establish any weight
limitation in excess of or in conflict with any weight
limitation prescribed by or pursuant to acts of Congress
with respect to the national system of interstate and
defense highways.
If the commissioner determines that the portion of State Route 2 located in the city of Weirton in the counties of Hancock and Brooke, named "Main Street" and that portion of U.S. Route 22 within the city of Weirton in the county of Brooke named "Freedom Way" are designed and constructed to allow the gross weight limitation to be increased to one hundred thousand pounds without undue damage, the commissioner may increase the weight limitations from eighty thousand pounds to one hundred thousand pounds on those sections of State Route 2 and U.S. Route 22 described above: Provided, That any person, organization or corporation exceeding eighty thousand pounds gross weight limitation while using these routes shall first obtain a permit from the commissioner before proceeding and shall provide the commissioner with a bond sufficient to cover any potential undue damage which may result from the use: Provided, however, That prior to issuance of that permit, if it is the determination of the commissioner that the road is in need of repaving, those persons, organizations or corporations shall be assessed the cost of repaving: Provided further, That the commissioner also determines that the increased limitation is not barred by an act of the United States Congress and the commissioner has received approval from the United States department of transportation to increase the weight limitation.

CHAPTER 177
(S. B. 149—By Senators Blatnik and Chernenko)

[Passed February 22, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the creation of conditional zoning for the city of Wheeling.

Be it enacted by the Legislature of West Virginia:

URBAN AND RURAL ZONING - ZONING DISTRICTS.

§1. Zoning districts - Wheeling.
The city of Wheeling is hereby empowered to create conditional zoning areas with rules that provide that an area shall be used only for a designated purpose in a specific location or building, subject to the condition of reverting to the prior zoning classification if the approved use is ceased in that location or building.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegate P. White)

[Adopted March 9, 1991]

Requesting the Joint Committee on Government and Finance in cooperation with the Statewide AHEC Steering Committee to continue the study of the expansion and development of area health education centers (AHEC).

WHEREAS, West Virginia remains a medically underserved state; and

WHEREAS, AHECs establish a link between university health science centers and remote communities for the clinical training of medical and health science students; and

WHEREAS, Students trained in rural areas are more likely to return to these areas after graduation; and

WHEREAS, A Carnegie Commission study in 1970 recommended the regionalization of medical education through the development of area health education centers in West Virginia; and

WHEREAS, West Virginia University was one of the first eleven AHEC projects funded in 1972 under P.L. 92-157; and

WHEREAS, West Virginia University has established the Central AHEC office at the Charleston division to coordinate AHEC activities in West Virginia; and

WHEREAS, The Central AHEC office has created a Statewide AHEC Steering Committee to advise on matters relating to the development of a Statewide AHEC system in West Virginia; and

WHEREAS, The West Virginia School of Osteopathic Medicine, the Marshall University School of Medicine and the West Virginia University School of Medicine are all working together to coordinate AHEC activities in order to provide better health care to the citizens of West Virginia; and
WHEREAS, The Carnegie Commission study of higher education in West Virginia recommended the regionalization of medical education; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance in cooperation with the Statewide AHEC Steering Committee is hereby requested to continue to study the expansion, development and coordination of AHECs in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations by January 1, 1992; 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.

COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION 27
(By Delegates Flanigan, Moore and Stewart)
[Adopted March 9, 1991]

Requesting the Joint Committee on Government and Finance to make a study of the problem of access to the State Capitol for people with physical disabilities to determine ways to improve access to the Capitol for all citizens.

WHEREAS, Many disabled West Virginians have reported difficulties in obtaining access to the State Capitol, its offices, restrooms and meeting rooms; and

WHEREAS, Many of these people were disabled as a result of defending this country in times of war; and

WHEREAS, Access to the Capitol should be available to all citizens of this State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is
hereby requested to review, examine and study the problem of access to the State Capitol for people with physical disabilities to determine ways in which access for all citizens may be improved; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, one thousand nine hundred ninety-two, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to pay, from legislative appropriations, any expenses necessary to conduct this study, to prepare a report and to draft necessary legislation.

HOUSE CONCURRENT RESOLUTION 28
(By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[Adopted February 13, 1991]
Raising a Joint Assembly to hear an address by the Honorable Robert C. Byrd, Senator of the Congress of the United States.

WHEREAS, The Honorable Robert C. Byrd has accepted an invitation to address a Joint Assembly of the House of Delegates and State Senate; therefore, be it

Resolved by the Legislature of West Virginia:
That the Senate and House of Delegates raise a Joint Assembly at 12:00 o'clock meridian on February 14, 1991, in the Hall of the House of Delegates, for the express purpose of hearing an address by Senator Byrd.

HOUSE CONCURRENT RESOLUTION 32
(By Mr. Speaker, Mr. Chambers, and Delegate P. White)
[Adopted March 9, 1991]
Urging the U. S. Congress to enact a national health plan providing access to health care for all Americans.
WHEREAS, Almost 37 million Americans under sixty-five have no health insurance; and

WHEREAS, The United States spends more than eleven percent of its gross national product on health care, a higher percentage than any other nation; and

WHEREAS, Approximately 350,000—one in five—West Virginians have no health insurance; and

WHEREAS, Nearly 100,000 West Virginia children have no health insurance; and

WHEREAS, Ten hospitals and five primary care providers have closed in West Virginia in the last five years, largely because government reimbursements did not equal the cost of providing service; and

WHEREAS, Rising health care costs are the leading cause of personal and small business bankruptcies in America; and

WHEREAS, The rising costs of health care have contributed to the problems of the Public Employees Insurance Agency and the failure of Blue Cross-Blue Shield of West Virginia; and

WHEREAS, State government—including the Medicaid program and the Workers’ Compensation Fund—have experienced the harsh impact of skyrocketing health care costs; and

WHEREAS, Health care is a basic human right; and

WHEREAS, The United States and South Africa are the only two industrialized countries in the world that have failed to enact a national health policy that guarantees all citizens access to basic health care; and

WHEREAS, A comprehensive national health policy is needed to address the health care crisis; and

WHEREAS, Federal leadership is required to enact a national health plan; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is encouraged to address the critical state of our health care system and to enact a national plan designed to guarantee universal access to health care for all citizens.
SENATE CONCURRENT RESOLUTION 13
(By Senators Jones, Heck, Chafin and Blatnik)

[Adopted February 14, 1991]

Commending the lifetime of service to the State and recognizing the contributions to the people of the State by the Honorable Robert C. Byrd, United States Senator.

WHEREAS, United States Senator Robert C. Byrd's story is a classic American saga of success and achievement starting with his mastery of the early lessons of life as a miner's son in the depths of the Great Depression of the 1930's; and

WHEREAS, One of the most successful careers in American politics commenced with his service to the people of West Virginia as a distinguished member of the West Virginia House of Delegates and the West Virginia Senate; and

WHEREAS, After three successful terms in the United States House of Representatives, Robert C. Byrd was elected in 1958 to the United States Senate where he daily continues to add to his records: Serving longer in the Senate than any other West Virginian and casting more votes than anyone who has ever served in the Senate from any state in the union; and

WHEREAS, The quality of Robert C. Byrd's service is equally record setting, having been chosen by his colleagues in the United States Senate to serve in more leadership positions than any other senator in Senate history including minority leader for six years, majority leader for six years and currently president pro tempore of the Senate, placing him third in line of succession to the presidency of the United States of America; and

WHEREAS, Since 1989 Robert C. Byrd has also served as chairman of the powerful appropriations committee in the U. S. Senate which has enabled Senator Byrd to do even more to help the people of our State and nation; therefore, be it

Resolved by the Legislature of West Virginia:

That the State of West Virginia declares that Senator Robert C. Byrd is not only our most valuable resource but also the greatest statesman in the history of West Virginia; and, be it
Further Resolved, That henceforth the State of West Virginia will officially recognize November 20, the birthdate of Senator Robert C. Byrd, as Senator Robert C. Byrd Day; and, be it

Further Resolved, That the governor, the president of the Senate and speaker of the House of Delegates invite U.S. Senator Robert C. Byrd to attend a joint session of the West Virginia Legislature called for the specific purpose of presenting this resolution to him.

SENATE CONCURRENT RESOLUTION 19

(By Senators Dittmar, Craigo, Chernenko, Boley, Burdette, Mr. President, Claypole, Blatnik, Withers, Wiedebusch, Tomblin, Brackenrich, Sharpe and J. Manchin)

[Adopted February 23, 1991]

Urging resolution of the labor-management crisis at Ravenswood Aluminum Corporation at Ravenswood, West Virginia.

WHEREAS, Due to the encouraging signs of the beginning of an economic upturn in West Virginia which promises benefits for all West Virginians; and

WHEREAS, Due to the need for creating a better labor-management image in West Virginia; and

WHEREAS, Due to West Virginia's need to keep present jobs while creating conditions to encourage the development of more jobs; therefore, be it

Resolved by the Legislature of West Virginia:

That Ravenswood Aluminum Corporation and the United Steelworkers of America are hereby urged to meet and with renewed effort on the part of each party to resolve through good faith bargaining to end the labor-management dispute now existing; and, be it

Further Resolved, That the Clerk of the Senate forward a copy of this resolution to Ravenswood Aluminum Corporation and to the United Steelworkers of America, Local Union 5668.
RESOLUTIONS

HOUSE RESOLUTION 9

(By Mr. Speaker, Mr. Chambers)
(Originating in House Rules)

[Adopted January 16, 1991]

Creating a Select Committee on Redistricting.

Resolved by the House of Delegates:

That for the life of the 70th Legislature, and under authority of House Rule 90, there is hereby created a Select Committee on Redistricting of the House of Delegates, consisting of not more than seventeen members to be appointed by the Speaker. Notwithstanding the provisions of any rule to the contrary, this committee shall have jurisdiction of legislative proposals to divide the State into senatorial districts, to apportion delegate representation in the House of Delegates, to divide the State into districts for the election of representatives to the Congress, and related matters; and, be it

Further Resolved, That the rules and practices of the House of Delegates governing standing committees shall govern the actions and proceedings of this committee insofar as applicable.

HOUSE RESOLUTION 18

(By Delegate Meadows)

[Adopted February 23, 1991]

Urging the President to support civil rights initiatives to help minorities and women in this country reach their full potential.

Whereas, There is a disproportionate number of blacks and other minorities servicing our nation in the Persian Gulf. Although they are serving with pride and dedication, their presence in such numbers is confusing to many here at home; and

Whereas, President Bush should do more for the rights of blacks and other minorities. While asking minorities to fight for freedom in a far-off distant land, it should also include the President fighting for freedom here at home; and
WHEREAS, President Bush vetoed the Civil Rights Act of 1990; and

WHEREAS, Congressional findings specified that a "series of recent decisions addressing employment discrimination under federal law, the Supreme Court cut back drastically on the scope and effectiveness of civil rights protections" which are needed now for minority people; and

WHEREAS, "Existing protections and remedies under federal law are not adequate to deter unlawful discrimination or to compensate victims of such discrimination"; and

WHEREAS, While we support the war effort in the Gulf, it should not be an excuse for ignoring the rights of minority people here at home; therefore, be it

Resolved by the House of Delegates:

That the President and members of Congress examine civil rights and take action to end the institutional racism that still occurs; and, be it

Further Resolved, That the Clerk of the House of Delegates forward copies of this resolution to the President, the six members of Congress from West Virginia and to the NAACP of West Virginia.

HOUSE RESOLUTION 21

(By Mr. Speaker, Mr. Chambers, Delegates P. White, S. Cook, Houvouras, Rowe, Williams, Rollins, Mezzatesta and Ashcraft)

[Adopted March 6, 1991]

Recognizing and commending the three medical schools for collaborative efforts in the development of foundation support for rural primary care centers.

WHEREAS, Much has been written and discussed recently about the cooperation and alleged lack of cooperation among the three Medical Schools of the State University System, the University of West Virginia School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine; and

WHEREAS, Officials at the three medical schools along with
the Deans of Nursing at West Virginia University and Marshall University and the Deans of Dentistry and Pharmacy at West Virginia University have put in many long hours to develop a six million dollar ($6,000,000) proposal to the W. K. Kellogg Foundation to change health professions education in West Virginia; and

WHEREAS, These health professions leaders have worked tirelessly together with faculty members from the three schools and with the legislators and community members to identify rural primary care centers that can be transformed into Rural Academic Centers for Education, Research, and Service for the Kellogg Project; and

WHEREAS, Faculty and students of all three medical schools will work with clinicians and nonprofessional community members to identify rural health problems and work together to solve these problems; therefore, be it

Resolved by the House of Delegates:

That the three medical schools should be recognized and commended for their efforts to work together and to collaborate in the development of the Kellogg Grant that would benefit the people of West Virginia; and, be it

Further Resolved, That copies of this Resolution be forwarded to the deans and presidents of the three medical schools.

SENATE RESOLUTION 8

(By Senators M. Manchin, Tomblin, Spears, Hawse, Claypole, Brackenrich, Felton, Humphreys, Boley, Heck, Anderson, Minard, Bailey, J. Manchin, Pritt, Wagner, Withers, Helmick, Dittmar, Whitlow, Jones and Dalton)

[Adopted January 30, 1991]

Requesting the government of the United States of America release all information obtained from intelligence sources, actual sightings and refugee reports pertaining to West Virginia's soldiers still classified as Prisoners of War (P.O.W.) or Missing in Action (M.I.A.) who still remain unaccounted for from serving in World War II, the Korean Conflict and the Vietnam Conflict.
Resolved by the Senate:

That the United States government release this information so that those who have lost a family member can finally rest in knowing the fate of their loved one; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the United States Congress, the West Virginia congressional delegation and the families of those West Virginian soldiers who remain prisoners of war or missing in action.
One”, and had been in the gulf region since January 13, 1991. Prior to that time, Kirk had been in the Army for about one year; and

WHEREAS, The younger Kirk, nicknamed “Skipper”, was a graduate of Tolsia High School and is survived by wife Cindy of Fort Gay, father Rueben, mother Connie, brother Bobby, sister Teresa and a grandmother, all of Dunlow, West Virginia; and

WHEREAS, Kirk had wanted to join the military since he was thirteen, according to his father, and was sent to Saudi Arabia along with approximately two thousand two hundred West Virginia reservists and National Guard units stationed in Saudi Arabia and with many hundreds of other West Virginians in the regular armed forces; and

WHEREAS, The passing of Rueben G. Kirk, III, should not go unnoticed; therefore, be it

Resolved by the Senate:

That regret is hereby expressed by the members at the passing of Rueben G. Kirk, III, one of West Virginia’s finest young men, who has given his life for his country and his state, but above all, shall not have died in vain; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to his wife Cindy and to the immediate family members of Rueben G. Kirk, III.
percentage of votes necessary for the passage of a bond
issue; numbering and designating such proposed amend-
ment; and providing a summarized statement of the
purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of
the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amend-
ment to the Constitution of the State of West Virginia be
submitted to the voters of the State at the next general election
to be held in the year one thousand nine hundred ninety-two,
which proposed amendment is that sections one and eight,
article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1. Taxation and finance.

Subject to the exceptions in this section contained, taxation
shall be equal and uniform throughout the State, and all
property, both real and personal, shall be taxed in proportion
to its value to be ascertained as directed by law. No one species
of property from which a tax may be collected shall be taxed
higher than any other species of property of equal value;
except that the aggregate of taxes assessed in any one year
upon personal property employed exclusively in agriculture,
including horticulture and grazing, products of agriculture as
above defined, including livestock, while owned by the
producer, and money, notes, bonds, bills and accounts
receivable, stocks and other similar intangible personal
property shall not exceed fifty cents on each one hundred
dollars of value thereon and upon all property owned, used and
occupied by the owner thereof exclusively for residential
purposes and upon farms occupied and cultivated by their
owners or bona fide tenants, one dollar; and upon all other
property situated outside of municipalities, one dollar and fifty
cents; and upon all other property situated within municipal-
ities, two dollars; and the Legislature shall further provide by
general law for increasing the maximum rates, authorized to
be fixed, by the different levying bodies upon all classes of
property, by submitting the question to the voters of the taxing
units affected, but no increase shall be effective unless at least
a majority of the qualified voters shall favor such increase, and
such increase shall not continue for a longer period than three
years at any one time, and shall never exceed by more than fifty percent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the Legislature among the levying units of the State in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including livestock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The Legislature shall have authority to tax privileges, franchises, and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the Legislature may provide. After the year nineteen hundred thirty-three, the rate of the State tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the State now existing.

§8. Bonded indebtedness of counties, etc.

No county, city, school district or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted in any manner or for any purpose to an amount including existing indebtedness in the aggregate exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax on all taxable property therein in the ratio as between the several classes or types of such taxable property specified in section one of this article separate and apart from and in addition to all other taxes for all other purposes sufficient to pay annually the interest on such debt and the principal thereof within, and not exceeding, thirty-four years. Such tax in an amount sufficient to pay the interest and principal on bonds issued by any school district not
exceeding in the aggregate three per centum of such assessed value may be levied outside the limits fixed by section one of this article: Provided, That no debt shall be contracted under this section unless all questions connected with the same shall have been first submitted to a vote of the people and is approved by a majority of all the votes cast for and against the same.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 1” designated as the “Local Government Levy and Bond Issue Amendment” and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to reduce from sixty percent to a simple majority the vote required to increase the property tax levy rate and to reduce from three fifths to a simple majority the vote required for passage of the bond issue by counties, cities, school districts or municipal corporations.”
AN ACT supplementing, amending and transferring between items of the existing appropriations of the department of public safety, division of public safety, account no. 5700, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, and by chapters one and three, acts of the Legislature, third extraordinary session, one thousand nine hundred ninety.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of account no. 5700, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, and chapters one and three, acts of the Legislature, third extraordinary session, one thousand nine hundred ninety, be supplemented, amended and transferred to read as follows:

1 \hspace{1cm} \text{TITLE II—APPROPRIATIONS.}

2 Section 1. Appropriations from general revenue.

3 Sec. 2. Appropriations of federal funds.

4 DEPARTMENT OF PUBLIC SAFETY
### Appropriations

**Division of Public Safety**

(WV Code Chapter 15)

Acct. No. 5700

<table>
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<tr>
<th>Item</th>
<th>Federal Funds Fiscal Year 1990-91</th>
<th>General Revenue Funds Fiscal Year 1990-91</th>
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</thead>
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<td>3</td>
<td>Employee Benefits ..........</td>
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<td>4</td>
<td>Unclassified ................ 774,223</td>
<td>$ 4,840,776</td>
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<td>4a</td>
<td>Public Employees Insurance .</td>
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<tr>
<td>5</td>
<td>Total ........................ 774,223</td>
<td>$24,018,471</td>
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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-one shall be made available for expenditure upon the effective date of this bill.

### CHAPTER 2

(H. B. 102—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 17, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations of the department of public safety, division of public safety—inspection fees, account no. 8350, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, and as amended by chapter four, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety.
Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of account no. 8350, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, and as amended by chapter four, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety, be supplemented, amended, reduced and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations from other funds.

DEPARTMENT OF PUBLIC SAFETY

151—Division of Public Safety—

Inspection Fees

(WV Code Chapter 15)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

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<th>Other Funds Fiscal Year 1990-91</th>
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<td>2 Annual Increment</td>
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<td>4 Equipment</td>
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<td>5 Unclassified</td>
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<td>Total</td>
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<td>$ 743,186</td>
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The purpose of this supplementary appropriation bill is to supplement, amend, reduce 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-one shall be made available for expenditure upon the effective date of this bill.
# DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

**Regular Session, 1991**

**HOUSE BILLS**

<table>
<thead>
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## Disposition of Bills

### Senate Bills

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### House Bills

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First Extraordinary Session, 1991

House Bills
INDEX
REGULAR SESSION, 1991
FIRST EXTRAORDINARY SESSION, 1991

ABANDONED MINE LAND:

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<thead>
<tr>
<th>Description</th>
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ACTS AMENDED:

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<th>Ch.</th>
<th>Sec.</th>
<th>Greater Huntington Park and Recreation District, financing and financial powers, law enforcement and severing relationship of the village of Barboursville from the district</th>
<th>Page</th>
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<td>Reg. 26</td>
<td>7, 8</td>
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<td></td>
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</table>

ADMINISTRATION:

See FINANCE AND ADMINISTRATION.

ADMINISTRATIVE PROCEDURES:

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency legislative rules</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing</td>
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<td>9</td>
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<tr>
<td>Attorney General</td>
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<tr>
<td>Disapproval by</td>
<td>2</td>
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<tr>
<td>Judicial review</td>
<td>2</td>
<td>13</td>
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<td>Effective date</td>
<td>2</td>
<td>8</td>
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<tr>
<td>Legislative Rule-Making Review Committee</td>
<td></td>
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<tr>
<td>Review by</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Recommendation following</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Promulgation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedure for</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Secretary of State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disapproval by</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Judicial review</td>
<td>2</td>
<td>11</td>
</tr>
</tbody>
</table>

AGRICULTURE:

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apiary Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apiaries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abandoned Notice</td>
<td>10</td>
<td>109</td>
</tr>
<tr>
<td>Bees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imported Notice of commissioner</td>
<td>10</td>
<td>110</td>
</tr>
<tr>
<td>Interstate movement</td>
<td>10</td>
<td>110</td>
</tr>
<tr>
<td>Candy for mailing cages</td>
<td>10</td>
<td>111</td>
</tr>
<tr>
<td>Poisoning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain pesticides prohibited</td>
<td>10</td>
<td>111</td>
</tr>
<tr>
<td>Registration</td>
<td>10</td>
<td>107</td>
</tr>
<tr>
<td>Shipment</td>
<td>10</td>
<td>110</td>
</tr>
<tr>
<td>Candy for mailing cages</td>
<td>10</td>
<td>111</td>
</tr>
<tr>
<td>Entry</td>
<td>10</td>
<td>107</td>
</tr>
<tr>
<td>Identification</td>
<td>10</td>
<td>107</td>
</tr>
<tr>
<td>Inspections</td>
<td>10</td>
<td>108</td>
</tr>
<tr>
<td>Quarantines</td>
<td>10</td>
<td>108</td>
</tr>
<tr>
<td>Section</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>AGRICULTURE—(continued): Apiary Law—(continued): Commissioner of Agriculture</td>
<td>10</td>
<td>107</td>
</tr>
<tr>
<td>Apiary education</td>
<td>10</td>
<td>107</td>
</tr>
<tr>
<td>Governmental agencies</td>
<td>10</td>
<td>106</td>
</tr>
<tr>
<td>Cooperation with</td>
<td>10</td>
<td>104-106</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>10</td>
<td>104</td>
</tr>
<tr>
<td>Definitions</td>
<td>10</td>
<td>104</td>
</tr>
<tr>
<td>Pesticides</td>
<td>10</td>
<td>111</td>
</tr>
<tr>
<td>Injurious to bees</td>
<td>10</td>
<td>113</td>
</tr>
<tr>
<td>Severability of provisions</td>
<td>10</td>
<td>112</td>
</tr>
<tr>
<td>Violations</td>
<td>10</td>
<td>112</td>
</tr>
<tr>
<td>Civil</td>
<td>10</td>
<td>112</td>
</tr>
<tr>
<td>Criminal</td>
<td>10</td>
<td>112</td>
</tr>
<tr>
<td>Commercial Feed Law</td>
<td>9</td>
<td>98</td>
</tr>
<tr>
<td>Adulteration</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Commissioner of Agriculture</td>
<td>9</td>
<td>102</td>
</tr>
<tr>
<td>Fees and penalties</td>
<td>9</td>
<td>102</td>
</tr>
<tr>
<td>Collection</td>
<td>9</td>
<td>90</td>
</tr>
<tr>
<td>Deposit</td>
<td>9</td>
<td>91</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>9</td>
<td>89-91</td>
</tr>
<tr>
<td>Condemnation and confiscation</td>
<td>9</td>
<td>99</td>
</tr>
<tr>
<td>Definitions</td>
<td>9</td>
<td>86-89</td>
</tr>
<tr>
<td>Embargoes</td>
<td>9</td>
<td>99</td>
</tr>
<tr>
<td>Injunctions</td>
<td>9</td>
<td>100</td>
</tr>
<tr>
<td>Labeling requirements</td>
<td>9</td>
<td>94-97</td>
</tr>
<tr>
<td>Misbranding</td>
<td>9</td>
<td>99</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Penalties</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Civil</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Criminal</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Permits and registration</td>
<td>9</td>
<td>91-93</td>
</tr>
<tr>
<td>Nontransferability</td>
<td>9</td>
<td>91</td>
</tr>
<tr>
<td>Refusal</td>
<td>9</td>
<td>93</td>
</tr>
<tr>
<td>Hearings and appeals</td>
<td>9</td>
<td>94</td>
</tr>
<tr>
<td>Suspension, revocation</td>
<td>9</td>
<td>93</td>
</tr>
<tr>
<td>Tonnage reports</td>
<td>9</td>
<td>97</td>
</tr>
<tr>
<td>Inspection fees</td>
<td>9</td>
<td>97-98</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Trade secrets</td>
<td>9</td>
<td>100,101</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>9</td>
<td>100,101</td>
</tr>
<tr>
<td>Violations</td>
<td>9</td>
<td>103</td>
</tr>
<tr>
<td>Damages</td>
<td>9</td>
<td>103</td>
</tr>
<tr>
<td>Recovery</td>
<td>9</td>
<td>103</td>
</tr>
<tr>
<td>Prosecuting attorneys</td>
<td>9</td>
<td>103</td>
</tr>
<tr>
<td>Duties</td>
<td>9</td>
<td>103</td>
</tr>
<tr>
<td>Dairy products/imitation dairy products</td>
<td>7</td>
<td>46</td>
</tr>
<tr>
<td>Adulteration</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Commissioner of Agriculture</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Cooperation with other entities</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Fees collected by</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Disposition</td>
<td>7</td>
<td>50</td>
</tr>
<tr>
<td>Payment</td>
<td>7</td>
<td>40</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>7</td>
<td>45</td>
</tr>
<tr>
<td>Definitions</td>
<td>7</td>
<td>47</td>
</tr>
<tr>
<td>Labeling</td>
<td>7</td>
<td>47</td>
</tr>
<tr>
<td>Misbranded</td>
<td>7</td>
<td>44</td>
</tr>
<tr>
<td>Permits</td>
<td>7</td>
<td>44</td>
</tr>
<tr>
<td>Distributor's</td>
<td>7</td>
<td>44</td>
</tr>
</tbody>
</table>
# INDEX

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Nontransferable</td>
<td>7</td>
<td>44</td>
</tr>
<tr>
<td>Posting</td>
<td>7</td>
<td>44</td>
</tr>
<tr>
<td>Suspension, revocation, denial</td>
<td>7</td>
<td>53</td>
</tr>
<tr>
<td>Hearings and appeals</td>
<td>7</td>
<td>54</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>7</td>
<td>47</td>
</tr>
<tr>
<td>Purpose</td>
<td>7</td>
<td>40</td>
</tr>
<tr>
<td>Sampling and testing Approved</td>
<td>7</td>
<td>49</td>
</tr>
<tr>
<td>Laboratories</td>
<td>7</td>
<td>50</td>
</tr>
<tr>
<td>Trade secrets Confidentiality</td>
<td>7</td>
<td>57</td>
</tr>
<tr>
<td>Violations Civil penalties</td>
<td>7</td>
<td>55</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>7</td>
<td>55</td>
</tr>
<tr>
<td>Livestock Dealers Licensing Act Bond Applicant to furnish</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>Complaints</td>
<td>6</td>
<td>18</td>
</tr>
<tr>
<td>Investigations</td>
<td>6</td>
<td>18</td>
</tr>
<tr>
<td>Order of commissioner</td>
<td>6</td>
<td>19</td>
</tr>
<tr>
<td>Definitions</td>
<td>6</td>
<td>16</td>
</tr>
<tr>
<td>Licenses Refusal to issue</td>
<td>6</td>
<td>19</td>
</tr>
<tr>
<td>Revocation or suspension</td>
<td>6</td>
<td>19</td>
</tr>
<tr>
<td>Violations Penalties Civil</td>
<td>6</td>
<td>21</td>
</tr>
<tr>
<td>Criminal</td>
<td>6</td>
<td>21</td>
</tr>
<tr>
<td>Meat inspection Continuation of program</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>Milk, bulk Bulk Milk Trade Law Commissioner of Agriculture Cooperation with other entities</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Fees collected by</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Disposition</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Payment</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>7</td>
<td>32</td>
</tr>
<tr>
<td>Definitions</td>
<td>7</td>
<td>24</td>
</tr>
<tr>
<td>Milk Purchase Permit for Suspension, revocation, denial</td>
<td>7</td>
<td>26</td>
</tr>
<tr>
<td>Test, weigh, measure, sample Adulteration</td>
<td>7</td>
<td>30</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>7</td>
<td>31</td>
</tr>
<tr>
<td>Determination</td>
<td>7</td>
<td>29</td>
</tr>
<tr>
<td>Licenses</td>
<td>7</td>
<td>28</td>
</tr>
<tr>
<td>Methods acceptable</td>
<td>7</td>
<td>29</td>
</tr>
<tr>
<td>Proficiency examinations</td>
<td>7</td>
<td>27</td>
</tr>
<tr>
<td>Basis</td>
<td>7</td>
<td>27</td>
</tr>
<tr>
<td>Certificates</td>
<td>7</td>
<td>26</td>
</tr>
<tr>
<td>Issuance</td>
<td>7</td>
<td>27</td>
</tr>
<tr>
<td>Posting suspension, revocation, denial</td>
<td>7</td>
<td>35</td>
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</tbody>
</table>
### AGRICULTURE—(continued):

#### Milk, bulk—(continued):

**Bulk Milk Trade Law—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permits</td>
<td>7</td>
<td>27</td>
</tr>
<tr>
<td>Issuance</td>
<td>7</td>
<td>27</td>
</tr>
<tr>
<td>Posting</td>
<td>7</td>
<td>27</td>
</tr>
<tr>
<td>Suspension, revocation, denial</td>
<td>7</td>
<td>35</td>
</tr>
<tr>
<td>Hearing and appeal</td>
<td>7</td>
<td>36</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>7</td>
<td>31</td>
</tr>
<tr>
<td>Purpose</td>
<td>7</td>
<td>23</td>
</tr>
<tr>
<td>Trade secrets</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>7</td>
<td>37</td>
</tr>
<tr>
<td>Violations</td>
<td>7</td>
<td>37</td>
</tr>
<tr>
<td>Civil penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal penalties</td>
<td></td>
<td></td>
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</tbody>
</table>

#### Pesticides

**Interagency Committee on Pesticides**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeal of article</td>
<td>120</td>
<td>1229</td>
</tr>
</tbody>
</table>

#### Plant pests, insects and noxious weeds

**Article governing**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement by commissioner</td>
<td>8</td>
<td>82</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>8</td>
<td>83</td>
</tr>
</tbody>
</table>

#### Poultry

**Disposal of dead**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Tree fruit industry

**Self-improvement assessment**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program continued</td>
<td>4</td>
<td>14</td>
</tr>
</tbody>
</table>

### ALCOHOLIC LIQUOR:

**Alcohol Beverage Control Commissioner**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrators, employees, agents</td>
<td>118</td>
<td>1183</td>
</tr>
<tr>
<td>Audit</td>
<td>118</td>
<td>1198</td>
</tr>
<tr>
<td>Oath and bond</td>
<td>118</td>
<td>1197</td>
</tr>
<tr>
<td>Responsibility</td>
<td>118</td>
<td>1183</td>
</tr>
<tr>
<td>Salary increase</td>
<td>118</td>
<td>1198</td>
</tr>
</tbody>
</table>

#### Sale of liquor

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licenses</td>
<td>118</td>
<td>1199</td>
</tr>
<tr>
<td>Revocation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wholesale prices</td>
<td>118</td>
<td>1198</td>
</tr>
</tbody>
</table>

#### Licenses to private clubs

**Alcoholic liquor, nonintoxicating beer**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale authorized</td>
<td>118</td>
<td>1201</td>
</tr>
</tbody>
</table>

#### Licensee

<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unlawful acts</td>
<td>118</td>
<td>1202</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>118</td>
<td>1203</td>
</tr>
<tr>
<td>Revocation or suspension</td>
<td>118</td>
<td>1203</td>
</tr>
<tr>
<td>Hearing</td>
<td>118</td>
<td>1204</td>
</tr>
<tr>
<td>Judicial review</td>
<td>118</td>
<td>1205</td>
</tr>
</tbody>
</table>
## Index

### ALCOHOLIC LIQUOR—(continued):

<table>
<thead>
<tr>
<th>Specific acts forbidden</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indictment</td>
<td>118</td>
<td>1200</td>
</tr>
</tbody>
</table>

**Wine**

<table>
<thead>
<tr>
<th>Sale</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distributors and suppliers</td>
<td>118</td>
<td>1209</td>
</tr>
<tr>
<td>Bond</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registration</td>
<td>118</td>
<td>1208</td>
</tr>
<tr>
<td>Liter tax</td>
<td>118</td>
<td>1207</td>
</tr>
<tr>
<td>Refund or credit</td>
<td>118</td>
<td>1208</td>
</tr>
<tr>
<td>Records</td>
<td>118</td>
<td>1208</td>
</tr>
<tr>
<td>Inspection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue</td>
<td>118</td>
<td>1208</td>
</tr>
<tr>
<td>Disposition</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### ANIMALS:

<table>
<thead>
<tr>
<th>Cruelty to animals</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal fighting</td>
<td>36</td>
<td>460</td>
</tr>
<tr>
<td>Prohibited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hearing</td>
<td>36</td>
<td>463</td>
</tr>
<tr>
<td>Liability for costs</td>
<td>36</td>
<td>460</td>
</tr>
<tr>
<td>Penalties</td>
<td>36</td>
<td>461</td>
</tr>
<tr>
<td>Reporting</td>
<td>36</td>
<td>461</td>
</tr>
</tbody>
</table>

**Humane officers**

<table>
<thead>
<tr>
<th>Duty</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interference with</td>
<td>36</td>
<td>459</td>
</tr>
<tr>
<td>Penalty</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### APIARY LAW:

*See* AGRICULTURE.

### APPROPRIATIONS:

**Budget Bill**

<table>
<thead>
<tr>
<th>Annual Budget Bill, Fiscal Year 1992</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index to, by accounts</td>
<td>13</td>
<td>117</td>
</tr>
</tbody>
</table>

**Supplemental**

<table>
<thead>
<tr>
<th>Division of Highways, Acct. No. 6700</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division of Motor Vehicles, Acct. No. 6710</td>
<td>11</td>
<td>114</td>
</tr>
</tbody>
</table>

### BANKS AND BANKING:

**Banking institutions**

<table>
<thead>
<tr>
<th>Bank shares</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition</td>
<td>14</td>
<td>213</td>
</tr>
</tbody>
</table>

**Branch banks**

<table>
<thead>
<tr>
<th>Authorization</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment procedure</td>
<td>14</td>
<td>208</td>
</tr>
</tbody>
</table>

**Trust powers**

<table>
<thead>
<tr>
<th>Deposits in trust</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation on liability</td>
<td>14</td>
<td>207</td>
</tr>
</tbody>
</table>

**Unimpaired capital**

<table>
<thead>
<tr>
<th>Certificate showing</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing required</td>
<td>14</td>
<td>207</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Failure to comply</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
</table>

**Incorporation of state banks**

<table>
<thead>
<tr>
<th>Requirements and procedure</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>
## INDEX

### BONDS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Bond Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Escrowing bond issues</td>
<td>15</td>
<td>221</td>
</tr>
<tr>
<td>Notification by issuer of sale</td>
<td>15</td>
<td>222</td>
</tr>
<tr>
<td>Officer and employee</td>
<td>15</td>
<td>218</td>
</tr>
<tr>
<td>Collection, deposit and accounting funds</td>
<td>15</td>
<td>222</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>15</td>
<td>223</td>
</tr>
<tr>
<td>Costs and expenses</td>
<td>15</td>
<td>218</td>
</tr>
<tr>
<td>Employees</td>
<td>15</td>
<td>217</td>
</tr>
<tr>
<td>Fees for services</td>
<td>15</td>
<td>218</td>
</tr>
<tr>
<td>Deposit in separate account</td>
<td>15</td>
<td>219</td>
</tr>
<tr>
<td>Investments in securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permissible</td>
<td>15</td>
<td>220</td>
</tr>
<tr>
<td>Purchase, sale or exchange</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limitations and prohibitions</td>
<td>15</td>
<td>220,221</td>
</tr>
<tr>
<td>Legal advisor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attorney General</td>
<td>15</td>
<td>218</td>
</tr>
<tr>
<td>Levy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funds raised by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorizing transfer, investment</td>
<td>15</td>
<td>225</td>
</tr>
<tr>
<td>Statement to political subdivisions</td>
<td>15</td>
<td>224</td>
</tr>
<tr>
<td>Meetings</td>
<td>15</td>
<td>218</td>
</tr>
<tr>
<td>Officers</td>
<td>15</td>
<td>217</td>
</tr>
<tr>
<td>Chief Administrative</td>
<td>15</td>
<td>217</td>
</tr>
<tr>
<td>Compensation and expenses</td>
<td>15</td>
<td>218</td>
</tr>
<tr>
<td>Paying agents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Substitute</td>
<td>15</td>
<td>224</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>15</td>
<td>219</td>
</tr>
</tbody>
</table>

### BUILDING AND LOAN ASSOCIATIONS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeal of article</td>
<td>30</td>
<td>444</td>
</tr>
</tbody>
</table>

### BUREAU OF EMPLOYMENT PROGRAMS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol Beverage Control Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Termination of employment</td>
<td>16</td>
<td>357</td>
</tr>
<tr>
<td>Reemployment preference</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attorney General</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal services</td>
<td>16</td>
<td>234</td>
</tr>
<tr>
<td>Written opinions, advice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bureau defined</td>
<td>16</td>
<td>288</td>
</tr>
<tr>
<td>Business Registration Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of registration</td>
<td>16</td>
<td>244</td>
</tr>
<tr>
<td>Display</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reciprocal exchange of information</td>
<td>16</td>
<td>245</td>
</tr>
<tr>
<td>Collection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injunction</td>
<td>16</td>
<td>244</td>
</tr>
<tr>
<td>Child Advocate Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment compensation</td>
<td>16</td>
<td>352</td>
</tr>
<tr>
<td>Obtaining support from</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>16</td>
<td>354</td>
</tr>
<tr>
<td>Obtaining support from</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child Support Agencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of information to</td>
<td>16</td>
<td>308</td>
</tr>
<tr>
<td>Coal-Workers' Pneumoconiosis Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration</td>
<td>16</td>
<td>335</td>
</tr>
<tr>
<td>Established</td>
<td>16</td>
<td>334</td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>16</td>
<td>289</td>
</tr>
<tr>
<td><strong>INDEX</strong></td>
<td><strong>Ch.</strong></td>
<td><strong>Page</strong></td>
</tr>
<tr>
<td>------------</td>
<td>--------</td>
<td>---------</td>
</tr>
<tr>
<td><strong>BUREAU OF EMPLOYMENT PROGRAMS—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistants and employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appropriation</td>
<td>16</td>
<td>292</td>
</tr>
<tr>
<td>Dismissals, terminations, layoffs, suspensions</td>
<td>16</td>
<td>293</td>
</tr>
<tr>
<td>Compensation</td>
<td>16</td>
<td>289</td>
</tr>
<tr>
<td>Compensation Programs Advisory Board</td>
<td>16</td>
<td>315</td>
</tr>
<tr>
<td>Deputies</td>
<td>16</td>
<td>293</td>
</tr>
<tr>
<td>Duties</td>
<td>16</td>
<td>311</td>
</tr>
<tr>
<td>Federal-State cooperation</td>
<td>16</td>
<td>293-296</td>
</tr>
<tr>
<td>Group insurance programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acceptance</td>
<td>16</td>
<td>300</td>
</tr>
<tr>
<td>Continuation following retirement</td>
<td>16</td>
<td>300</td>
</tr>
<tr>
<td>Inaugurating</td>
<td>16</td>
<td>299</td>
</tr>
<tr>
<td>Payroll deductions</td>
<td>16</td>
<td>300</td>
</tr>
<tr>
<td>Information by Tax Commissioner</td>
<td>16</td>
<td>291</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>16</td>
<td>292</td>
</tr>
<tr>
<td>Violation</td>
<td>16</td>
<td>292</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>16</td>
<td>290,291</td>
</tr>
<tr>
<td>Report, annual</td>
<td>16</td>
<td>314</td>
</tr>
<tr>
<td>Term of office</td>
<td>16</td>
<td>289</td>
</tr>
<tr>
<td>Traveling expenses</td>
<td>16</td>
<td>290</td>
</tr>
<tr>
<td>Veteran’s Training Program</td>
<td>16</td>
<td>296</td>
</tr>
<tr>
<td>Work Incentive Program</td>
<td>16</td>
<td>296</td>
</tr>
<tr>
<td>Corporation Net Income Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manufacturing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain tax credit</td>
<td>16</td>
<td>246</td>
</tr>
<tr>
<td>Corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business and Nonprofit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissolution, withdrawal, consolidation, merger, expiration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax certificate prerequisite</td>
<td>16</td>
<td>334</td>
</tr>
<tr>
<td>County Airport Authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public employee designation</td>
<td>16</td>
<td>240</td>
</tr>
<tr>
<td>Workers’ compensation, insurance coverage</td>
<td>16</td>
<td>240</td>
</tr>
<tr>
<td>County Solid Waste Authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees covered</td>
<td>16</td>
<td>239</td>
</tr>
<tr>
<td>Created</td>
<td>16</td>
<td>288</td>
</tr>
<tr>
<td>Definitions</td>
<td>16</td>
<td>267-288</td>
</tr>
<tr>
<td>Disabled Workers’ Relief Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computation</td>
<td>16</td>
<td>332</td>
</tr>
<tr>
<td>Mode of payment</td>
<td>16</td>
<td>333</td>
</tr>
<tr>
<td>To whom paid</td>
<td>16</td>
<td>332</td>
</tr>
<tr>
<td>Employers’ own system</td>
<td>16</td>
<td>333</td>
</tr>
<tr>
<td>Funding</td>
<td>16</td>
<td>334</td>
</tr>
<tr>
<td>Economic Opportunity Programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees covered</td>
<td>16</td>
<td>239</td>
</tr>
<tr>
<td>Elderly Homeowners and Renters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax relief</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>16</td>
<td>248-250</td>
</tr>
<tr>
<td>Emergency Employment Supplemental Matching Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>16</td>
<td>297</td>
</tr>
<tr>
<td>Private business employers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applications</td>
<td>16</td>
<td>298</td>
</tr>
<tr>
<td>Notice</td>
<td>16</td>
<td>298</td>
</tr>
<tr>
<td>Emergency Hospitals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment</td>
<td>16</td>
<td>337</td>
</tr>
<tr>
<td>BUREAU OF EMPLOYMENT PROGRAMS—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Emergency Hospitals—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patients</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preference</td>
<td>16</td>
<td>337</td>
</tr>
<tr>
<td>Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Termination under provisions of chapter</td>
<td>16</td>
<td>357</td>
</tr>
<tr>
<td>Reemployment Preference</td>
<td>16</td>
<td>357</td>
</tr>
<tr>
<td>Employers’ Excess Liability Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration</td>
<td>16</td>
<td>336</td>
</tr>
<tr>
<td>Established</td>
<td>16</td>
<td>335</td>
</tr>
<tr>
<td>Employment stabilization</td>
<td></td>
<td>288</td>
</tr>
<tr>
<td>Evidence and witnesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous provisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospital records</td>
<td>16</td>
<td>356</td>
</tr>
<tr>
<td>Federal-State cooperation</td>
<td>16</td>
<td>288</td>
</tr>
<tr>
<td>Food Stamp Agencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of information to</td>
<td>16</td>
<td>309</td>
</tr>
<tr>
<td>Group Insurance Plans for Regular Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acceptance by commissioner</td>
<td>16</td>
<td>300</td>
</tr>
<tr>
<td>Continuation following retirement</td>
<td>16</td>
<td>300</td>
</tr>
<tr>
<td>Inaugurating</td>
<td>16</td>
<td>299</td>
</tr>
<tr>
<td>Payroll deductions</td>
<td>16</td>
<td>300</td>
</tr>
<tr>
<td>Guaranty Association Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scope of article</td>
<td>16</td>
<td>351</td>
</tr>
<tr>
<td>Health Care, State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beneficiaries of various programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plan to provide health care</td>
<td>16</td>
<td>254</td>
</tr>
<tr>
<td>Report to Legislature</td>
<td>16</td>
<td>256</td>
</tr>
<tr>
<td>Purchase of health care services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Late payments by agencies</td>
<td>16</td>
<td>257</td>
</tr>
<tr>
<td>Interest</td>
<td>16</td>
<td>257</td>
</tr>
<tr>
<td>Health, State Division of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information and material acquired</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of</td>
<td>16</td>
<td>253</td>
</tr>
<tr>
<td>Investigations and hearings</td>
<td>16</td>
<td>252</td>
</tr>
<tr>
<td>Oaths</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Power to administer</td>
<td>16</td>
<td>253</td>
</tr>
<tr>
<td>Witnesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subpoena</td>
<td>16</td>
<td>253</td>
</tr>
<tr>
<td>Homestead Property Tax Exemption</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claim</td>
<td>16</td>
<td>243</td>
</tr>
<tr>
<td>Renewals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disabled</td>
<td>16</td>
<td>244</td>
</tr>
<tr>
<td>Senior citizens</td>
<td>16</td>
<td>243</td>
</tr>
<tr>
<td>Waiver</td>
<td>16</td>
<td>244</td>
</tr>
<tr>
<td>Horse and dog racing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disposition of permit, registration</td>
<td>16</td>
<td>262</td>
</tr>
<tr>
<td>Fines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disposition</td>
<td>16</td>
<td>262</td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of information</td>
<td>16</td>
<td>310</td>
</tr>
<tr>
<td>Human Rights Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain records exempt</td>
<td>16</td>
<td>236</td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accident and sickness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scope of article</td>
<td>16</td>
<td>350,351</td>
</tr>
<tr>
<td>Policies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Optional provisions</td>
<td>16</td>
<td>346-350</td>
</tr>
<tr>
<td><strong>BUREAU OF EMPLOYMENT PROGRAMS—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Insurance—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Accident and sickness—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scope of article ..................................</td>
<td>16</td>
<td>345</td>
</tr>
<tr>
<td><strong>State Definitions</strong> ..................................</td>
<td>16</td>
<td>338</td>
</tr>
<tr>
<td><strong>Intergovernmental Relations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Building Commissions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Workers' Compensation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees covered ..................................</td>
<td>16</td>
<td>241</td>
</tr>
<tr>
<td><strong>Regional Airports</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Workers' Compensation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees covered ..................................</td>
<td>16</td>
<td>240</td>
</tr>
<tr>
<td><strong>Urban Mass Transportation Systems</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Workers' Compensation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees covered ..................................</td>
<td>16</td>
<td>240</td>
</tr>
<tr>
<td><strong>Labor</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Wage payment and collection</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer's bond ..................................</td>
<td>16</td>
<td>263</td>
</tr>
<tr>
<td>Employee cause of action ..........................</td>
<td>16</td>
<td>264</td>
</tr>
<tr>
<td>Filing with circuit clerk ..........................</td>
<td>16</td>
<td>263</td>
</tr>
<tr>
<td>Form .............................................</td>
<td>16</td>
<td>263</td>
</tr>
<tr>
<td>Posting and reporting .............................</td>
<td>16</td>
<td>265</td>
</tr>
<tr>
<td>Termination .......................................</td>
<td>16</td>
<td>266</td>
</tr>
<tr>
<td>Waiver ............................................</td>
<td>16</td>
<td>263</td>
</tr>
<tr>
<td><strong>Unpaid wages and benefits</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Action of commissioner ............................</td>
<td>16</td>
<td>264</td>
</tr>
<tr>
<td>Cause of action for ................................</td>
<td>16</td>
<td>264</td>
</tr>
<tr>
<td><strong>Labor—Management Council</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Appointment</strong> ....................................</td>
<td>16</td>
<td>237</td>
</tr>
<tr>
<td><strong>Chairman</strong> ......................................</td>
<td>16</td>
<td>238</td>
</tr>
<tr>
<td><strong>Meetings</strong> ......................................</td>
<td>16</td>
<td>239</td>
</tr>
<tr>
<td><strong>Quorum</strong> ........................................</td>
<td>16</td>
<td>239</td>
</tr>
<tr>
<td><strong>Terms</strong> ..........................................</td>
<td>16</td>
<td>238</td>
</tr>
<tr>
<td><strong>Vacancies</strong> .......................................</td>
<td>16</td>
<td>238</td>
</tr>
<tr>
<td><strong>Legal services</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Attorney General</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Performance by entities other than</strong> ..........</td>
<td>16</td>
<td>234</td>
</tr>
<tr>
<td><strong>Liens</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Public officers</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Garnishment and suggestion .......................</td>
<td>16</td>
<td>351.352</td>
</tr>
<tr>
<td>Certain exemption ................................</td>
<td>16</td>
<td>351.352</td>
</tr>
<tr>
<td><strong>State and political subdivisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suggestion .........................................</td>
<td>16</td>
<td>351.352</td>
</tr>
<tr>
<td>Certain exemption ...............................</td>
<td>16</td>
<td>351.352</td>
</tr>
<tr>
<td><strong>Linked Deposit Program</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Loan package</strong> ..................................</td>
<td>16</td>
<td>251</td>
</tr>
<tr>
<td>Acceptance or rejection .........................</td>
<td>16</td>
<td>251</td>
</tr>
<tr>
<td>Deposit agreement ...............................</td>
<td>16</td>
<td>252</td>
</tr>
<tr>
<td><strong>Mortgage and Industrial Development Investment Pool</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Mortgage payments</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest ...........................................</td>
<td>16</td>
<td>344</td>
</tr>
<tr>
<td>Disposition .......................................</td>
<td>16</td>
<td>345</td>
</tr>
<tr>
<td><strong>Principal</strong> .....................................</td>
<td>16</td>
<td>345</td>
</tr>
<tr>
<td>Repayment ........................................</td>
<td>16</td>
<td>345</td>
</tr>
<tr>
<td><strong>Motor vehicle liability insurance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Policy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined ...........................................</td>
<td>16</td>
<td>258</td>
</tr>
<tr>
<td>Scope and provisions ............................</td>
<td>16</td>
<td>258-261</td>
</tr>
<tr>
<td>Property appraiser</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Homestead Property Tax Exemption</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claim</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renewals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disabled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior citizens</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Periodic statewide reappraisal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hearings and appeals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participation of assessor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local exceptions to value</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Commissioner and Assessor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Division of functions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Employees Insurance Agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Availability of data to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Employees Retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>System membership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Railroad Maintenance Authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers, duties, responsibilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ridesharing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemption from law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Finance, State Board of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent improvement fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transmission and investment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Administrative Procedures Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contested cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exceptions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Public Employment Agency</td>
<td></td>
<td></td>
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<tr>
<td>State Employment Service Division</td>
<td></td>
<td></td>
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<tr>
<td>Redesignation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Teachers Retirement System</td>
<td></td>
<td></td>
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<tr>
<td>Investment of funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child Support Agencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of information to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee eligibility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claim procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of benefits, place</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer coverage and responsibility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Default in payment</td>
<td></td>
<td></td>
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<tr>
<td>Civil action against employer</td>
<td></td>
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<tr>
<td>Collection</td>
<td></td>
<td></td>
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<tr>
<td>Comity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overpayments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recovery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers and employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option assessments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employing units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confidentiality</td>
<td></td>
<td></td>
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<tr>
<td>Slander or libel</td>
<td></td>
<td></td>
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<tr>
<td>Restriction</td>
<td></td>
<td></td>
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<tr>
<td>Use</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food Stamp Agencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of information to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General provisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of information</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>243</td>
</tr>
<tr>
<td>16</td>
<td>244</td>
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<tr>
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<td>237</td>
</tr>
<tr>
<td>16</td>
<td>235</td>
</tr>
<tr>
<td>16</td>
<td>339-343</td>
</tr>
<tr>
<td>16</td>
<td>258</td>
</tr>
<tr>
<td>16</td>
<td>262</td>
</tr>
<tr>
<td>16</td>
<td>343</td>
</tr>
<tr>
<td>16</td>
<td>289</td>
</tr>
<tr>
<td>16</td>
<td>261</td>
</tr>
<tr>
<td>16</td>
<td>308</td>
</tr>
<tr>
<td>16</td>
<td>306</td>
</tr>
<tr>
<td>16</td>
<td>306</td>
</tr>
<tr>
<td>16</td>
<td>303-305</td>
</tr>
<tr>
<td>16</td>
<td>305</td>
</tr>
<tr>
<td>16</td>
<td>305</td>
</tr>
<tr>
<td>16</td>
<td>301-303</td>
</tr>
<tr>
<td>16</td>
<td>306</td>
</tr>
<tr>
<td>16</td>
<td>307</td>
</tr>
<tr>
<td>16</td>
<td>308</td>
</tr>
<tr>
<td>16</td>
<td>306-308</td>
</tr>
<tr>
<td>16</td>
<td>309</td>
</tr>
<tr>
<td>16</td>
<td>306</td>
</tr>
<tr>
<td>16</td>
<td>310</td>
</tr>
</tbody>
</table>
INDEX

BUREAU OF EMPLOYMENT PROGRAMS—(continued):

Veteran's Incentive Program
Administration of ........................................ 16 301
Veteran's Training Program .................................... 16 296
Workers' Compensation
Appeal Board
General provisions ........................................... 16 336
Chapter governing
Partial invalidity ................................................. 16 320
Disability and death benefits .................................. 16 323-326
Disabled Workers' Relief Fund
Benefits
Computation ....................................................... 15 332
Mode of payment .................................................. 16 333
To whom paid ...................................................... 16 332
Employers' own system .......................................... 16 333
Funding .................................................. 16 334
Employers, employees subject to chapter ...................... 16 317
Common-law defenses prohibited ................................ 16 319
Default in payment ................................................. 16 319
Election not to pay ................................................ 16 319
Exemption from liability ........................................ 16 318
Extraterritorial coverage ......................................... 16 317
General administrative provisions ................................ 16 311
Applications for benefits ......................................... 16 313
Bureau of Employment Programs
Commissioner
Duties ................................................................. 16 311
Report .......................................................... 16 314
Extraterritorial coverage ......................................... 16 317
Salaries and expenses
Payment generally ................................................. 16 312
Manner and limitation ............................................. 16 312
Secretary, other assistants ....................................... 16 313
Compensation, travel expenses .................................. 16 313
Subpoenas
Fee of officer serving ............................................. 16 313
Witneses
Fees and mileage ................................................ 16 313
Injuries
Benefits
Application for
Effect .......................................................... 16 330
Computation ....................................................... 16 331
Legislative findings ................................................. 16 330
Intentionally employer-caused .................................. 16 327-330
Medical information
Release to employer ................................................. 16 330
Self-inflicted ...................................................... 16 327
Temporary total disability ....................................... 16 323
Occupational Pneumoconiosis Board
Annual report ...................................................... 16 314
Workers' Compensation Fund
Omission to subscribe ............................................. 16 314
Perjury .......................................................... 16 314
Silicosis fund
Claims .......................................................... 16 321
Custody, investment, disbursement ................................ 16 321
Transfer .......................................................... 16 320
Surplus funds
Investment ...................................................... 16 322
Work Incentive Program ........................................ 16 296
## CAPITAL COMPANY ACT:

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissolution or liquidation</td>
<td>17</td>
<td>367</td>
</tr>
<tr>
<td>Examination</td>
<td>17</td>
<td>371</td>
</tr>
<tr>
<td>Failure to comply</td>
<td>17</td>
<td>372</td>
</tr>
<tr>
<td>Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualified</td>
<td>17</td>
<td>366</td>
</tr>
<tr>
<td>Record keeping</td>
<td>17</td>
<td>369</td>
</tr>
<tr>
<td>Examination</td>
<td>17</td>
<td>371</td>
</tr>
<tr>
<td>Reporting</td>
<td>17</td>
<td>369</td>
</tr>
<tr>
<td>Restrictions</td>
<td>17</td>
<td>368</td>
</tr>
<tr>
<td>Ownership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage exclusion</td>
<td>17</td>
<td>373</td>
</tr>
<tr>
<td>Qualification</td>
<td>17</td>
<td>362</td>
</tr>
<tr>
<td>Records</td>
<td>17</td>
<td>369</td>
</tr>
<tr>
<td>Audit</td>
<td>17</td>
<td>371</td>
</tr>
<tr>
<td>Standards, minimum</td>
<td>17</td>
<td>363</td>
</tr>
<tr>
<td>Tax credits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application requirements</td>
<td>17</td>
<td>366</td>
</tr>
<tr>
<td>Effective date</td>
<td>17</td>
<td>372</td>
</tr>
<tr>
<td>Declaration of policy</td>
<td>17</td>
<td>359</td>
</tr>
<tr>
<td>Definitions</td>
<td>17</td>
<td>360</td>
</tr>
<tr>
<td>Economic Development Authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Officer, member, employee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conflict of interest</td>
<td>17</td>
<td>369</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confidentiality of certain</td>
<td>17</td>
<td>374</td>
</tr>
<tr>
<td>Rules</td>
<td>17</td>
<td>362</td>
</tr>
<tr>
<td>Ruling procedure</td>
<td>17</td>
<td>372</td>
</tr>
<tr>
<td>Purposes</td>
<td>17</td>
<td>359</td>
</tr>
</tbody>
</table>

## CHILD ADVOCATE:

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Advocate Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reestablishment</td>
<td>18</td>
<td>375</td>
</tr>
</tbody>
</table>

## CHILD WELFARE:

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Support Program</td>
<td>20</td>
<td>383</td>
</tr>
<tr>
<td>Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>20</td>
<td>380</td>
</tr>
<tr>
<td>Family support services</td>
<td>20</td>
<td>381</td>
</tr>
<tr>
<td>Eligibility</td>
<td>20</td>
<td>383</td>
</tr>
<tr>
<td>Findings</td>
<td>20</td>
<td>379</td>
</tr>
<tr>
<td>Support councils</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional and state family</td>
<td>20</td>
<td>384</td>
</tr>
<tr>
<td>Handicapped children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article</td>
<td>19</td>
<td>377</td>
</tr>
<tr>
<td>Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>19</td>
<td>376</td>
</tr>
<tr>
<td>Programs</td>
<td>19</td>
<td>376</td>
</tr>
<tr>
<td>Report of birth</td>
<td>19</td>
<td>377</td>
</tr>
<tr>
<td>Treatment</td>
<td>19</td>
<td>377</td>
</tr>
<tr>
<td>Powers of state bureau</td>
<td>19</td>
<td>377</td>
</tr>
<tr>
<td>Juvenile proceedings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child, parent or guardian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Noncustodial counseling</td>
<td>21</td>
<td>386</td>
</tr>
</tbody>
</table>

## CIVIL SERVICE:

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee representative organization bulletin boards</td>
<td>22</td>
<td>387</td>
</tr>
</tbody>
</table>
## INDEX

### CLAIMS:

<table>
<thead>
<tr>
<th>Claims Against the State</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjutant General</td>
<td>25</td>
<td>393</td>
</tr>
<tr>
<td>Alcohol Beverage Control</td>
<td>25</td>
<td>393</td>
</tr>
<tr>
<td>Attorney General</td>
<td>25</td>
<td>393</td>
</tr>
<tr>
<td>Commission on Aging</td>
<td>25</td>
<td>395</td>
</tr>
<tr>
<td>Department of Administration</td>
<td>23</td>
<td>395</td>
</tr>
<tr>
<td>Department of Education</td>
<td>23</td>
<td>398</td>
</tr>
<tr>
<td>Department of Health and Human Resources</td>
<td>23,25</td>
<td>389,395</td>
</tr>
<tr>
<td>Department of Tax and Revenue</td>
<td>25</td>
<td>396</td>
</tr>
<tr>
<td>Department of Veterans Affairs</td>
<td>25</td>
<td>396</td>
</tr>
<tr>
<td>Division of Corrections</td>
<td>23,25</td>
<td>389,396</td>
</tr>
<tr>
<td>Division of Culture and History</td>
<td>25</td>
<td>397</td>
</tr>
<tr>
<td>Division of Forestry</td>
<td>25</td>
<td>397</td>
</tr>
<tr>
<td>Division of Highways</td>
<td>25</td>
<td>398</td>
</tr>
<tr>
<td>Division of Tourism and Parks</td>
<td>25</td>
<td>399</td>
</tr>
<tr>
<td>Ethics Commission</td>
<td>25</td>
<td>399</td>
</tr>
<tr>
<td>GOCID</td>
<td>25</td>
<td>400</td>
</tr>
<tr>
<td>Human Rights Commission</td>
<td>25</td>
<td>400</td>
</tr>
<tr>
<td>PEIA</td>
<td>25</td>
<td>400</td>
</tr>
<tr>
<td>Public Defender Services</td>
<td>25</td>
<td>401</td>
</tr>
<tr>
<td>Railroad Maintenance Authority</td>
<td>25</td>
<td>400</td>
</tr>
<tr>
<td>Real Estate Commission</td>
<td>25</td>
<td>400</td>
</tr>
<tr>
<td>State Treasurer</td>
<td>25</td>
<td>400</td>
</tr>
<tr>
<td>Supreme Court of Appeals</td>
<td>25</td>
<td>400</td>
</tr>
<tr>
<td>Workers' Compensation Fund</td>
<td>23,25</td>
<td>389,401</td>
</tr>
<tr>
<td>WVU Board of Trustees</td>
<td>25</td>
<td>395</td>
</tr>
</tbody>
</table>

### Crime Victims

<table>
<thead>
<tr>
<th>Claims</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney and witness fees</td>
<td>26</td>
<td>404</td>
</tr>
<tr>
<td>Claims for compensation</td>
<td>24</td>
<td>390</td>
</tr>
<tr>
<td>Court of Claims</td>
<td>26</td>
<td>405</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awards of $5,000 +</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of guardian</td>
<td>26</td>
<td>404</td>
</tr>
</tbody>
</table>

### CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Native American Indian Heritage Week...</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2</td>
<td>1a*</td>
<td>Composition of political party committees and meetings thereof, designating persons responsible for printing of ballots, their number, packaging, delivery and correction and providing for compensation of election officials...</td>
<td>987</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>9,21.44</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>21a*</td>
<td>Vendors authorized to print ballots...</td>
<td>668</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>22,22a*</td>
<td>Voter registration at driver's license facilities...</td>
<td>1616</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>2b</td>
<td>Special absentee voting list...</td>
<td>678</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>10,11</td>
<td>Arrangement of position of names on ballot, ballot label arrangement requirements in voting machines and drawing by lot to determine the same...</td>
<td>680</td>
</tr>
<tr>
<td>3</td>
<td>4A</td>
<td>11,12</td>
<td>Electronic voting systems, ballot labels and their arrangement...</td>
<td>683</td>
</tr>
<tr>
<td>Ch.</td>
<td>Art.</td>
<td>Sec.</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>------</td>
<td>---------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>2, 3, 4, 7, 11, 13, 13a, 19</td>
<td>Delegates to national conventions, presidential preference, primary election nominations, filing announcements of candidacies and withdrawals, form and contents of ballots and ballot labels, order of offices and candidates on ballot and vacancies in nominations</td>
<td>688</td>
</tr>
<tr>
<td>3</td>
<td>6</td>
<td>2</td>
<td>Preparation and form of general election ballots</td>
<td>704</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>5a</td>
<td>Specific requirements as to information in financial statements prepared in connection with political campaign activities</td>
<td>713</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>1, 6, 7, 8</td>
<td>Elections to fill vacancies, vacancies in offices of circuit court clerk, county commissioner, clerk of county commission, prosecuting attorney, sheriff, assessor and surveyor</td>
<td>708</td>
</tr>
<tr>
<td>4</td>
<td>10</td>
<td>4</td>
<td>Termination of governmental entities or programs</td>
<td>1382</td>
</tr>
<tr>
<td>5</td>
<td>3</td>
<td>1</td>
<td>Written opinions, advice and legal services by Attorney General to Commissioner of Bureau of Employment Programs</td>
<td>234</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>17</td>
<td>Exclusion from membership in public employees retirement system of Bureau of Employment Programs</td>
<td>235</td>
</tr>
<tr>
<td>5</td>
<td>11</td>
<td>16</td>
<td>Certain record-keeping information of Bureau of Employment Programs declared nondiscriminatory</td>
<td>236</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>5, 24</td>
<td>Purpose, powers and duties of finance board</td>
<td>1314</td>
</tr>
<tr>
<td>5</td>
<td>16A</td>
<td>7</td>
<td>Availability of data of Bureau of Employment Programs</td>
<td>237</td>
</tr>
<tr>
<td>5A</td>
<td>2</td>
<td>1, 24, 33*</td>
<td>Financial accounting and reporting section within the Finance Division of the Department of Administration</td>
<td>721</td>
</tr>
<tr>
<td>5B</td>
<td>1</td>
<td>16a*</td>
<td>North Bend Rail Trail</td>
<td>1365</td>
</tr>
<tr>
<td>5B</td>
<td>1</td>
<td>18</td>
<td>Extending termination date of the division of tourism and parks</td>
<td>1385</td>
</tr>
<tr>
<td>5B</td>
<td>2</td>
<td>2a</td>
<td>Office of Community and Industrial Development to study and promote development of a coal-based synthetic fuel industry</td>
<td>1453</td>
</tr>
<tr>
<td>5B</td>
<td>2D</td>
<td>3, 4, 5</td>
<td>Guaranteed Work Force Program, funds and program activities</td>
<td>727</td>
</tr>
<tr>
<td>5B</td>
<td>4</td>
<td>1</td>
<td>Membership of Bureau of Employment Programs Commissioner on Labor-Management Council</td>
<td>237</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>5B</td>
<td>4</td>
<td>5B</td>
<td>Continuation of the Labor-Management Council</td>
</tr>
<tr>
<td>5E</td>
<td>1</td>
<td>2.3.4.5.6.7.8.9.10.12.13.14.15.16.17.18.19.20.21*</td>
<td>WV Capital Company Act, ruling procedure, effective date, transition rules, limitation on financial institutions and confidentiality</td>
</tr>
<tr>
<td>6</td>
<td>13</td>
<td>1</td>
<td>Preference rating of veterans for civil service positions</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>5a</td>
<td>Excusal of county commissioner from voting where conflict of interest involved</td>
</tr>
<tr>
<td>7</td>
<td>4</td>
<td>2</td>
<td>Full-time investigators of crime</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>4</td>
<td>Additional duties of county officials and compensation therefor.</td>
</tr>
<tr>
<td>7</td>
<td>10</td>
<td>2.4.4a*</td>
<td>Duties of humane officers, authority to inspect certain records and property, redefining acts of cruelty to animals, reporting requirements and enforcement</td>
</tr>
<tr>
<td>7</td>
<td>13</td>
<td>10</td>
<td>Employees covered by Workers’ Compensation, economic opportunity programs</td>
</tr>
<tr>
<td>7</td>
<td>14</td>
<td>1.3.20</td>
<td>Appointments and promotions of deputy sheriffs, civil service for deputies and mandatory requirement</td>
</tr>
<tr>
<td>7</td>
<td>14</td>
<td>1.13</td>
<td>Appointments and promotions of deputy sheriffs and filling of vacancies</td>
</tr>
<tr>
<td>7</td>
<td>14B</td>
<td>1.13</td>
<td>Appointments and promotions of correctional officers and filling of vacancies</td>
</tr>
<tr>
<td>7</td>
<td>14B</td>
<td>18a*</td>
<td>Compensation of correctional officers required to work on certain holidays</td>
</tr>
<tr>
<td>7</td>
<td>16</td>
<td>6</td>
<td>Employees to be covered by Workers’ Compensation, county solid waste authorities</td>
</tr>
<tr>
<td>7</td>
<td>18</td>
<td>13a*:14</td>
<td>Hotel occupancy annual tax reports by convention and visitor’s bureaus, use and application of proceeds</td>
</tr>
<tr>
<td>8</td>
<td>12</td>
<td>18</td>
<td>Leasing of real or personal properties by municipalities</td>
</tr>
<tr>
<td>8</td>
<td>14</td>
<td>17</td>
<td>Promotions in paid police departments of Class I or II cities to be based upon experience and by written competitive examinations</td>
</tr>
<tr>
<td>8</td>
<td>15</td>
<td>22</td>
<td>Promotions in paid fire departments to be based upon experience and by written competitive examinations</td>
</tr>
<tr>
<td>8</td>
<td>22</td>
<td>16a*:20.24.26.26a</td>
<td>Policemen’s and firemen’s disability and death benefits</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Code</th>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>27</td>
<td>27</td>
<td>27</td>
<td>240</td>
<td>Workers' Compensation coverage, Intergovernmental Relations-Urban Mass Transportation Systems</td>
</tr>
<tr>
<td>8</td>
<td>29</td>
<td>19</td>
<td>240</td>
<td></td>
<td>Workers' Compensation coverage, Intergovernmental Relations-Regional Airports</td>
</tr>
<tr>
<td>8</td>
<td>29A</td>
<td></td>
<td>1139</td>
<td></td>
<td>County airport authorities</td>
</tr>
<tr>
<td>8</td>
<td>29A</td>
<td></td>
<td>240</td>
<td></td>
<td>Full-time employees of county airport authorities to be considered public employees</td>
</tr>
<tr>
<td>8</td>
<td>33</td>
<td>11</td>
<td>240</td>
<td></td>
<td>Workers' Compensation coverage, Intergovernmental Relations-Building Commissions</td>
</tr>
<tr>
<td>9</td>
<td>2</td>
<td>6a*</td>
<td>865</td>
<td></td>
<td>Commissioner of Division of Human Services to develop caseload standards</td>
</tr>
<tr>
<td>9</td>
<td>4A*</td>
<td></td>
<td>1099</td>
<td></td>
<td>Medicaid Uncompensated Care Fund</td>
</tr>
<tr>
<td>9A</td>
<td>1</td>
<td>1,2,4,5,6,9,10</td>
<td>1587</td>
<td>Updating terms relating to division of veterans affairs</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>5</td>
<td>1,2a*</td>
<td>663</td>
<td>Educational Broadcasting Authority and establishing a distance learning coordinating council</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>1A</td>
<td></td>
<td>241</td>
<td></td>
<td>Division of functions between Tax Commissioner and Assessor, periodic statewide reappraisals</td>
</tr>
<tr>
<td>11</td>
<td>6B</td>
<td>4</td>
<td>243</td>
<td></td>
<td>Claim for homestead property tax exemption, renewal and waiver of exemption</td>
</tr>
<tr>
<td>11</td>
<td>10</td>
<td>3</td>
<td>1181</td>
<td></td>
<td>Application of article governing tax procedure and administration to include barrel tax on beer and wine liter tax</td>
</tr>
<tr>
<td>11</td>
<td>10</td>
<td>5c*</td>
<td>1470</td>
<td></td>
<td>Exceptions to confidentiality and providing for disclosure of certain taxpayer information</td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td></td>
<td>244</td>
<td></td>
<td>Business certificate of registration and certain information to Bureau of Employment Programs</td>
</tr>
<tr>
<td>11</td>
<td>13A</td>
<td>6</td>
<td>1473</td>
<td></td>
<td>Application of credits against additional coal severance tax</td>
</tr>
<tr>
<td>11</td>
<td>13D</td>
<td>1,2,3c*,5b*,6,7</td>
<td>1481</td>
<td>Management information services facility investment tax credit</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>13D</td>
<td>3d*</td>
<td>1458</td>
<td></td>
<td>Tax credit for investment in facilities for producing coal-based liquids used to produce synthetic motor and special fuel</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>2,9</td>
<td>1502</td>
<td></td>
<td>Management information services facility investment tax credit</td>
</tr>
<tr>
<td>11</td>
<td>16</td>
<td>3,4,13,14,15,23,24</td>
<td>1502</td>
<td>Definitions, nonintoxicating beer act, transferring administration of barrel</td>
<td></td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>16</td>
<td>3.6.9.12.</td>
<td>Permitting the establishment of brewpubs</td>
<td>1182</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13.15,17,18,21,26</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>8a.8b.8c.8e,8f</td>
<td>Certification by division of culture and history for historic preservation tax credit against personal income tax</td>
<td>1210</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>9</td>
<td>Personal income tax terms</td>
<td>1523</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>12b,42;61,62,71</td>
<td>Exempting combat pay, providing military incentive tax credit, extension of time for performing certain acts due to Desert Shield Service, income taxes of armed forces members upon death, withholding tax from wages</td>
<td>1528</td>
</tr>
<tr>
<td>11</td>
<td>23</td>
<td>3.5,5a,27,28</td>
<td>Imposing business franchise tax on out-of-state financial organizations engaging in certain activities in this state</td>
<td>1530</td>
</tr>
<tr>
<td>11</td>
<td>23</td>
<td>3a</td>
<td>Business franchise tax terms</td>
<td>1580</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>3</td>
<td>Corporation net income tax terms</td>
<td>1580</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>3a,7;7b,24</td>
<td>Imposing corporation net income tax on out-of-state financial organizations engaging in certain activities in this state</td>
<td>1555</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>10</td>
<td>Disclosure by Bureau of Employment Programs to State Tax Commissioner of employee, wage, benefit or eligibility information</td>
<td>246</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>12</td>
<td>Military incentive tax credit for certain employers</td>
<td>1600</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>23a,23b,23c,23f</td>
<td>Certification by division of culture and history for historic preservation tax credit against corporation net income tax</td>
<td>1525</td>
</tr>
<tr>
<td>11</td>
<td>25</td>
<td>2</td>
<td>Definitions, tax relief for elderly homeowners and renters</td>
<td>248</td>
</tr>
<tr>
<td>12</td>
<td>1A</td>
<td>5</td>
<td>Acceptance or rejection of linked deposit loan package based on standing with State Tax Department and Bureau of Employment Programs</td>
<td>250</td>
</tr>
<tr>
<td>12</td>
<td>6A*</td>
<td></td>
<td>Debt Management Act of 1991</td>
<td>1326</td>
</tr>
<tr>
<td>13</td>
<td>3</td>
<td>3,5,5a,6,7,7a,8,9,11,13,14</td>
<td>Municipal bond commission, costs and expenses, escrowing bond issues</td>
<td>217</td>
</tr>
<tr>
<td>14</td>
<td>2A</td>
<td>14,19,26</td>
<td>Appointment of guardian when minor has received an award</td>
<td>402</td>
</tr>
<tr>
<td>15</td>
<td>1F</td>
<td>1</td>
<td>Twenty-four day leave of absence for active military service for national guard or military reserve personnel</td>
<td>1601</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Duties of superintendent and division of public safety</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>2</td>
<td>2,12</td>
<td>1191, 1355</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>1</td>
<td>7</td>
<td>Promulgation of rules by Secretary of Department of Health and Human Resources</td>
<td>752</td>
</tr>
<tr>
<td>16</td>
<td>1</td>
<td>10b*</td>
<td>Uniform health professionals data collection system</td>
<td>764</td>
</tr>
<tr>
<td>16</td>
<td>1</td>
<td>16</td>
<td>Use of investigative information by Bureau of Employment Programs for adjustment of Workers' Compensation claims</td>
<td>252</td>
</tr>
<tr>
<td>16</td>
<td>1A*</td>
<td></td>
<td>Health Care Planning Commission</td>
<td>754</td>
</tr>
<tr>
<td>16</td>
<td>2D</td>
<td>2,4,5,11</td>
<td>Certificate of need, exemptions from program, powers and duties of health planning and development agency, nontransferance, time period compliance and withdrawal</td>
<td>766</td>
</tr>
<tr>
<td>16</td>
<td>2G</td>
<td>1</td>
<td>Renaming the Division of Health the Bureau of Public Health and the Director of Health the Commissioner of Public Health and permitting funding of a special funds account</td>
<td>814</td>
</tr>
<tr>
<td>16</td>
<td>5</td>
<td>12a</td>
<td>Registration of newborn infants and minors with a hearing impairment</td>
<td>816</td>
</tr>
<tr>
<td>16</td>
<td>5</td>
<td>12b*</td>
<td>Notation on birth records of missing children</td>
<td>1359</td>
</tr>
<tr>
<td>16</td>
<td>5F</td>
<td>1,2,3,4,5,6</td>
<td>Health care facility financial disclosure</td>
<td>788</td>
</tr>
<tr>
<td>16</td>
<td>5K*</td>
<td></td>
<td>Early intervention services for children with developmental delays</td>
<td>820</td>
</tr>
<tr>
<td>16</td>
<td>5L*</td>
<td></td>
<td>Long-Term Care Ombudsman Program</td>
<td>825</td>
</tr>
<tr>
<td>16</td>
<td>22</td>
<td>1,2,3</td>
<td>Testing for phenylketonuria, galactosemia, hypothyroidism and certain other diseases in newborns</td>
<td>847</td>
</tr>
<tr>
<td>16</td>
<td>27</td>
<td>1,2</td>
<td>Storage and disposal of radioactive waste materials</td>
<td>1362</td>
</tr>
<tr>
<td>16</td>
<td>29B</td>
<td>3,5,6*;7,8,18;19a*;20,21,28</td>
<td>Health Care Cost Review Authority</td>
<td>794</td>
</tr>
<tr>
<td>16</td>
<td>29D</td>
<td>3</td>
<td>Bureau of Employment Programs included within agencies to cooperate and to provide state health care plan</td>
<td>253, 1322</td>
</tr>
<tr>
<td>16</td>
<td>29D</td>
<td>4</td>
<td>Prohibiting balance billing of medical bills under public employees insurance</td>
<td>1324</td>
</tr>
<tr>
<td>16</td>
<td>30</td>
<td>2,3,4,5,6,7,8,9;11*;12*;13*</td>
<td>Natural Death Act, providing reciprocity, relation to existing law and severability</td>
<td>850</td>
</tr>
<tr>
<td>17</td>
<td>3</td>
<td>1</td>
<td>Combined voter registration and driver's license fund</td>
<td>1620</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>17</td>
<td>16B</td>
<td>1,2,3,5,6,7,15*:16*:17*:18*:19*:20*:21*:22*</td>
<td>Reorganizing and combining the Public Port and Wayport Authorities................. 1337</td>
</tr>
<tr>
<td>17</td>
<td>23</td>
<td>2</td>
<td>Salvage yards and related definitions........ 1381</td>
</tr>
<tr>
<td>17A</td>
<td>3</td>
<td>1a*</td>
<td>Registration of vehicles of new residents...... 1108</td>
</tr>
<tr>
<td>17A</td>
<td>3</td>
<td>4</td>
<td>Limited exemption from motor vehicle certificate of title for military personnel and dependents................. 1601</td>
</tr>
<tr>
<td>17A</td>
<td>3</td>
<td>23</td>
<td>Registration plates to state, county, municipal and other governmental vehicles......................... 1195</td>
</tr>
<tr>
<td>17B</td>
<td>2</td>
<td>7a</td>
<td>Driver’s Licensing Advisory Board................ 1110</td>
</tr>
<tr>
<td>17B</td>
<td>2</td>
<td>8</td>
<td>Increasing the fee for issuance of a driver’s license by fifty cents................. 1621</td>
</tr>
<tr>
<td>17C</td>
<td>1</td>
<td>6</td>
<td>Authorized emergency vehicle defined........... 1112</td>
</tr>
<tr>
<td>17C</td>
<td>5A</td>
<td>1a*</td>
<td>Eliminating administrative hearing for suspension or revocation of licenses for driving under the influence of alcohol, controlled substances or drugs in cases wherein there is no appeal.......... 1115</td>
</tr>
<tr>
<td>17C</td>
<td>15</td>
<td>26</td>
<td>Special restrictions on lamps on motor vehicles........................................ 1112</td>
</tr>
<tr>
<td>17C</td>
<td>15</td>
<td>36a</td>
<td>Sun screening devices............................. 1118</td>
</tr>
<tr>
<td>17C</td>
<td>16</td>
<td>9</td>
<td>Permitting motor vehicle dealers to operate certain motor vehicles without an inspection sticker......................... 1121</td>
</tr>
<tr>
<td>17C</td>
<td>22</td>
<td>3</td>
<td>Ridesharing exempt from Workers’ Compensation law and exceptions.............. 257</td>
</tr>
<tr>
<td>17D</td>
<td>4</td>
<td>12</td>
<td>Motor vehicle liability policies............... 258</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>5c*</td>
<td>Exchange of information on missing children between board of education, state registrar of vital statistics and division of public safety......................... 1359</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>7a*</td>
<td>State Board of Education to prescribe a program incorporating elements propounded by the President’s Council on Physical Fitness and Sports.............. 584</td>
</tr>
<tr>
<td>18</td>
<td>2E</td>
<td>5</td>
<td>Establishing instances wherein a school may be declared seriously impaired.............. 585</td>
</tr>
<tr>
<td>18</td>
<td>2F*</td>
<td></td>
<td>West Virginia Share in Your Future Act........ 591</td>
</tr>
<tr>
<td>18</td>
<td>2G*</td>
<td></td>
<td>School Library Media Improvement Grant Program........................................ 596</td>
</tr>
<tr>
<td>18</td>
<td>4</td>
<td>2,4</td>
<td>Clarifying qualifications of superintendent of public schools...................... 603</td>
</tr>
<tr>
<td>18</td>
<td>4</td>
<td>10</td>
<td>Clarifying and limiting emergency powers of the county superintendent of schools................................. 622</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>1a</td>
<td>School employees permitted to serve on county boards of education in county of residence......................... 624</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Code Amended—(Continued):</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>5</td>
<td>2</td>
<td>Filling vacancies on county boards of education</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>7;7b*</td>
<td>Donation by county boards of education of unneeded real estate to certain nonprofit organizations and limiting liability for hazardous conditions associated with such conveyance</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>13a</td>
<td>School closing or consolidation</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>39</td>
<td>Employment of school personnel during the summer and providing for seniority in summer service positions</td>
</tr>
<tr>
<td>18</td>
<td>5A</td>
<td>2</td>
<td>Local school improvement councils</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>20</td>
<td>Investment of funds, state teachers retirement system</td>
</tr>
<tr>
<td>18</td>
<td>9A</td>
<td>10,13</td>
<td>Maintaining step seven funds for 1991</td>
</tr>
<tr>
<td>18</td>
<td>9B</td>
<td>7,8</td>
<td>County boards of education prohibited from reducing employee salaries by reducing days in employment term</td>
</tr>
<tr>
<td>18</td>
<td>9B</td>
<td>16</td>
<td>Transmission and investment of proceeds of permanent improvement fund, state board of school finance</td>
</tr>
<tr>
<td>18</td>
<td>10</td>
<td>3</td>
<td>West Virginia State College designated a land grant institution</td>
</tr>
<tr>
<td>18</td>
<td>19</td>
<td>1,2,3</td>
<td>Continuing an appropriation for educational opportunities for children of certain military personnel</td>
</tr>
<tr>
<td>18A</td>
<td>2</td>
<td>4</td>
<td>Licensing of school electricians</td>
</tr>
<tr>
<td>18A</td>
<td>4</td>
<td>1</td>
<td>Salaries, advanced salary classification and other benefits expanded in definitions for educators</td>
</tr>
<tr>
<td>18A</td>
<td>4</td>
<td>8,10</td>
<td>Priority status to certain disabled school service personnel and enlarging conditions of personal leave for service employees</td>
</tr>
<tr>
<td>18B</td>
<td>1</td>
<td>8a*</td>
<td>Institutional and statewide report cards to ensure higher education accountability</td>
</tr>
<tr>
<td>18B</td>
<td>2</td>
<td>6*</td>
<td>Legislative findings regarding health sciences education and funding for medical education</td>
</tr>
<tr>
<td>18B</td>
<td>9</td>
<td>5</td>
<td>Payment of experience increment to classified employees of higher education</td>
</tr>
<tr>
<td>18B</td>
<td>9</td>
<td>10*</td>
<td>Classified employees' catastrophic leave transfer</td>
</tr>
<tr>
<td>18C</td>
<td>1</td>
<td>1</td>
<td>General eligibility in programs for outstanding resident college students</td>
</tr>
<tr>
<td>18C</td>
<td>4*</td>
<td></td>
<td>Underwood-Smith Teacher Scholarship Program</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>19</td>
<td>1</td>
<td>3a</td>
<td>1387</td>
</tr>
<tr>
<td>19</td>
<td>2B</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>19</td>
<td>2C</td>
<td>1.3.4.5.5a.6.6a:6b:*6c:*8.8a:*9.10</td>
<td>1232</td>
</tr>
<tr>
<td>19</td>
<td>2G</td>
<td>10</td>
<td>23</td>
</tr>
<tr>
<td>19</td>
<td>9</td>
<td>34a</td>
<td>15</td>
</tr>
<tr>
<td>19</td>
<td>10B</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>19</td>
<td>11</td>
<td></td>
<td>11A</td>
</tr>
<tr>
<td>19</td>
<td>11A</td>
<td></td>
<td>11B*</td>
</tr>
<tr>
<td>19</td>
<td>11B*</td>
<td></td>
<td>19</td>
</tr>
<tr>
<td>19</td>
<td>12</td>
<td>2.3.14.16:18*</td>
<td>1388</td>
</tr>
<tr>
<td>19</td>
<td>13</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td>19</td>
<td>14</td>
<td></td>
<td>86</td>
</tr>
<tr>
<td>19</td>
<td>21A</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>23</td>
<td>13b</td>
<td>14</td>
</tr>
<tr>
<td>19</td>
<td>28*</td>
<td></td>
<td>262</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>5E</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>5H</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>20</td>
<td>5J*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>5M*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>5</td>
<td>14</td>
<td>263</td>
</tr>
<tr>
<td>21</td>
<td>5C</td>
<td>2</td>
<td>986</td>
</tr>
<tr>
<td>21</td>
<td>11*</td>
<td></td>
<td>1246</td>
</tr>
<tr>
<td>21A</td>
<td>1</td>
<td>3,4,5,6,7</td>
<td>266</td>
</tr>
<tr>
<td>21A</td>
<td>2</td>
<td>1,5,6,6b,8,11,13,16,16a</td>
<td>289</td>
</tr>
<tr>
<td>21A</td>
<td>2A</td>
<td>2,4</td>
<td></td>
</tr>
<tr>
<td>21A</td>
<td>2B</td>
<td>1,2,4</td>
<td></td>
</tr>
<tr>
<td>21A</td>
<td>2C</td>
<td>6</td>
<td>1608</td>
</tr>
<tr>
<td>21A</td>
<td>2C</td>
<td></td>
<td>301</td>
</tr>
<tr>
<td>21A</td>
<td>5</td>
<td>10a,16,17b</td>
<td>301</td>
</tr>
<tr>
<td>21A</td>
<td>6</td>
<td>9</td>
<td>306</td>
</tr>
<tr>
<td>21A</td>
<td>7</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>21A</td>
<td>10</td>
<td>11,19,20,22</td>
<td>306</td>
</tr>
<tr>
<td>22</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>22</td>
<td>3</td>
<td>4</td>
<td>3</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>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>22A</td>
<td>2</td>
<td>55</td>
</tr>
<tr>
<td>22A</td>
<td>3</td>
<td>3, 5, 8, 9, 10, 12, 15, 17, 18, 19, 22, 25, 26, 28, 40</td>
</tr>
<tr>
<td>23</td>
<td>1</td>
<td>1, 2, 3, 6, 10, 14, 16, 17, 18</td>
</tr>
<tr>
<td>23</td>
<td>2</td>
<td>1a, 1b, 2, 5, 9, 13</td>
</tr>
<tr>
<td>23</td>
<td>2</td>
<td>1c, 6, 8, 11</td>
</tr>
<tr>
<td>23</td>
<td>3</td>
<td>1a, 2, 3</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>1c, 2, 7, 14</td>
</tr>
<tr>
<td>23</td>
<td>4A</td>
<td>2, 3, 4, 5, 8</td>
</tr>
<tr>
<td>23</td>
<td>4B</td>
<td>2.7</td>
</tr>
<tr>
<td>23</td>
<td>4C</td>
<td>2.5</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>1j*; 3</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>24A</td>
<td>1</td>
<td>2.3</td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>26</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>29</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>29</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>16a</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>2</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>29</td>
<td>6</td>
<td>5a*</td>
<td>1396</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>26*</td>
<td>387</td>
</tr>
<tr>
<td>29</td>
<td>7</td>
<td>1</td>
<td>1229</td>
</tr>
<tr>
<td>29</td>
<td>12</td>
<td>2</td>
<td>338</td>
</tr>
<tr>
<td>29</td>
<td>18</td>
<td>4</td>
<td>1366</td>
</tr>
<tr>
<td>29</td>
<td>18</td>
<td>6</td>
<td>339</td>
</tr>
<tr>
<td>29</td>
<td>20</td>
<td>1,2,3,4,6</td>
<td>1397</td>
</tr>
<tr>
<td>29</td>
<td>21</td>
<td>17</td>
<td>1628</td>
</tr>
<tr>
<td>29</td>
<td>22</td>
<td>26</td>
<td>1399</td>
</tr>
<tr>
<td>29A</td>
<td>3</td>
<td>15,15a,15b</td>
<td>7</td>
</tr>
<tr>
<td>29A</td>
<td>3A</td>
<td>11</td>
<td>650</td>
</tr>
<tr>
<td>29A</td>
<td>5</td>
<td>5</td>
<td>343</td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>10</td>
<td>1265</td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>12</td>
<td>1268</td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>16</td>
<td>1271</td>
</tr>
<tr>
<td>30</td>
<td>5</td>
<td>2,6,9,10,14,14a,14b*</td>
<td>1278</td>
</tr>
<tr>
<td>30</td>
<td>5</td>
<td>6a*</td>
<td>1286</td>
</tr>
<tr>
<td>30</td>
<td>14A</td>
<td>1</td>
<td>1288</td>
</tr>
<tr>
<td>30</td>
<td>21</td>
<td>2,3,5,6,7,7a*,7b*,7c*,7d*,7e*,7f*,7g*,8a*</td>
<td>1295</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>10a*</td>
<td>1310</td>
</tr>
<tr>
<td>30</td>
<td>27</td>
<td>11</td>
<td>1310</td>
</tr>
<tr>
<td>31</td>
<td>1</td>
<td>61</td>
<td>344</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Code</th>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1713</td>
<td>31</td>
<td>18B</td>
<td>10</td>
<td>Disposition of interest income and repayments of principal, mortgage and industrial development investment pool</td>
</tr>
<tr>
<td></td>
<td>31A</td>
<td>2</td>
<td>15*</td>
<td>Report by commissioner of banking of out-of-state corporations and partnerships doing business in this state</td>
</tr>
<tr>
<td></td>
<td>31A</td>
<td>4</td>
<td>5.14.15,33</td>
<td>Incorporation of banks, trust powers and prerequisite information, deposits in trust and certain limitation on liability</td>
</tr>
<tr>
<td></td>
<td>31A</td>
<td>8</td>
<td>12</td>
<td>Branch banks</td>
</tr>
<tr>
<td></td>
<td>31A</td>
<td>8A</td>
<td>4</td>
<td>Acquisition of bank shares, necessary notification of board and exemptions</td>
</tr>
<tr>
<td></td>
<td>32</td>
<td>4</td>
<td>402</td>
<td>NASDAQ/NMS included under exemptions from certain provisions of the Uniform Securities Act</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>2</td>
<td>2.9</td>
<td>Compensation and expenses of commissioner and employees, examination of insurers, agents, brokers and solicitors</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>2</td>
<td>16*:17*:18*</td>
<td>Creation of the Office of Consumer Advocacy concerning health care and insurance costs</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>3</td>
<td>5b</td>
<td>Capital and surplus requirements of insurers</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>4</td>
<td>14.15,16:19*</td>
<td>Annual statement by insurer, reinsurance, limit of risk, domestics to comply with reciprocal state laws</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>6</td>
<td>1</td>
<td>Limitation on scope of article</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>6</td>
<td>5a*:11b*</td>
<td>Requiring certain signatures on life or accident and sickness insurance applications, providing exemptions and setting forth policy provisions providing the insured a ten-day free examination of policy</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>6</td>
<td>29</td>
<td>Insurance coverage for loaned motor vehicles</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>6C*</td>
<td></td>
<td>Guaranteed loss ratios as applied to individual sickness and accident insurance policies</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>7</td>
<td>12</td>
<td>Valuation of real property held by an insurer</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>8</td>
<td>5,7,15</td>
<td>Limitation on investments in one person, government obligations, real property mortgages</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>10</td>
<td>1</td>
<td>Rehabilitation and liquidation definitions</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>15</td>
<td>1,5</td>
<td>Accident and sickness insurance, optional policy provisions</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>33</td>
<td>15</td>
<td>4d;14*</td>
<td>Third party reimbursement for rehabilitation services and relating to policies discriminating among health care providers</td>
</tr>
<tr>
<td>33</td>
<td>15</td>
<td>15*</td>
<td>Minimum benefits and coverages for individual insurance policies, basic benefits and exemptions</td>
</tr>
<tr>
<td>33</td>
<td>15</td>
<td>16*</td>
<td>Insurance coverage for children of insureds</td>
</tr>
<tr>
<td>33</td>
<td>16</td>
<td>1</td>
<td>Group accident and sickness insurance</td>
</tr>
<tr>
<td>33</td>
<td>16</td>
<td>3h;10*</td>
<td>Third party reimbursement for rehabilitation services and relating to policies discriminating among health care providers</td>
</tr>
<tr>
<td>33</td>
<td>16</td>
<td>11*</td>
<td>Group policies not to exclude insured's children</td>
</tr>
<tr>
<td>33</td>
<td>16B</td>
<td>4*</td>
<td>Accident and sickness rates and promulgation of rules and regulations by commissioner regarding affiliate and subsidiary operating results</td>
</tr>
<tr>
<td>33</td>
<td>16C*</td>
<td></td>
<td>Employer group accident and sickness insurance policies</td>
</tr>
<tr>
<td>33</td>
<td>16D*</td>
<td></td>
<td>Marketing and rate practices for small employer accident and sickness insurance policies</td>
</tr>
<tr>
<td>33</td>
<td>20</td>
<td>20*</td>
<td>Rates and rating organizations and promulgation of rules and regulations by commissioner regarding affiliate and subsidiary operating results</td>
</tr>
<tr>
<td>33</td>
<td>20B</td>
<td>8*</td>
<td>Insurers required to report results of civil actions against physicians or podiatrists</td>
</tr>
<tr>
<td>33</td>
<td>20B</td>
<td>9*</td>
<td>Rate making and promulgation of rules and regulations by commissioner regarding affiliate and subsidiary operating results</td>
</tr>
<tr>
<td>33</td>
<td>20D*</td>
<td></td>
<td>Tail insurance</td>
</tr>
<tr>
<td>33</td>
<td>22</td>
<td>2</td>
<td>Applicability of other provisions, farmers' mutual fire insurance companies</td>
</tr>
<tr>
<td>33</td>
<td>23</td>
<td>2</td>
<td>Fraternal benefits societies and applicability of other provisions</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>4</td>
<td>Exemptions for hospital, medical, dental and health service corporations</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>5,6,10,14,16,17, 19;44*</td>
<td>Hospital, medical, dental and health service corporations, licenses, etc., and promulgation of rules and regulations by commissioner regarding affiliate and subsidiary operating results</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>33</td>
<td>24</td>
<td>7c</td>
<td>974</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>43*</td>
<td>976</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>2,6,7,9</td>
<td>899</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>8b</td>
<td>976</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>20*</td>
<td>978</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>21*</td>
<td>899</td>
</tr>
<tr>
<td>33</td>
<td>25A</td>
<td>2,4,9, 17,24:32*</td>
<td>904</td>
</tr>
<tr>
<td>33</td>
<td>25A</td>
<td>8b,31</td>
<td>978</td>
</tr>
<tr>
<td>33</td>
<td>26</td>
<td>3</td>
<td>351</td>
</tr>
<tr>
<td>33</td>
<td>26A</td>
<td>3,8</td>
<td>914</td>
</tr>
<tr>
<td>33</td>
<td>27</td>
<td>5</td>
<td>919</td>
</tr>
<tr>
<td>33</td>
<td>31</td>
<td>8</td>
<td>922</td>
</tr>
<tr>
<td>33</td>
<td>32</td>
<td>8</td>
<td>922</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>7</td>
<td>923</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Standards and commissioner's authority for companies deemed to be in hazardous financial condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>34A*</td>
<td></td>
<td>924</td>
</tr>
<tr>
<td>37</td>
<td>14</td>
<td>2,3,4,6,13, 28,30,31,40,44</td>
<td>Real estate appraiser licensing and certification ......................................... 1371</td>
</tr>
<tr>
<td>38</td>
<td>2</td>
<td>1.2,5,6,6a*;16</td>
<td>Architects, engineers and landscape architects entitled to mechanics' lien ......... 1096</td>
</tr>
<tr>
<td>38</td>
<td>5B</td>
<td>12</td>
<td>Exemptions from certain liens ............................................................................. 351</td>
</tr>
<tr>
<td>46A</td>
<td>3</td>
<td>109</td>
<td>Additional charges permitted, insurance, refund requirements and rules relating to certain insurance under WV Consumer Credit Protection Act .... 405</td>
</tr>
<tr>
<td>46A</td>
<td>6C*</td>
<td></td>
<td>Regulation of credit service organizations ................................................................ 410</td>
</tr>
<tr>
<td>47</td>
<td>12</td>
<td>17</td>
<td>Suspension of real estate salesperson's license upon revocation of employing broker's license ..................................................... 1368</td>
</tr>
<tr>
<td>48</td>
<td>2</td>
<td>15a.15b;15c*;33</td>
<td>Medical support enforcement, withholding support from income, modification forms, disclosure of assets required ........................................ 551</td>
</tr>
<tr>
<td>48</td>
<td>2A</td>
<td>1,2,3,3a*;4,5,6,9,10,11*</td>
<td>Prevention of domestic violence, responding officer's duty to advise parties, violation of temporary or protective orders .................. 511</td>
</tr>
<tr>
<td>48</td>
<td>4</td>
<td>10</td>
<td>Nonidentifying information on health and history and genetic and social history of adoptees ......................................................... 560</td>
</tr>
<tr>
<td>48</td>
<td>4A*</td>
<td></td>
<td>Establishing a mutual consent voluntary adoption registry .................................. 572</td>
</tr>
<tr>
<td>48A</td>
<td>1</td>
<td>3</td>
<td>Family support obligations, general definitions .................................................. 575</td>
</tr>
<tr>
<td>48A</td>
<td>2</td>
<td>1</td>
<td>Child Advocate Office continued ........................................................................... 520</td>
</tr>
<tr>
<td>48A</td>
<td>2</td>
<td>2</td>
<td>12,15,23*</td>
</tr>
<tr>
<td>48A</td>
<td>2</td>
<td>17,18</td>
<td>Obtaining child support from unemployment and Workers' Compensation benefits .......... 534</td>
</tr>
<tr>
<td>48A</td>
<td>3</td>
<td>3a</td>
<td>Representation by Children's Advocate .................................................................... 531</td>
</tr>
<tr>
<td>48A</td>
<td>4</td>
<td>1</td>
<td>Family law masters .................................................................................................. 532</td>
</tr>
<tr>
<td>48A</td>
<td>4</td>
<td>12</td>
<td>Family Law Masters System continued .................................................................... 1399</td>
</tr>
<tr>
<td>48A</td>
<td>5</td>
<td>2,3</td>
<td>Support obligation arrearages, enforcement, withholding support from income ........ 539</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>48A</td>
<td>6</td>
<td>5</td>
<td>550</td>
</tr>
<tr>
<td>48A</td>
<td>7</td>
<td>12.36</td>
<td>550</td>
</tr>
<tr>
<td>49</td>
<td>4</td>
<td></td>
<td>376</td>
</tr>
<tr>
<td>49</td>
<td>4A*</td>
<td></td>
<td>378</td>
</tr>
<tr>
<td>49</td>
<td>5</td>
<td>3</td>
<td>386</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1</td>
<td>452</td>
</tr>
<tr>
<td>51</td>
<td>9</td>
<td>10</td>
<td>455</td>
</tr>
<tr>
<td>52</td>
<td>2</td>
<td>13</td>
<td>985</td>
</tr>
<tr>
<td>57</td>
<td>5</td>
<td>4d</td>
<td>356</td>
</tr>
<tr>
<td>59</td>
<td>1</td>
<td>14</td>
<td>718</td>
</tr>
<tr>
<td>60</td>
<td>1</td>
<td>6</td>
<td>1197</td>
</tr>
<tr>
<td>60</td>
<td>2</td>
<td>7.9.21</td>
<td>1197</td>
</tr>
<tr>
<td>60</td>
<td>3A</td>
<td>17</td>
<td>1198</td>
</tr>
<tr>
<td>60</td>
<td>3A</td>
<td>30</td>
<td>357</td>
</tr>
<tr>
<td>60</td>
<td>4</td>
<td>19</td>
<td>1199</td>
</tr>
<tr>
<td>60</td>
<td>6</td>
<td>7</td>
<td>1200</td>
</tr>
<tr>
<td>60</td>
<td>7</td>
<td>3.12.13.13a</td>
<td>1201</td>
</tr>
<tr>
<td>60</td>
<td>8</td>
<td>3</td>
<td>1623</td>
</tr>
<tr>
<td>60</td>
<td>8</td>
<td>4,5.7.24.28.29</td>
<td>1206</td>
</tr>
<tr>
<td>60A</td>
<td>2</td>
<td>204.206.208</td>
<td>419</td>
</tr>
<tr>
<td>60A</td>
<td>8*</td>
<td></td>
<td>432</td>
</tr>
<tr>
<td>61</td>
<td>2</td>
<td>1</td>
<td>465</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>61</td>
<td>3</td>
<td>49</td>
<td>Purchase of nonferrous metal by scrap metal purchasing business, salvage yards or recycling facilities</td>
</tr>
<tr>
<td>61</td>
<td>5</td>
<td>12a</td>
<td>Felony offense, escape from custody of Commissioner of Corrections</td>
</tr>
<tr>
<td>61</td>
<td>8</td>
<td>12</td>
<td>Offense of incest</td>
</tr>
<tr>
<td>61</td>
<td>8</td>
<td>19,19a</td>
<td>Cruelty to animals and penalties therefor and prohibiting animal fighting ventures</td>
</tr>
<tr>
<td>61</td>
<td>8B</td>
<td>3,4</td>
<td>Sexual assault, first and second degree</td>
</tr>
<tr>
<td>61</td>
<td>8D</td>
<td>5</td>
<td>Sexual abuse by a parent, guardian or custodian</td>
</tr>
<tr>
<td>62</td>
<td>1C</td>
<td>17c</td>
<td>Bail in cases of crimes between family or household members</td>
</tr>
<tr>
<td>62</td>
<td>8</td>
<td>1</td>
<td>Felony offenses by confined convicts and conspiracy</td>
</tr>
<tr>
<td>62</td>
<td>12</td>
<td>7a</td>
<td>Presentence diagnosis and classification, custody of convicted person, presentence reports and penalty for escape</td>
</tr>
<tr>
<td>62</td>
<td>12</td>
<td>9</td>
<td>Conditions of release on probation</td>
</tr>
<tr>
<td>62</td>
<td>12</td>
<td>23*</td>
<td>Notification of parole hearing or release date to victim or member of immediate family</td>
</tr>
<tr>
<td>64</td>
<td>2</td>
<td>2,3;7*</td>
<td>Legislative rules: division of purchasing, division of personnel and secretary of administration</td>
</tr>
<tr>
<td>64</td>
<td>3</td>
<td>1,4,8,10;12*;13*</td>
<td>Legislative rules: air pollution control commission, division of energy, division of natural resources, water resources board, solid waste management board and board of manufactured housing construction and safety</td>
</tr>
<tr>
<td>64</td>
<td>4</td>
<td>3*</td>
<td>Legislative rules: division of culture and history</td>
</tr>
<tr>
<td>64</td>
<td>5</td>
<td>2,3,4;7*;8*</td>
<td>Legislative rules: state board of health, health care cost review authority, WV hospital finance authority, employment security, human rights commission</td>
</tr>
<tr>
<td>64</td>
<td>6</td>
<td>2,4;5*</td>
<td>Legislative rules: fire commission, public safety, regional jail and correctional facility authority</td>
</tr>
<tr>
<td>64</td>
<td>7</td>
<td>1,2,4,5,6;7*</td>
<td>Legislative rules: alcohol beverage control, insurance commissioner, lottery commission, racing commission, tax department, nonintoxicating beer commissioner</td>
</tr>
<tr>
<td>64</td>
<td>8</td>
<td>1</td>
<td>Legislative rules: division of highways</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>64</td>
<td>9</td>
<td>1,3,5,10,12,15,16, 18,20,24,26;28*</td>
<td>Legislative rules: agriculture, attorney general, barbers and beauticians, dental examiners, professional engineers, examiners of land surveyors, board of medicine, registered professional nurses, board of pharmacy, secretary of state, state treasurer, cable television advisory board</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>3</td>
<td>1</td>
<td>47</td>
<td>Candidate not to run for more than one office and exceptions</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
<td>4</td>
<td>Citizens Hearing Committee, Department of Administration</td>
</tr>
<tr>
<td>7</td>
<td>14</td>
<td>19</td>
<td>Civil service for deputy sheriffs in counties of less than twenty-five thousand</td>
</tr>
<tr>
<td>9A</td>
<td>1</td>
<td>11</td>
<td>Advisory council, division of veteran's affairs</td>
</tr>
<tr>
<td>16</td>
<td>1</td>
<td>4.6</td>
<td>Abolishing the Board of Health</td>
</tr>
<tr>
<td>16</td>
<td>2D</td>
<td>5a</td>
<td>Health Care Planning Council</td>
</tr>
<tr>
<td>16</td>
<td>5D</td>
<td>1</td>
<td>Continuum of care for the elderly, impaired and terminally ill</td>
</tr>
<tr>
<td>17</td>
<td>16B</td>
<td>4</td>
<td>Purpose of Public Port Authority</td>
</tr>
<tr>
<td>17</td>
<td>16C</td>
<td>1</td>
<td>Wayport Authority</td>
</tr>
<tr>
<td>18</td>
<td>21</td>
<td>1</td>
<td>Underwood-Smith Teacher Scholarship Program</td>
</tr>
<tr>
<td>19</td>
<td>2C</td>
<td>11</td>
<td>Persons currently licensed as auctioneers</td>
</tr>
<tr>
<td>19</td>
<td>12C</td>
<td>1</td>
<td>Interagency Committee on Pesticides</td>
</tr>
<tr>
<td>21</td>
<td>1B</td>
<td>1</td>
<td>Labor-Management Relations Board</td>
</tr>
<tr>
<td>21</td>
<td>5A</td>
<td>4</td>
<td>Composition of Minimum Wage Rate Board</td>
</tr>
<tr>
<td>21A</td>
<td>2</td>
<td>1a,7,9</td>
<td>Powers formerly granted director vested in Commissioner of Employment Security, divisions within department, classification of services and compensation</td>
</tr>
<tr>
<td>21A</td>
<td>3</td>
<td>1</td>
<td>Advisory council, Department of Employment Security</td>
</tr>
<tr>
<td>22A</td>
<td>3</td>
<td>9a,13,39</td>
<td>Application for permit to surface mine two acres or less, pilot program for growing of grapes on reclaimed areas, validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977</td>
</tr>
<tr>
<td>29</td>
<td>15</td>
<td>4</td>
<td>Mental retardation advisory committee</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
**CODE REPEALED—(Continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>6</td>
<td>Building and Loan Associations</td>
<td>444</td>
</tr>
<tr>
<td>31</td>
<td>6A</td>
<td>Federal Savings and Loan Insurance Corporation</td>
<td>445</td>
</tr>
<tr>
<td>31</td>
<td>11</td>
<td>Savings and Loan Association of the State of West Virginia</td>
<td>1386</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>Grounds for administrative supervision of insurance corporations</td>
<td>869</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>Investments, health care corporations</td>
<td>869</td>
</tr>
<tr>
<td>37</td>
<td>14</td>
<td>Scope of real estate appraiser license, qualification for such license, courses of study, waiver and special waiver of license qualification requirements, term of certification</td>
<td>1371</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>First through Thirty-First Judicial Circuits</td>
<td>452</td>
</tr>
<tr>
<td>60</td>
<td>2</td>
<td>Qualifications of Alcohol Beverage Control Commissioner, vacation of office for political activity, personal interest in manufacture of alcoholic liquor, organization and quorum of commission</td>
<td>1180</td>
</tr>
<tr>
<td>60</td>
<td>3</td>
<td>Additional price increase in alcoholic liquor for payment of Korean veterans bonus bonds, state building revenue bonds and Vietnam veterans bonus bonds, price increase for state temporary economic program, price increase for care, treatment and rehabilitation of alcoholics and payment into certain funds for retirement of certain bonds</td>
<td>1180</td>
</tr>
<tr>
<td>60</td>
<td>8</td>
<td>Assessment of tax on wine when insufficiently returned, jeopardy assessments, interest and penalties, notice of assessment and petition for reassessment, hearings and appeals, sale or discontinuance of business of taxpayer, collection by action or suit</td>
<td>1180</td>
</tr>
</tbody>
</table>

**CONSUMER CREDIT AND PROTECTION:**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer credit sale or loan</td>
<td>27 405</td>
</tr>
<tr>
<td>Additional charges permitted</td>
<td>28 413</td>
</tr>
</tbody>
</table>

**Credit service organizations**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bond</td>
<td>28 413</td>
</tr>
<tr>
<td>Form and terms</td>
<td>28 416</td>
</tr>
<tr>
<td>Definitions</td>
<td>28 410</td>
</tr>
<tr>
<td>Disclosure statement</td>
<td>28 415</td>
</tr>
<tr>
<td>Exemptions</td>
<td>28 411</td>
</tr>
<tr>
<td>Burden of proving</td>
<td>28 418</td>
</tr>
<tr>
<td>Prohibited conduct</td>
<td>28 412</td>
</tr>
<tr>
<td>Registration</td>
<td>28 414</td>
</tr>
<tr>
<td>Remedies cumulative</td>
<td>28 419</td>
</tr>
<tr>
<td>Surety account</td>
<td>28 413</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## Index

CONSUMER CREDIT AND PROTECTION—(continued):
Credit service organizations—(continued):
  - Violations of article
    - Action for damages .......................................................... 28 418
    - Criminal penalty ............................................................... 28 418
    - Waiver of right .................................................................... 28 418
  - Insurance .............................................................................. 27 406-409

CONTROLLED SUBSTANCES:
  Schedule I .............................................................................. 29 419
  Schedule II ............................................................................. 29 426
  Schedule III ........................................................................... 29 430
  Wholesale Drug Distribution Licensing Act
    - Board of Pharmacy
      - Complaint provisions ......................................................... 29 441
      - Inspection powers ............................................................... 29 442
      - Promulgation of rules ......................................................... 29 441
    - Definitions .......................................................................... 29 434
    - Drug purchases or receipt
      - Prohibited ........................................................................ 29 436
      - Penalties ........................................................................... 29 437
      - Purpose ............................................................................... 29 432
    - Judicial enforcement ........................................................... 29 443
    - Scope .................................................................................. 29 432
    - Short title ............................................................................ 29 432
    Wholesale drug distributors
      - Advisory committee
        - Composition ................................................................... 29 433
        - Duties ............................................................................ 29 433
      - Licensing requirements ...................................................... 29 437
        - Renewal procedures .......................................................... 29 440
        - Violations
          - Penalties ...................................................................... 29 444
        Records ............................................................................. 29 442
  - Access by Board of Pharmacy ................................................ 29 442

CORPORATIONS:
  Federal Savings and Loan Insurance Corporation
    - Repeal of article ................................................................. 31 445

CORRECTIONAL OFFICERS:
  Work during holidays
    - Compensation ................................................................. 32 445

COUNTY COMMISSIONS:
  Conflict of interest ............................................................. 33 446
    - Excusal from voting ......................................................... 33 446
  Elected county officials
    - Compensation ................................................................... 33 447

COURTS AND THEIR OFFICERS:
  Judicial recircuiting ......................................................... 34 453
    - Probation .......................................................................... 34 456
  Senior judges
    - Services of ........................................................................ 34 355

CRIME INVESTIGATORS:
  Appointment ........................................................................... 35 457
CRIMES AND OFFENSES:

Animals
- Cruelty to animals ........................................ 36 460
- Animal fighting
  - Prohibited .............................................. 36 463
- Hearing .................................................... 36 460
- Liability for costs ........................................ 36 461
- Penalties ................................................... 36 462
- Reporting .................................................. 36 461

Convicts
- Offenses by
  - Conspiracy .............................................. 40 470
  - Felony .................................................... 40 469
- Presentence diagnosis ...................................... 40 470
- Custody .................................................... 40 470

Escape from custody
- Felony offense ............................................ 40 468

Humane officers
- Duty ......................................................... 36 459
  - Interference with
    - Penalty ............................................... 36 460

Incest
- Definitions ................................................ 41 471.472
  - Penalty .................................................. 41 472.473

Junk dealers
- Purchase of certain metals ................................ 39 466
  - Violations ............................................... 39 467

Murder
- First degree
  - Defined ................................................... 38 465
  - Indictment ............................................... 38 465
- Second degree
  - Defined ................................................... 38 465

Negligent shooting
- Penalties ................................................... 37 464

Sexual assault
- Children ..................................................... 41 474.475
  - Penalties ................................................ 41 474.475
- First degree
  - Penalty ................................................... 41 473
- Second degree
  - Penalty ................................................... 41 474

CULTURE AND HISTORY:

Administrative Section
- Director ...................................................... 42 498
  - Purposes and duties ..................................... 42 498

Archives and History
- Commission
  - Composition ............................................... 42 482
  - Powers ..................................................... 42 484
- Section
  - Director ................................................... 42 485
  - Powers and duties ...................................... 42 485

Arts and Humanities
- Directors .................................................... 42 482
  - Purposes and duties ..................................... 42 481

Commission on the Arts
- Composition ................................................ 42 480
- Continued ................................................... 42 480
  - Powers ..................................................... 42 481
## INDEX

**CULTURE AND HISTORY**—(continued):

<table>
<thead>
<tr>
<th>Division</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner</td>
<td>42</td>
<td>479</td>
</tr>
<tr>
<td>General powers</td>
<td>42</td>
<td>479</td>
</tr>
<tr>
<td>Continued</td>
<td>42</td>
<td>477</td>
</tr>
<tr>
<td>Contracts and obligations</td>
<td>42</td>
<td>478</td>
</tr>
<tr>
<td>Existing, transferred</td>
<td>42</td>
<td>478</td>
</tr>
<tr>
<td>Employees</td>
<td>42</td>
<td>498</td>
</tr>
<tr>
<td>Classification by civil service</td>
<td>42</td>
<td>498</td>
</tr>
<tr>
<td>Exceptions</td>
<td>42</td>
<td>499</td>
</tr>
<tr>
<td>Funds</td>
<td>42</td>
<td>499</td>
</tr>
<tr>
<td>Power to receive</td>
<td>42</td>
<td>500</td>
</tr>
<tr>
<td>Land</td>
<td>42</td>
<td>500</td>
</tr>
<tr>
<td>Control and disposal</td>
<td>42</td>
<td>500</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>42</td>
<td>478</td>
</tr>
<tr>
<td>Transfer from various agencies</td>
<td>42</td>
<td>478</td>
</tr>
<tr>
<td>Publication of materials</td>
<td>42</td>
<td>499</td>
</tr>
<tr>
<td>Sections and commissions</td>
<td>42</td>
<td>477</td>
</tr>
<tr>
<td>Termination date</td>
<td>42</td>
<td>479</td>
</tr>
<tr>
<td>Historic and prehistoric sites</td>
<td>42</td>
<td>498</td>
</tr>
<tr>
<td>Disturbances</td>
<td>42</td>
<td>498</td>
</tr>
<tr>
<td>Penalties</td>
<td>42</td>
<td>489</td>
</tr>
<tr>
<td>Historic Preservation Section</td>
<td>42</td>
<td>488</td>
</tr>
<tr>
<td>Director</td>
<td>42</td>
<td>488</td>
</tr>
<tr>
<td>Purposes and duties</td>
<td>42</td>
<td>488</td>
</tr>
<tr>
<td>Human skeletal remains, grave artifacts and markers</td>
<td>42</td>
<td>491</td>
</tr>
<tr>
<td>Definitions</td>
<td>42</td>
<td>491</td>
</tr>
<tr>
<td>Discovery</td>
<td>42</td>
<td>497</td>
</tr>
<tr>
<td>Notification</td>
<td>42</td>
<td>493</td>
</tr>
<tr>
<td>Disposition</td>
<td>42</td>
<td>497</td>
</tr>
<tr>
<td>Disturbances</td>
<td>42</td>
<td>496</td>
</tr>
<tr>
<td>Civil penalties</td>
<td>42</td>
<td>496</td>
</tr>
<tr>
<td>Rewards for information</td>
<td>42</td>
<td>497</td>
</tr>
<tr>
<td>Excavation</td>
<td>42</td>
<td>491</td>
</tr>
<tr>
<td>Permits</td>
<td>42</td>
<td>494</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>42</td>
<td>490</td>
</tr>
<tr>
<td>Recovery</td>
<td>42</td>
<td>490</td>
</tr>
<tr>
<td>Museums Section</td>
<td>42</td>
<td>487</td>
</tr>
<tr>
<td>Director</td>
<td>42</td>
<td>487</td>
</tr>
<tr>
<td>Purposes and duties</td>
<td>42</td>
<td>486</td>
</tr>
<tr>
<td>Washington-Carver Camp</td>
<td>42</td>
<td>500</td>
</tr>
<tr>
<td>Control, administration and supervision</td>
<td>42</td>
<td>500</td>
</tr>
<tr>
<td>Minerals</td>
<td>42</td>
<td>501</td>
</tr>
</tbody>
</table>

## DEPUTY SHERIFFS:

| Appointments, promotions | 44 | 505 |
| Civil service | 44 | 505 |
| Coverage | 44 | 505 |
| Commission | 44 | 506 |
| Mandatory | 44 | 508 |
| Jailer | 43 | 502-504 |

## DOMESTIC RELATIONS:

| Adoption | 48 | 573 |
| Adoptees | 48 | 573 |
| Health, genetic, social history | 48 | 573 |
| Nonidentifying information | 48 | 573 |
DOMESTIC RELATIONS—(continued):

Adoption—(continued):

| Voluntary adoption registry | Definitions | 48 | 576 |
| Implementation | 48 | 578 |
| Maintenance | 48 | 578 |
| Nondisclosure | 48 | 578 |
| Nondisclosure information | Compilation | 48 | 579 |
| Nonidentifying information | Operation of | 48 | 581 |
| Policy and purposes | Use | 48 | 580 |

Annulment, divorce, separate maintenance

| Order for Relief | 46 | 552 |
| Other party Custodial, visitation rights | Interferring with molesting or interferring with | 46 | 555 |
| Revisions or alterations | 46 | 555 |

Child support

| Assets Disclosure | 45 | 518 |
| Automatic withholding | 45 | 516 |
| Order Modification | 45 | 518 |

Domestic violence

| Family or household members Crimes between Bail | 47 | 571 |
| Prevention Abuse Advisement of parties Duty of responding officer | 47 | 562 |
| Law-enforcement agencies Record keeping | Reporting | 47 | 567 |
| Transport of victims | Commencement of proceeding | 47 | 563 |
| Definitions | Jurisdiction of courts | 47 | 561 |
| Leaving residence Effect | Order of court Protective orders Enforcement Violation | 47 | 561 |
| Temporary Enforcement Hearing Violation | 47 | 560 |

Purpose of article

| Family obligations, enforcement Child Advocate Office Child or spousal support Disbursements | 45 | 526 |
| Obtaining from federal tax refunds Confidentiality of records | 45 | 529 |
| Children's Advocate Representation | 45 | 531 |
| Definitions | 45 | 520 |
## DOMESTIC RELATIONS—(continued):

### Family obligations, enforcement—(continued):

<table>
<thead>
<tr>
<th>Family law masters</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment</td>
<td>45</td>
<td>532</td>
</tr>
<tr>
<td>Compensation and expenses</td>
<td>45</td>
<td>533</td>
</tr>
<tr>
<td>Distribution of offices</td>
<td>45</td>
<td>534</td>
</tr>
<tr>
<td>Regions by county</td>
<td>45</td>
<td>533</td>
</tr>
<tr>
<td>Employees of judicial branch</td>
<td>45</td>
<td>533</td>
</tr>
<tr>
<td>Hearings</td>
<td>45</td>
<td>535</td>
</tr>
<tr>
<td>Fees</td>
<td>45</td>
<td>536</td>
</tr>
<tr>
<td>Notice of hearing</td>
<td>45</td>
<td>538</td>
</tr>
<tr>
<td>Qualifications</td>
<td>45</td>
<td>532</td>
</tr>
<tr>
<td>Removal</td>
<td>45</td>
<td>532</td>
</tr>
</tbody>
</table>

### Family support obligations

<table>
<thead>
<tr>
<th>Enforcement</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrearages</td>
<td>45</td>
<td>539</td>
</tr>
<tr>
<td>Remedies</td>
<td>45</td>
<td>538</td>
</tr>
<tr>
<td>Withholding from income</td>
<td>45</td>
<td>541</td>
</tr>
</tbody>
</table>

### Paternity

<table>
<thead>
<tr>
<th>Establishment</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representation of parties</td>
<td>45</td>
<td>550</td>
</tr>
</tbody>
</table>

### Revised Uniform Reciprocal Enforcement of Support Act

<table>
<thead>
<tr>
<th>Children's Advocate</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interests of child</td>
<td>45</td>
<td>550</td>
</tr>
<tr>
<td>Representation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>45</td>
<td>551</td>
</tr>
</tbody>
</table>

### Insurance

<table>
<thead>
<tr>
<th>Accident and sickness</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children of insured</td>
<td>45</td>
<td>511</td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policies not to exclude</td>
<td>45</td>
<td>511</td>
</tr>
</tbody>
</table>

### EDUCATION:

<table>
<thead>
<tr>
<th>County boards of education</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members</td>
<td>55</td>
<td>624</td>
</tr>
<tr>
<td>Eligibility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residency requirement</td>
<td>55</td>
<td>624</td>
</tr>
<tr>
<td>Real estate</td>
<td>56</td>
<td>626</td>
</tr>
<tr>
<td>Sale of, at public auction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disposition of proceeds</td>
<td>56</td>
<td>626</td>
</tr>
<tr>
<td>Unneeded buildings</td>
<td>57</td>
<td>627</td>
</tr>
<tr>
<td>Charitable or community use</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>School closing/consolidation</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public hearing</td>
<td>57</td>
<td>628</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Summer school programs</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment</td>
<td>53</td>
<td>604</td>
</tr>
<tr>
<td>Tuition</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vacancies</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filling</td>
<td>68</td>
<td>712</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>County superintendents</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acting superintendent</td>
<td>53</td>
<td>604</td>
</tr>
<tr>
<td>Compensation</td>
<td>53</td>
<td>604</td>
</tr>
<tr>
<td>Disability</td>
<td>53</td>
<td>603</td>
</tr>
<tr>
<td>Duties</td>
<td>54</td>
<td>622</td>
</tr>
<tr>
<td>Emergency powers</td>
<td>54</td>
<td>623</td>
</tr>
<tr>
<td>Health certificate</td>
<td>53</td>
<td>603</td>
</tr>
<tr>
<td>Qualifications</td>
<td>53</td>
<td>603</td>
</tr>
</tbody>
</table>

### Financial assistance

<table>
<thead>
<tr>
<th>Administration generally</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>65</td>
<td>656</td>
</tr>
</tbody>
</table>
## Index

**EDUCATION—(continued):**

<table>
<thead>
<tr>
<th>Item</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutions of higher education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Classified employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catastrophic leave transfer</td>
<td>64</td>
<td>654</td>
</tr>
<tr>
<td>Experience increment</td>
<td>63</td>
<td>652</td>
</tr>
<tr>
<td>Salaries</td>
<td>63</td>
<td>651</td>
</tr>
<tr>
<td>Quality and performance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information regarding</td>
<td>62</td>
<td>642</td>
</tr>
<tr>
<td>Statewide report cards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completion</td>
<td>62</td>
<td>649</td>
</tr>
<tr>
<td>Dissemination</td>
<td>62</td>
<td>649</td>
</tr>
<tr>
<td>Health sciences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accountability/coordination</td>
<td>62</td>
<td>649</td>
</tr>
<tr>
<td>Legislative findings, intent</td>
<td>62</td>
<td>649</td>
</tr>
<tr>
<td>Information required</td>
<td>62</td>
<td>643-649</td>
</tr>
<tr>
<td>Preparation</td>
<td>62</td>
<td>643</td>
</tr>
<tr>
<td>Legislative Oversight Commission, Education Accountability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative rules</td>
<td>62</td>
<td>650</td>
</tr>
<tr>
<td>Review</td>
<td>62</td>
<td>650</td>
</tr>
<tr>
<td>Termination</td>
<td>62</td>
<td>651</td>
</tr>
<tr>
<td>Physical fitness and sports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program</td>
<td>49</td>
<td>584</td>
</tr>
<tr>
<td>Public school support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Instructional programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Improvement</td>
<td>52</td>
<td>598</td>
</tr>
<tr>
<td>Rural district boards</td>
<td>52</td>
<td>601</td>
</tr>
<tr>
<td>Transitional allocation</td>
<td>52</td>
<td>601</td>
</tr>
<tr>
<td>School accreditation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Educational Standards Compliance Review Team</td>
<td>50</td>
<td>589</td>
</tr>
<tr>
<td>Impaired schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance standards</td>
<td>50</td>
<td>587</td>
</tr>
<tr>
<td>Levels</td>
<td>50</td>
<td>588</td>
</tr>
<tr>
<td>Performance-based system</td>
<td>50</td>
<td>586</td>
</tr>
<tr>
<td>School Library Media Improvement Grant Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applications</td>
<td>52</td>
<td>597</td>
</tr>
<tr>
<td>Criteria</td>
<td>52</td>
<td>597</td>
</tr>
<tr>
<td>Legislative intent</td>
<td>52</td>
<td>597</td>
</tr>
<tr>
<td>School personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial driver's license</td>
<td>53</td>
<td>607</td>
</tr>
<tr>
<td>Reimbursement</td>
<td>53</td>
<td>607</td>
</tr>
<tr>
<td>Electrician's license</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement</td>
<td>53</td>
<td>607</td>
</tr>
<tr>
<td>Salaries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advanced classification</td>
<td>61</td>
<td>637</td>
</tr>
<tr>
<td>Definitions</td>
<td>61</td>
<td>635-637</td>
</tr>
<tr>
<td>Service personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class titles</td>
<td>53</td>
<td>609-617</td>
</tr>
<tr>
<td>Employment term</td>
<td>53</td>
<td>607</td>
</tr>
<tr>
<td>Personal leave</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illness, other causes</td>
<td>53</td>
<td>619</td>
</tr>
<tr>
<td>Substitute during</td>
<td>53</td>
<td>621</td>
</tr>
<tr>
<td>State board of school finance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Budget</td>
<td>59</td>
<td>632</td>
</tr>
<tr>
<td>Determinations by board</td>
<td>59</td>
<td>632</td>
</tr>
<tr>
<td>Projected expenditures</td>
<td>59</td>
<td>632</td>
</tr>
<tr>
<td>Revision</td>
<td>59</td>
<td>633</td>
</tr>
<tr>
<td>Underwood-Smith Teacher Scholarship Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>65</td>
<td>657</td>
</tr>
<tr>
<td>Eligibility</td>
<td>65</td>
<td>658</td>
</tr>
<tr>
<td>Funding</td>
<td>65</td>
<td>657</td>
</tr>
<tr>
<td>INDEX</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>EDUCATION—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underwood-Smith Teacher Scholarship Program—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purposes</td>
<td>65</td>
<td>657</td>
</tr>
<tr>
<td>Scholarships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreement</td>
<td>65</td>
<td>659</td>
</tr>
<tr>
<td>Amount</td>
<td>65</td>
<td>661</td>
</tr>
<tr>
<td>Duration</td>
<td>65</td>
<td>662</td>
</tr>
<tr>
<td>Renewal conditions</td>
<td>65</td>
<td>660</td>
</tr>
<tr>
<td>Vocational-technical schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School improvement councils</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business/industry representative</td>
<td>58</td>
<td>630</td>
</tr>
<tr>
<td>West Virginia Share in Your Future Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties and responsibilities</td>
<td>51</td>
<td>592</td>
</tr>
<tr>
<td>Established</td>
<td>51</td>
<td>591</td>
</tr>
<tr>
<td>Termination</td>
<td>51</td>
<td>595</td>
</tr>
<tr>
<td>Incentives-based shares program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awards</td>
<td>51</td>
<td>594</td>
</tr>
<tr>
<td>Conversion of shares</td>
<td>51</td>
<td>594</td>
</tr>
<tr>
<td>Duties of county boards</td>
<td>51</td>
<td>595</td>
</tr>
<tr>
<td>Registration requirements</td>
<td>51</td>
<td>598</td>
</tr>
<tr>
<td>Scholarship funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonprofit fund</td>
<td>51</td>
<td>593</td>
</tr>
<tr>
<td>West Virginia State College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land grant institution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Designation</td>
<td>60</td>
<td>634</td>
</tr>
<tr>
<td>EDUCATIONAL BROADCASTING AUTHORITY:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>66</td>
<td>663</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>66</td>
<td>663</td>
</tr>
<tr>
<td>West Virginia Distance Learning Coordinating Council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creation</td>
<td>66</td>
<td>664</td>
</tr>
<tr>
<td>Distance learning fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>66</td>
<td>665</td>
</tr>
<tr>
<td>Purpose</td>
<td>66</td>
<td>665</td>
</tr>
<tr>
<td>Duties</td>
<td>66</td>
<td>665</td>
</tr>
<tr>
<td>ELECTIONS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Absentee voting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special list</td>
<td>68</td>
<td>712</td>
</tr>
<tr>
<td>Ballots</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Official</td>
<td>68</td>
<td>676</td>
</tr>
<tr>
<td>Correction</td>
<td>68</td>
<td>677</td>
</tr>
<tr>
<td>Packaging and delivery</td>
<td>68</td>
<td>676</td>
</tr>
<tr>
<td>Printing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorization</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>67</td>
<td>669</td>
</tr>
<tr>
<td>Certificate</td>
<td>67</td>
<td>668</td>
</tr>
<tr>
<td>Suspension, revocation</td>
<td>67</td>
<td>669</td>
</tr>
<tr>
<td>Vendors authorized</td>
<td>67</td>
<td>668</td>
</tr>
<tr>
<td>Sample</td>
<td>68</td>
<td>676</td>
</tr>
<tr>
<td>Correction</td>
<td>68</td>
<td>677</td>
</tr>
<tr>
<td>Packaging and delivery</td>
<td>68</td>
<td>676</td>
</tr>
<tr>
<td>County boards of education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacancies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filling</td>
<td>68</td>
<td>712</td>
</tr>
<tr>
<td>Election officials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation</td>
<td>68</td>
<td>677</td>
</tr>
<tr>
<td>Expenses</td>
<td>68</td>
<td>678</td>
</tr>
</tbody>
</table>
# Index

**ELECTIONS—(continued):**

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic voting systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ballot labels</td>
<td>68</td>
<td>683</td>
</tr>
<tr>
<td>Arrangement</td>
<td>68</td>
<td>683</td>
</tr>
<tr>
<td>Procedure and requirements</td>
<td>68</td>
<td>687</td>
</tr>
<tr>
<td>Vote recording devices</td>
<td>68</td>
<td>687</td>
</tr>
<tr>
<td>Sealing</td>
<td>68</td>
<td>687</td>
</tr>
<tr>
<td>Financial statements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>69</td>
<td>717</td>
</tr>
<tr>
<td>Information required</td>
<td>69</td>
<td>713</td>
</tr>
<tr>
<td>General elections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ballots</td>
<td>68</td>
<td>704</td>
</tr>
<tr>
<td>Preparation and form</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political party committees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>68</td>
<td>673</td>
</tr>
<tr>
<td>Organization</td>
<td>68</td>
<td>675</td>
</tr>
<tr>
<td>Primary elections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ballots</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Candidates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Order</td>
<td>68</td>
<td>700</td>
</tr>
<tr>
<td>Drawing</td>
<td>68</td>
<td>701</td>
</tr>
<tr>
<td>Form and contents</td>
<td>68</td>
<td>696</td>
</tr>
<tr>
<td>Candidates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Announcements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing</td>
<td>68</td>
<td>692</td>
</tr>
<tr>
<td>Requirements</td>
<td>68</td>
<td>693</td>
</tr>
<tr>
<td>Nomination</td>
<td>68</td>
<td>691</td>
</tr>
<tr>
<td>Vacancies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filling</td>
<td>68</td>
<td>701</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>68</td>
<td>695</td>
</tr>
<tr>
<td>Publication</td>
<td>68</td>
<td>696</td>
</tr>
<tr>
<td>Delegates to national conventions</td>
<td>68</td>
<td>688</td>
</tr>
<tr>
<td>Alternate</td>
<td>68</td>
<td>690</td>
</tr>
<tr>
<td>Presidential preference</td>
<td>68</td>
<td>691</td>
</tr>
<tr>
<td>Vacancies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessor</td>
<td>68</td>
<td>711</td>
</tr>
<tr>
<td>Circuit court clerk</td>
<td>68</td>
<td>709</td>
</tr>
<tr>
<td>Clerk of county commission</td>
<td>68</td>
<td>710</td>
</tr>
<tr>
<td>County commissioner</td>
<td>68</td>
<td>710</td>
</tr>
<tr>
<td>Elections to fill</td>
<td>68</td>
<td>708</td>
</tr>
<tr>
<td>Prosecuting attorney</td>
<td>68</td>
<td>711</td>
</tr>
<tr>
<td>Sheriff</td>
<td>68</td>
<td>711</td>
</tr>
<tr>
<td>Surveyor</td>
<td>68</td>
<td>711</td>
</tr>
<tr>
<td>Voting machines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ballot labels</td>
<td>68</td>
<td>681</td>
</tr>
<tr>
<td>Arrangement</td>
<td>68</td>
<td>682</td>
</tr>
<tr>
<td>Position of candidates</td>
<td>68</td>
<td>682</td>
</tr>
<tr>
<td>Procedure and requirements</td>
<td>68</td>
<td>681</td>
</tr>
<tr>
<td>Vacancy changes</td>
<td>68</td>
<td>681</td>
</tr>
</tbody>
</table>

**FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeal of article</td>
<td>31</td>
<td>445</td>
</tr>
</tbody>
</table>

**FEES AND ALLOWANCES:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriffs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prisoners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conveying</td>
<td>70</td>
<td>718</td>
</tr>
<tr>
<td>Mileage charged increase</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service of process, subpoenas, writs</td>
<td>70</td>
<td>718</td>
</tr>
<tr>
<td>Increasing fees</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## INDEX

<table>
<thead>
<tr>
<th>FINANCE AND ADMINISTRATION:</th>
<th>1729</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens Hearing Committee</td>
<td>Ch.</td>
</tr>
<tr>
<td>Abolished</td>
<td>71</td>
</tr>
<tr>
<td>Finance Division</td>
<td>72</td>
</tr>
<tr>
<td>Created</td>
<td>72</td>
</tr>
<tr>
<td>Director</td>
<td>72</td>
</tr>
<tr>
<td>Financial accounting and reporting section</td>
<td>72</td>
</tr>
<tr>
<td>Comptroller</td>
<td>72</td>
</tr>
<tr>
<td>Powers, responsibilities</td>
<td>72</td>
</tr>
<tr>
<td>Sections</td>
<td>72</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>72</td>
</tr>
<tr>
<td>Management accounting</td>
<td></td>
</tr>
<tr>
<td>Centralized system</td>
<td>72</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FIRE PREVENTION AND CONTROL:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Smoke detectors</td>
<td></td>
</tr>
<tr>
<td>One- and two-family dwellings</td>
<td>73</td>
</tr>
<tr>
<td>Failure to install</td>
<td>73</td>
</tr>
<tr>
<td>Penalty</td>
<td>73</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GROUNDWATER PROTECTION ACT:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal and review procedures</td>
<td>117</td>
</tr>
<tr>
<td>Article enacting</td>
<td></td>
</tr>
<tr>
<td>Conflicting provisions</td>
<td>117</td>
</tr>
<tr>
<td>Effective dates</td>
<td></td>
</tr>
<tr>
<td>Federal approval</td>
<td>117</td>
</tr>
<tr>
<td>Purposes</td>
<td>117</td>
</tr>
<tr>
<td>Severability</td>
<td>117</td>
</tr>
<tr>
<td>Compliance</td>
<td></td>
</tr>
<tr>
<td>Effect</td>
<td>117</td>
</tr>
<tr>
<td>Definitions</td>
<td>117</td>
</tr>
<tr>
<td>Fees</td>
<td></td>
</tr>
<tr>
<td>Proceeds</td>
<td>117</td>
</tr>
<tr>
<td>Dedication</td>
<td></td>
</tr>
<tr>
<td>Schedule</td>
<td>117</td>
</tr>
<tr>
<td>Calculation</td>
<td></td>
</tr>
<tr>
<td>Groundwater</td>
<td></td>
</tr>
<tr>
<td>Agencies of government</td>
<td></td>
</tr>
<tr>
<td>Express authority</td>
<td>117</td>
</tr>
<tr>
<td>Certification program</td>
<td>117</td>
</tr>
<tr>
<td>Purity and quality</td>
<td></td>
</tr>
<tr>
<td>Natural Resources, Division</td>
<td></td>
</tr>
<tr>
<td>Lead agency designation</td>
<td>117</td>
</tr>
<tr>
<td>Additional powers, duties</td>
<td>117</td>
</tr>
<tr>
<td>Regulatory agency</td>
<td>117</td>
</tr>
<tr>
<td>Standards</td>
<td>117</td>
</tr>
<tr>
<td>Additional and cumulative rights</td>
<td>117</td>
</tr>
<tr>
<td>Groundwater Coordinating Committee</td>
<td></td>
</tr>
<tr>
<td>Creation</td>
<td>117</td>
</tr>
<tr>
<td>Groundwater Protection Fund</td>
<td></td>
</tr>
<tr>
<td>Created and established</td>
<td>117</td>
</tr>
<tr>
<td>Expenditures</td>
<td>117</td>
</tr>
<tr>
<td>Groundwater Remediation Fund</td>
<td></td>
</tr>
<tr>
<td>Created and established</td>
<td>117</td>
</tr>
<tr>
<td>Expenditures</td>
<td>117</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>117</td>
</tr>
<tr>
<td>Natural Resources, Division</td>
<td></td>
</tr>
<tr>
<td>Lead agency designation</td>
<td>117</td>
</tr>
<tr>
<td>Additional powers, duties</td>
<td>117</td>
</tr>
<tr>
<td>Unassigned facilities</td>
<td></td>
</tr>
<tr>
<td>Regulatory agency</td>
<td>117</td>
</tr>
<tr>
<td>Subject</td>
<td>Ch.</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>GROUNDWATER PROTECTION ACT—(continued):</td>
<td>117</td>
</tr>
<tr>
<td>Public policy</td>
<td></td>
</tr>
<tr>
<td>Rights and remedies</td>
<td></td>
</tr>
<tr>
<td>Existing, preserved</td>
<td>117</td>
</tr>
<tr>
<td>Rule making</td>
<td></td>
</tr>
<tr>
<td>Petition</td>
<td>117</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
</tr>
<tr>
<td>Cease and desist order</td>
<td>117</td>
</tr>
<tr>
<td>Reconsideration</td>
<td>117</td>
</tr>
<tr>
<td>Civil penalties</td>
<td>117</td>
</tr>
<tr>
<td>Administrative</td>
<td></td>
</tr>
<tr>
<td>Use of proceeds</td>
<td>117</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>117</td>
</tr>
<tr>
<td>Injunctions</td>
<td>117</td>
</tr>
<tr>
<td>Water Resources Board</td>
<td></td>
</tr>
<tr>
<td>Authority</td>
<td>117</td>
</tr>
<tr>
<td>Groundwater standards</td>
<td>117</td>
</tr>
<tr>
<td>Water standards</td>
<td></td>
</tr>
<tr>
<td>Natural Resources, Division</td>
<td></td>
</tr>
<tr>
<td>Lead agency designation</td>
<td>117</td>
</tr>
<tr>
<td>Additional powers, duties</td>
<td>117</td>
</tr>
<tr>
<td>Regulatory agencies</td>
<td>117</td>
</tr>
<tr>
<td>GUARANTEED WORK FORCE PROGRAM:</td>
<td></td>
</tr>
<tr>
<td>Activities</td>
<td>74</td>
</tr>
<tr>
<td>Funds</td>
<td>74</td>
</tr>
<tr>
<td>Training program</td>
<td>74</td>
</tr>
<tr>
<td>HAZARDOUS AND MEDICAL WASTE:</td>
<td></td>
</tr>
<tr>
<td>West Virginia Medical Waste Act</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>75</td>
</tr>
<tr>
<td>Infectious medical waste</td>
<td></td>
</tr>
<tr>
<td>Collectors and haulers</td>
<td></td>
</tr>
<tr>
<td>Regulation by PSC</td>
<td>75</td>
</tr>
<tr>
<td>Limitation</td>
<td>75</td>
</tr>
<tr>
<td>Commercial facilities prohibited</td>
<td>75</td>
</tr>
<tr>
<td>Inspection</td>
<td>75</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
</tr>
<tr>
<td>Civil actions</td>
<td>75</td>
</tr>
<tr>
<td>Enforcement orders</td>
<td>75</td>
</tr>
<tr>
<td>Hearings</td>
<td>75</td>
</tr>
<tr>
<td>Injunctive relief</td>
<td>75</td>
</tr>
<tr>
<td>Subpoenas</td>
<td>75</td>
</tr>
<tr>
<td>Primary agency</td>
<td></td>
</tr>
<tr>
<td>Health and Human Resources</td>
<td></td>
</tr>
<tr>
<td>Secretary</td>
<td>75</td>
</tr>
<tr>
<td>Legislative rules</td>
<td></td>
</tr>
<tr>
<td>Promulgation</td>
<td>75</td>
</tr>
<tr>
<td>Scope</td>
<td>75</td>
</tr>
<tr>
<td>Scope</td>
<td>75</td>
</tr>
<tr>
<td>Powers</td>
<td>75</td>
</tr>
<tr>
<td>Samples</td>
<td></td>
</tr>
<tr>
<td>Analysis</td>
<td>75</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>75</td>
</tr>
<tr>
<td>Purpose</td>
<td>75</td>
</tr>
<tr>
<td>HEALTH:</td>
<td></td>
</tr>
<tr>
<td>Continuum of care</td>
<td></td>
</tr>
<tr>
<td>Elderly, impaired and terminally ill</td>
<td>81</td>
</tr>
<tr>
<td>Repeal of article</td>
<td></td>
</tr>
<tr>
<td>Galactosemia</td>
<td></td>
</tr>
<tr>
<td>Assistance to children</td>
<td>84</td>
</tr>
<tr>
<td>Tests for</td>
<td>84</td>
</tr>
</tbody>
</table>
## INDEX

<table>
<thead>
<tr>
<th>HEALTH—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Care Cost Containment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of need</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>78</td>
<td>766-774</td>
</tr>
<tr>
<td>Exemptions</td>
<td>78</td>
<td>774</td>
</tr>
<tr>
<td>Nontransferability</td>
<td>78</td>
<td>785</td>
</tr>
<tr>
<td>State health planning/development agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td>78</td>
<td>781</td>
</tr>
<tr>
<td>Validity</td>
<td>78</td>
<td>785</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>78</td>
<td>786</td>
</tr>
<tr>
<td>Health Care Cost Review Authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Budget expenses</td>
<td>78</td>
<td>803</td>
</tr>
<tr>
<td>Compensation</td>
<td>78</td>
<td>798</td>
</tr>
<tr>
<td>Composition</td>
<td>78</td>
<td>796</td>
</tr>
<tr>
<td>Cost-based rate review system</td>
<td>78</td>
<td>805</td>
</tr>
<tr>
<td>Hospitals and related organizations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual financial reporting</td>
<td>78</td>
<td>804</td>
</tr>
<tr>
<td>Legislative directives</td>
<td>78</td>
<td>805-807</td>
</tr>
<tr>
<td>Powers generally</td>
<td>78</td>
<td>801</td>
</tr>
<tr>
<td>Qualifications</td>
<td>78</td>
<td>796</td>
</tr>
<tr>
<td>Rates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Determination</td>
<td>78</td>
<td>807</td>
</tr>
<tr>
<td>Initial rate schedule</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedure</td>
<td>78</td>
<td>810</td>
</tr>
<tr>
<td>Revisions</td>
<td>78</td>
<td>811</td>
</tr>
<tr>
<td>Term</td>
<td>78</td>
<td>797</td>
</tr>
<tr>
<td>Continued</td>
<td>78</td>
<td>796</td>
</tr>
<tr>
<td>Definitions</td>
<td>78</td>
<td>794-796</td>
</tr>
<tr>
<td>Health Care Cost Review Council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advisory capacity</td>
<td>78</td>
<td>799</td>
</tr>
<tr>
<td>Composition</td>
<td>78</td>
<td>798</td>
</tr>
<tr>
<td>Established</td>
<td>78</td>
<td>798</td>
</tr>
<tr>
<td>Staff</td>
<td>78</td>
<td>800</td>
</tr>
<tr>
<td>Termination date</td>
<td>78</td>
<td>813</td>
</tr>
<tr>
<td>Health Care Facility Financial Disclosure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>78</td>
<td>789</td>
</tr>
<tr>
<td>General powers and duties</td>
<td>78</td>
<td>789</td>
</tr>
<tr>
<td>Reports and review</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Form</td>
<td>78</td>
<td>791</td>
</tr>
<tr>
<td>Inspection</td>
<td>78</td>
<td>793</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>78</td>
<td>789-790</td>
</tr>
<tr>
<td>Publication and filing</td>
<td>78</td>
<td>790</td>
</tr>
<tr>
<td>Failure</td>
<td>78</td>
<td>793</td>
</tr>
<tr>
<td>Injunction</td>
<td>78</td>
<td>793</td>
</tr>
<tr>
<td>Penalty</td>
<td>78</td>
<td>794</td>
</tr>
<tr>
<td>Definitions</td>
<td>78</td>
<td>788</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>78</td>
<td>788</td>
</tr>
<tr>
<td>Health Care Planning Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>76</td>
<td>756</td>
</tr>
<tr>
<td>Compensation</td>
<td>76</td>
<td>757</td>
</tr>
<tr>
<td>Composition</td>
<td>76</td>
<td>756</td>
</tr>
<tr>
<td>Created</td>
<td>76</td>
<td>756</td>
</tr>
<tr>
<td>Effective date</td>
<td>76</td>
<td>763</td>
</tr>
<tr>
<td>Expenses</td>
<td>76</td>
<td>757</td>
</tr>
<tr>
<td>Funding</td>
<td>76</td>
<td>763</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>76</td>
<td>754</td>
</tr>
<tr>
<td>State health plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coordination and development</td>
<td>76</td>
<td>757</td>
</tr>
<tr>
<td>Specific duties of commission</td>
<td>76</td>
<td>759</td>
</tr>
<tr>
<td>Termination</td>
<td>76</td>
<td>763</td>
</tr>
<tr>
<td>Terms</td>
<td>76</td>
<td>758</td>
</tr>
</tbody>
</table>
### HEALTH—(continued):

#### Hearing impaired

- **Newborn infants**
  - Registration .......................................................... 80  817
  - Reporting ............................................................. 80  818

#### Hypothyroidism

- **Assistance to children** ........................................... 84  849
- **Tests for** ............................................................ 84  848

#### Infants

- **Developmentally delayed**
  - Definitions ............................................................ 82  820-822
  - **Early Intervention Interagency Coordinating Council**
    - Established .......................................................... 82  823
    - **Provision for services** ........................................ 82  824
  - **Health and Human Resources**
    - **Responsibilities** .................................................. 82  822
    - **Legislative findings** ............................................ 82  820
  - **Hearing impaired**
    - Registration .......................................................... 80  817
    - Reporting ............................................................. 80  818

#### Legislative Health Care Oversight Committee

- **Established** .......................................................... 76  762

#### Long-Term Care Ombudsman Program

- **Created** .............................................................. 83  828
- **Definitions** ........................................................... 83  826-828
- **Funding** ............................................................... 83  846

#### Legislative Health Care Oversight Committee

- **Established** .......................................................... 76  762

- **Long-Term Care Ombudsman Program**
  - **Created** .............................................................. 83  828
  - **Definitions** ........................................................... 83  826-828
  - **Funding** ............................................................... 83  846

#### Legislative purpose

- **Ombudsman**
  - **Complaints**
    - **Investigation** ..................................................... 83  835
    - **Access to facilities** ............................................. 83  836-838
  - **Civil liability**
    - **Immunity** .......................................................... 83  843
    - **Confidentiality** .................................................. 83  841
  - **Departments or agencies**
    - **Cooperation** ...................................................... 83  840
  - **Duties** ............................................................... 83  820
    - **Willful interference** ............................................. 83  843-845
    - **Penalties** .......................................................... 83  844
  - **Legal council** ...................................................... 83  843
  - **Qualifications** ..................................................... 83  828
  - **Records**
    - **Access** ............................................................ 83  838
  - **Subpoena powers** .................................................. 83  839
  - **Volunteer program** ................................................ 83  833
  - **Volunteers**
    - **Civil liability** .................................................. 83  843
    - **Immunity** .......................................................... 83  833-834
    - **Duties** ............................................................... 83  844-845
      - **Willful interference** ........................................... 83  844
      - **Penalties** .......................................................... 83  843
    - **Legal council** ..................................................... 83  833
    - **Qualifications** ..................................................... 83  834
    - **Training and certification** ..................................... 83  834

#### Regional program

- **Establishment** ........................................................ 83  830
<table>
<thead>
<tr>
<th>HEALTH—(continued): Long-Term Care Ombudsman Program—(continued): Regional program—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ombudsman Certification</td>
<td>83</td>
<td>831</td>
</tr>
<tr>
<td>Complaints Investigation</td>
<td>83</td>
<td>835</td>
</tr>
<tr>
<td>Access to facilities</td>
<td>83</td>
<td>836-838</td>
</tr>
<tr>
<td>Duties Qualifications</td>
<td>83</td>
<td>831,832</td>
</tr>
<tr>
<td>Training</td>
<td>83</td>
<td>832</td>
</tr>
<tr>
<td>Severability of article</td>
<td>83</td>
<td>846</td>
</tr>
<tr>
<td>Mental retardation Phenylketonuria Program to combat</td>
<td>84</td>
<td>848</td>
</tr>
<tr>
<td>Natural Death Act Definitions</td>
<td>85</td>
<td>850</td>
</tr>
<tr>
<td>Living will Declarant Competency and intent</td>
<td>85</td>
<td>856</td>
</tr>
<tr>
<td>Transfer to other physician</td>
<td>85</td>
<td>857</td>
</tr>
<tr>
<td>Executing Insurance No legal impairment</td>
<td>85</td>
<td>852</td>
</tr>
<tr>
<td>Life support Withholding Assisting suicide Expressly not to constitute</td>
<td>85</td>
<td>857</td>
</tr>
<tr>
<td>Immunity from liability</td>
<td>85</td>
<td>856</td>
</tr>
<tr>
<td>No legal impairment</td>
<td>85</td>
<td>857</td>
</tr>
<tr>
<td>Nonexisting No legal presumption</td>
<td>85</td>
<td>857</td>
</tr>
<tr>
<td>Previously executed</td>
<td>85</td>
<td>858</td>
</tr>
<tr>
<td>Reciprocity</td>
<td>85</td>
<td>855</td>
</tr>
<tr>
<td>Revocation Sample form</td>
<td>85</td>
<td>853</td>
</tr>
<tr>
<td>Terminal condition Confirmation, documentation Physician's duty</td>
<td>85</td>
<td>855</td>
</tr>
<tr>
<td>Medical necessity Common law doctrine</td>
<td>85</td>
<td>858</td>
</tr>
<tr>
<td>Not abrogated</td>
<td>85</td>
<td>858</td>
</tr>
<tr>
<td>Severability of article</td>
<td>85</td>
<td>858</td>
</tr>
<tr>
<td>Phenylketonuria Assistance to children</td>
<td>84</td>
<td>849</td>
</tr>
<tr>
<td>Tests for State Division of Health</td>
<td>84</td>
<td>848</td>
</tr>
<tr>
<td>Rules and regulations Promulgation</td>
<td>76</td>
<td>752</td>
</tr>
<tr>
<td>WIC Program Federal funds Deposit in special account</td>
<td>79</td>
<td>814</td>
</tr>
</tbody>
</table>

**HORSE AND DOG RACING:**

| Frank Gall Memorial Stakes Established | 86 | 861 |
| Restricted races Funding | 86 | 864 |
| Thoroughbred Development Fund Distribution Established | 86 | 860 |
|  | 86 | 859 |
### HORSE AND DOG RACING—(continued):

**Thoroughbred Development Fund—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>86</td>
<td>859</td>
</tr>
<tr>
<td>Sire owners</td>
<td>86</td>
<td>861, 862</td>
</tr>
<tr>
<td>Share</td>
<td>86</td>
<td>861</td>
</tr>
<tr>
<td>West Virginia Futurity</td>
<td>86</td>
<td>861</td>
</tr>
</tbody>
</table>

### HUMANE OFFICERS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cruelty to animals</td>
<td>36</td>
<td>460</td>
</tr>
<tr>
<td>Animal fighting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibited</td>
<td>36</td>
<td>463</td>
</tr>
<tr>
<td>Hearing</td>
<td>36</td>
<td>460</td>
</tr>
<tr>
<td>Liability for costs</td>
<td>36</td>
<td>461</td>
</tr>
<tr>
<td>Penalties</td>
<td>36</td>
<td>462</td>
</tr>
<tr>
<td>Reporting</td>
<td>36</td>
<td>461</td>
</tr>
<tr>
<td>Duty</td>
<td>36</td>
<td>459</td>
</tr>
<tr>
<td>Interference with</td>
<td>36</td>
<td>460</td>
</tr>
<tr>
<td>Penalty</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### HUMAN SERVICES:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caseload standards</td>
<td>87</td>
<td>865</td>
</tr>
<tr>
<td>Commissioner to develop</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee</td>
<td>87</td>
<td>865</td>
</tr>
<tr>
<td>Employee organization representatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advisory role</td>
<td>87</td>
<td>866</td>
</tr>
<tr>
<td>Defined</td>
<td>87</td>
<td>866</td>
</tr>
<tr>
<td>Personal services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Budget request</td>
<td>87</td>
<td>866</td>
</tr>
</tbody>
</table>

### HUNTING AND FISHING:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class K nonresident fishing license</td>
<td>88</td>
<td>867</td>
</tr>
<tr>
<td>Fee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance</td>
<td>88</td>
<td>867</td>
</tr>
<tr>
<td>Reducing time period</td>
<td>88</td>
<td>867</td>
</tr>
<tr>
<td>Trout stamps</td>
<td>88</td>
<td>867</td>
</tr>
<tr>
<td>Additional fee</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### HUNTINGTON PARK AND RECREATION DISTRICT:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing and financial powers</td>
<td>175</td>
<td>1661</td>
</tr>
<tr>
<td>Law enforcement</td>
<td>175</td>
<td>1665</td>
</tr>
</tbody>
</table>

### INSURANCE:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accident and Sickness Policies</td>
<td>89</td>
<td>922</td>
</tr>
<tr>
<td>See &quot;Policies&quot; within this heading</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Captive insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examination, investigations</td>
<td>89</td>
<td>922</td>
</tr>
<tr>
<td>Companies generally</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hazardous financial condition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article</td>
<td>89</td>
<td>925</td>
</tr>
<tr>
<td>Purpose</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severability</td>
<td>89</td>
<td>925</td>
</tr>
<tr>
<td>Definitions</td>
<td>89</td>
<td>924</td>
</tr>
<tr>
<td>Delinquency proceedings</td>
<td>89</td>
<td>929</td>
</tr>
<tr>
<td>Commissioner</td>
<td>89</td>
<td>929</td>
</tr>
<tr>
<td>Immunity from liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rules</td>
<td>89</td>
<td>929</td>
</tr>
<tr>
<td>Determination</td>
<td>89</td>
<td>928</td>
</tr>
<tr>
<td>Commissioner's authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standards</td>
<td>89</td>
<td>925</td>
</tr>
<tr>
<td>Rehabilitation, liquidation proceedings</td>
<td>89</td>
<td>929</td>
</tr>
<tr>
<td>Commissioner</td>
<td>89</td>
<td>929</td>
</tr>
<tr>
<td>Immunity from liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rules</td>
<td>89</td>
<td>929</td>
</tr>
</tbody>
</table>
INDEX

INSURANCE—(continued):
Consumer Advocacy, Office of
Authority ................................................................. 90 931
Retroactive effect prohibited ....................................... 90 933
Director .................................................................. 90 931
Promulgation of rules .................................................. 90 931
Established .................................................................. 90 931
Funding ..................................................................... 90 933
Farmers' Mutual Fire Insurance Companies
Applicability of other provisions .................................. 89 887
Federal Savings and Loan Insurance Corporation
Repeal of article ............................................................. 31 445
Fraternal Benefit Societies
Applicability of other provisions .................................. 89 888
Group Accident and Sickness Policies
See "Policies" within this heading
Health care corporations
Affiliate and subsidiary operating results
Commissioner
Promulgation of rules .................................................. 89 903
Annual report ................................................................ 89 903
Definitions .................................................................. 89 899
Discrimination prohibited .............................................. 94 978
Insurance commissioner
Supervision by ............................................................... 89,93 899,966
Insurance laws
Exemption from ................................................................ 89,93 900,966
Rehabilitation services
Third party reimbursement ........................................... 94 976
Health Maintenance Organization Act
Affiliate and subsidiary operating results
Rules and regulations
Authority of commissioner .............................................. 89 913
Annual report ................................................................ 89 910
Certificate of authority
Issuance ......................................................................... 89 907
Definitions .................................................................. 89 904-907
Discrimination prohibited .............................................. 94 980
Examinations .................................................................. 89 911
Rehabilitation services
Third party reimbursement ........................................... 94 978
Statutory construction .................................................... 89,93 912,967
Hospital, medical, dental and health service corporations
Commissioner
Contracts, forms, fees
Approval ...................................................................... 89 892
Enforcement of article ................................................... 89 891
Rates
Approval ...................................................................... 89 892
Rule making authority ..................................................... 89 899
Definitions .................................................................. 89 893-895
Discrimination prohibited .............................................. 94 976
Domestic corporations
Delinquency proceedings ................................................. 89 895
Orders
Ex parte, injunctions and other ....................................... 89 897
Liquidation .................................................................... 89,93 889,965
Exemptions .................................................................... 89,93 889,965
Funds
Bonds
Corporate officers, employees ....................................... 89 893
Minimum statutory surplus ........................................... 89 893
<table>
<thead>
<tr>
<th>INSURANCE—(continued):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital, medical, dental and health service corporations—(continued):</td>
</tr>
<tr>
<td>Insurance laws</td>
</tr>
<tr>
<td>Applicability</td>
</tr>
<tr>
<td>Investments</td>
</tr>
<tr>
<td>Method</td>
</tr>
<tr>
<td>Licenses</td>
</tr>
<tr>
<td>Corporation</td>
</tr>
<tr>
<td>Certain descriptive words prohibited</td>
</tr>
<tr>
<td>Requirements</td>
</tr>
<tr>
<td>Rehabilitation services</td>
</tr>
<tr>
<td>Third party reimbursement</td>
</tr>
<tr>
<td>Insurance Commissioner</td>
</tr>
<tr>
<td>Compensation</td>
</tr>
<tr>
<td>Employees</td>
</tr>
<tr>
<td>Expenses</td>
</tr>
<tr>
<td>Expenses</td>
</tr>
<tr>
<td>Health care corporations</td>
</tr>
<tr>
<td>See “Health care corporations” within this heading</td>
</tr>
<tr>
<td>Hospital and other service corporations</td>
</tr>
<tr>
<td>See “Hospital” within this heading</td>
</tr>
<tr>
<td>Insurers, agents, brokers, solicitors</td>
</tr>
<tr>
<td>Annual statement</td>
</tr>
<tr>
<td>Books, records, etc.</td>
</tr>
<tr>
<td>Examination</td>
</tr>
<tr>
<td>Domestic</td>
</tr>
<tr>
<td>Reciprocal state laws</td>
</tr>
<tr>
<td>Compliance</td>
</tr>
<tr>
<td>Examination</td>
</tr>
<tr>
<td>Risks</td>
</tr>
<tr>
<td>Limit</td>
</tr>
<tr>
<td>Reinsurance</td>
</tr>
<tr>
<td>Office location</td>
</tr>
<tr>
<td>Rates</td>
</tr>
<tr>
<td>Accident and sickness</td>
</tr>
<tr>
<td>Affiliate, subsidiary operating results</td>
</tr>
<tr>
<td>Commissioner to promulgate rules</td>
</tr>
<tr>
<td>Malpractice insurance policies</td>
</tr>
<tr>
<td>Affiliate, subsidiary operating results</td>
</tr>
<tr>
<td>Commissioner to promulgate rules</td>
</tr>
<tr>
<td>Rates and rating organizations</td>
</tr>
<tr>
<td>Affiliate, subsidiary operating results</td>
</tr>
<tr>
<td>Commissioner to promulgate rules</td>
</tr>
<tr>
<td>Insurance holding company systems</td>
</tr>
<tr>
<td>Audit</td>
</tr>
<tr>
<td>Consolidated or combined</td>
</tr>
<tr>
<td>Standards</td>
</tr>
<tr>
<td>Insurers, agents, brokers, solicitors</td>
</tr>
<tr>
<td>Annual statement</td>
</tr>
<tr>
<td>Books, records, etc.</td>
</tr>
<tr>
<td>Examination</td>
</tr>
<tr>
<td>Domestic</td>
</tr>
<tr>
<td>Reciprocal state laws</td>
</tr>
<tr>
<td>Compliance</td>
</tr>
<tr>
<td>Examination</td>
</tr>
<tr>
<td>Investments</td>
</tr>
<tr>
<td>Government investigations</td>
</tr>
<tr>
<td>Limitation</td>
</tr>
<tr>
<td>Real property mortgages</td>
</tr>
<tr>
<td>Risks</td>
</tr>
<tr>
<td>Limit</td>
</tr>
<tr>
<td>Reinsurance</td>
</tr>
<tr>
<td>INDEX</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>INSURANCE—(continued):</td>
</tr>
<tr>
<td>Investments</td>
</tr>
<tr>
<td>Government investigations</td>
</tr>
<tr>
<td>Limitation</td>
</tr>
<tr>
<td>Real property mortgages</td>
</tr>
<tr>
<td>Licensing, fees and taxation</td>
</tr>
<tr>
<td>Capital, surplus requirements</td>
</tr>
<tr>
<td>Life and Health Insurance Guaranty Association Act</td>
</tr>
<tr>
<td>Association</td>
</tr>
<tr>
<td>Powers and duties</td>
</tr>
<tr>
<td>Scope of article</td>
</tr>
<tr>
<td>Malpractice insurance policies</td>
</tr>
<tr>
<td>See “Policies” within this heading</td>
</tr>
<tr>
<td>Policies</td>
</tr>
<tr>
<td>Accident and sickness</td>
</tr>
<tr>
<td>Application</td>
</tr>
<tr>
<td>Requirements</td>
</tr>
<tr>
<td>Group</td>
</tr>
<tr>
<td>Basic</td>
</tr>
<tr>
<td>Disclosures</td>
</tr>
<tr>
<td>Required provisions</td>
</tr>
<tr>
<td>Mandatory</td>
</tr>
<tr>
<td>Exemption</td>
</tr>
<tr>
<td>Minimum</td>
</tr>
<tr>
<td>Optional</td>
</tr>
<tr>
<td>Definitions</td>
</tr>
<tr>
<td>Discrimination prohibited</td>
</tr>
<tr>
<td>Employer</td>
</tr>
<tr>
<td>Certification by</td>
</tr>
<tr>
<td>Findings and purpose</td>
</tr>
<tr>
<td>Rates</td>
</tr>
<tr>
<td>Prohibitions against discrimination</td>
</tr>
<tr>
<td>Rehabilitation services</td>
</tr>
<tr>
<td>Third party reimbursement</td>
</tr>
<tr>
<td>Rules and regulations</td>
</tr>
<tr>
<td>Commissioner to promulgate</td>
</tr>
<tr>
<td>Tax exemption</td>
</tr>
<tr>
<td>Health care providers</td>
</tr>
<tr>
<td>Discrimination prohibited</td>
</tr>
<tr>
<td>Individual</td>
</tr>
<tr>
<td>Basic benefits</td>
</tr>
<tr>
<td>Loss ratio guarantees</td>
</tr>
<tr>
<td>Calculation</td>
</tr>
<tr>
<td>Definitions</td>
</tr>
<tr>
<td>Duties of commissioner</td>
</tr>
<tr>
<td>Establishment by commissioner</td>
</tr>
<tr>
<td>Form</td>
</tr>
<tr>
<td>Minimum rate</td>
</tr>
<tr>
<td>Participation by insurer</td>
</tr>
<tr>
<td>Application</td>
</tr>
<tr>
<td>Premium refunds</td>
</tr>
<tr>
<td>Calculation</td>
</tr>
<tr>
<td>Payment</td>
</tr>
<tr>
<td>Rating practices</td>
</tr>
<tr>
<td>Disclosure</td>
</tr>
<tr>
<td>Rejection</td>
</tr>
<tr>
<td>Hearing</td>
</tr>
<tr>
<td>Requirements</td>
</tr>
<tr>
<td>Rules and regulations</td>
</tr>
<tr>
<td>Promulgation by commissioner</td>
</tr>
</tbody>
</table>
### INSURANCE—(continued):

#### Policies—(continued):

#### Accident and Sickness—(continued):

#### Individual—(continued):

- **Policy design**
  - Minimum benefits, coverage: 93 945
- **Tax exemption**: 93 947
- **Rehabilitation services**
  - Third party reimbursement: 94 970
- **Right to return**: 91 936

#### Small employer

- **Article**
  - Effective date: 93 964
  - Plans subject to: 93 957
  - Provisions
    - Suspension: 93 963
    - Purpose of: 93 954
  - Definitions: 93 954-957

#### Health care benefit plans

- **Continuous coverage**
  - Restrictions: 93 964

#### Employer

- **Discrimination as to payment**
  - Prohibited: 93 965
  - Obligations: 93 965
- **Pre-existing conditions**: 93 964
- **Premium rates**
  - Disclosure: 93 958
  - Increases: 93 959
  - Maximum: 93 959
  - Renewability: 93 961
  - Disclosure: 93 962
  - Exceptions: 93 961

#### Insurer

- **Records**
  - Maintenance: 93 963

#### Marketing

- **Discrimination prohibited**: 93 958
  - Violations, penalties: 93 958

#### Rules and regulations

- **Commissioner to promulgate**: 93 961

#### Malpractice policies

- **Cancellation**
  - Tail insurance offered: 95 983
  - Legislative rules
    - Emergency
      - Promulgation: 95 984
    - Premium payments
      - Amortization: 95 984

#### Physicians or podiatrists

- **Civil actions against**
  - Insurers required to report: 95 981
  - Failure
    - Hearing: 95 982
    - Penalties: 95 982

#### Tail insurance

- **Definitions**: 95 983
  - Legislative rules
    - Emergency
      - Promulgation: 95 984
    - Premium payments
      - Amortization: 95 984
INSURANCE—(continued):
Policies—(continued):
Malpractice policies—(continued):
Tail insurance—(continued):
Scope of article ........................................................................................................... 95 983
When offered ................................................................................................................ 95 983
Motor vehicle
Loaned
Coverage ....................................................................................................................... 92 937
Passengers
Coverage for injury ....................................................................................................... 92 937
Rates
Accident and sickness
Affiliate, subsidiary operating results
Commissioner to promulgate rules ............................................................................... 89 887
Malpractice insurance policies
Affiliate, subsidiary operating results
Commissioner to promulgate rules ............................................................................... 89 887
Rates and rating organizations
Affiliate, subsidiary operating results
Commissioner to promulgate rules ............................................................................... 89 887
Real property
Valuation ........................................................................................................................ 89 880
Rehabilitation and liquidation
Definitions ....................................................................................................................... 89 884-886
Risk Retention Act
Retention group
Financial condition
Examination ................................................................................................................... 89 922

JURIES:
Grand jurors
Compensation and mileage ............................................................................................ 96 985

LABOR:
Minimum wage
Increasing ....................................................................................................................... 97 986
Training wage
Established ...................................................................................................................... 97 986

LEGAL HOLIDAYS:
Native American Indian Heritage Week ......................................................................... 98 987

LEGISLATIVE RULES:
Administration, Department of
Authorization to promulgate
Division of Personnel .................................................................................................... 99 996
Division of Purchasing .................................................................................................... 99 996
Secretary
Modification of rules ....................................................................................................... 99 997,998
Authorization to promulgate
Agriculture, Commissioner ........................................................................................... 99 1075
Air Pollution Control Commission .................................................................................. 99 998
Alcohol Beverage Control Commissioner ....................................................................... 99 1044
Attorney General ........................................................................................................... 99 1079
Barbers and Beauticians ................................................................................................ 99 1084
Cable Television Advisory Board .................................................................................. 99 1085
Culture and History, Division ....................................................................................... 99 1025
Dental Examiners ........................................................................................................... 99 1088
Employment Security, Division ..................................................................................... 99 1039
Energy, Division ............................................................................................................. 99 1002
Fire Commission ........................................................................................................... 99 1040
### LEGISLATIVE RULES—(continued):

Authorization to promulgate—(continued):

- Health Care Cost Review Authority ........................................... 99 1036
- Health, Division........................................................................ 99 1026
- Health, State Board.................................................................... 99 1026
- Highways, Division..................................................................... 99 1089
- Hospital Finance Authority....................................................... 99 1039
- Human Rights Commission....................................................... 99 1040
- Insurance, Commissioner.......................................................... 99 1048
- Land Surveyors, State Board of Examiners................................ 99 1090
- Lottery Commission..................................................................... 99 1050
- Manufactured Housing Construction & Safety........................... 99 1025
- Medicine, Board........................................................................ 99 1090
- Natural Resources, Division....................................................... 99 1099
- Nonintoxicating Beer Commissioner......................................... 99 1069
- Pharmacy, Board........................................................................ 99 1093
- Professional Engineers, State Board of
  Registration................................................................................... 99 1089
- Public Safety, Division................................................................ 99 1043
- Racing Commission...................................................................... 99 1050
- Regional Jail & Correctional Facility Authority......................... 99 1044
- Registered Professional Nurses, Board of Examiners.................. 99 1093
- Secretary of State........................................................................ 99 1094
- Solid Waste Management Board................................................. 99 1024
- Tax Department........................................................................... 99 1055
- Treasurer..................................................................................... 99 1095
- Water Resources Board............................................................. 99 1021

### LIENS:

Mechanics’ lien

- Architect.................................................................................... 100 1098
- Contract
  - What deemed included........................................................... 100 1098
- Contractor.................................................................................. 100 1096
- Engineer..................................................................................... 100 1098
- Landscape architect................................................................. 100 1098
- Mechanic or laborer
  - Working for contractor or subcontractor................................ 100 1097
  - Working for owner.................................................................. 100 1097
- Subcontractor.............................................................................. 100 1097

### MEDICAID UNCOMPENSATED CARE FUND:

Creation.......................................................................................... 101 1100
Disproportionate share hospitals.................................................... 101 1101
Legislative findings........................................................................ 101 1099
Legislative reports......................................................................... 101 1102

### MINES AND MINERALS:

Underground mines
  - Protective equipment, clothing................................................. 102 1103

### MOTOR CARRIERS:

Definitions...................................................................................... 103 1104
Transportation of persons and property
  - Vehicles exempt......................................................................... 103 1106

### MOTOR VEHICLES:

Driver’s Licensing Advisory Board
  - Board members
    - Per diem increase.................................................................... 105 1111
  - Recreated.................................................................................. 105 1110
<table>
<thead>
<tr>
<th><strong>INDEX</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MOTOR VEHICLES—(continued):</strong></td>
<td><strong>Ch.</strong></td>
</tr>
<tr>
<td>DUI conviction</td>
<td></td>
</tr>
<tr>
<td>Appeal</td>
<td></td>
</tr>
<tr>
<td>Failure</td>
<td></td>
</tr>
<tr>
<td>Administrative hearing eliminated</td>
<td>107</td>
</tr>
<tr>
<td>Revocation or suspension</td>
<td>107</td>
</tr>
<tr>
<td>Emergency vehicles</td>
<td></td>
</tr>
<tr>
<td>Authorized</td>
<td>106</td>
</tr>
<tr>
<td>Defined</td>
<td>106</td>
</tr>
<tr>
<td>Permits</td>
<td>106</td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
</tr>
<tr>
<td>Lamps</td>
<td></td>
</tr>
<tr>
<td>Special restrictions</td>
<td>106</td>
</tr>
<tr>
<td>Governmental vehicles</td>
<td></td>
</tr>
<tr>
<td>Registration plates</td>
<td>118</td>
</tr>
<tr>
<td>Inspection sticker</td>
<td></td>
</tr>
<tr>
<td>Operation of vehicle without</td>
<td></td>
</tr>
<tr>
<td>Dealers</td>
<td></td>
</tr>
<tr>
<td>Certain exemption for</td>
<td>109</td>
</tr>
<tr>
<td>Misdemeanor offense</td>
<td>109</td>
</tr>
<tr>
<td>Fine</td>
<td>109</td>
</tr>
<tr>
<td>Licenses</td>
<td></td>
</tr>
<tr>
<td>DUI conviction</td>
<td></td>
</tr>
<tr>
<td>Appeal</td>
<td></td>
</tr>
<tr>
<td>Failure</td>
<td></td>
</tr>
<tr>
<td>Administrative hearing eliminated</td>
<td>107</td>
</tr>
<tr>
<td>Revocation or suspension</td>
<td>107</td>
</tr>
<tr>
<td>Issuance</td>
<td>171</td>
</tr>
<tr>
<td>Fees</td>
<td>171</td>
</tr>
<tr>
<td>Voter Registration-Driver's Licensing Fund</td>
<td></td>
</tr>
<tr>
<td>Payment</td>
<td>171</td>
</tr>
<tr>
<td>New residence</td>
<td></td>
</tr>
<tr>
<td>Registration of vehicles</td>
<td>104</td>
</tr>
<tr>
<td>State Road Fund</td>
<td></td>
</tr>
<tr>
<td>License fees</td>
<td></td>
</tr>
<tr>
<td>Payment of partial</td>
<td>171</td>
</tr>
<tr>
<td>Sun screening devices</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>108</td>
</tr>
<tr>
<td>Specifications</td>
<td>108</td>
</tr>
<tr>
<td>Exception</td>
<td>108</td>
</tr>
<tr>
<td>Violations</td>
<td>108</td>
</tr>
<tr>
<td>Penalty</td>
<td>108</td>
</tr>
<tr>
<td><strong>MUNICIPALITIES:</strong></td>
<td></td>
</tr>
<tr>
<td>County Airport Authorities</td>
<td></td>
</tr>
<tr>
<td>Airport properties</td>
<td></td>
</tr>
<tr>
<td>Conveyance by county commission</td>
<td>113</td>
</tr>
<tr>
<td>Article governing</td>
<td></td>
</tr>
<tr>
<td>Cumulative provisions</td>
<td>113</td>
</tr>
<tr>
<td>Liberal construction</td>
<td>113</td>
</tr>
<tr>
<td>Purpose</td>
<td>113</td>
</tr>
<tr>
<td>Dissolution</td>
<td></td>
</tr>
<tr>
<td>Procedure</td>
<td>113</td>
</tr>
<tr>
<td>Employees</td>
<td></td>
</tr>
<tr>
<td>Full-time, public employees</td>
<td>113</td>
</tr>
<tr>
<td>Funds</td>
<td></td>
</tr>
<tr>
<td>Accounting</td>
<td>113</td>
</tr>
<tr>
<td>Reporting</td>
<td>113</td>
</tr>
<tr>
<td>Surplus</td>
<td>113</td>
</tr>
<tr>
<td>Disposition</td>
<td>113</td>
</tr>
<tr>
<td>Indebtedness</td>
<td></td>
</tr>
<tr>
<td>Authority may incur</td>
<td>113</td>
</tr>
<tr>
<td>Nonliability of county</td>
<td>113</td>
</tr>
</tbody>
</table>
### MUNICIPALITIES—(continued):

County Airport Authorities—(continued):

<table>
<thead>
<tr>
<th>Members</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment</td>
<td>113</td>
<td>1140</td>
</tr>
<tr>
<td>Compensation</td>
<td>113</td>
<td>1141</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>113</td>
<td>1140</td>
</tr>
<tr>
<td>Removal or replacement</td>
<td>113</td>
<td>1141</td>
</tr>
<tr>
<td>Terms</td>
<td>113</td>
<td>1140</td>
</tr>
<tr>
<td>Powers generally</td>
<td>113</td>
<td>1141</td>
</tr>
<tr>
<td>Public agencies</td>
<td>113</td>
<td>1140</td>
</tr>
<tr>
<td>Taxes and fees</td>
<td>113</td>
<td>1145</td>
</tr>
<tr>
<td>Industrial park</td>
<td>113</td>
<td>1146</td>
</tr>
</tbody>
</table>

Paid police and fire departments

- Experience, written competitive exams
  - Promotions based on | 111 | 1125,1126 |

Real or personal property

- Lease as lessor
  - Extending term | 110 | 1123 |

Retirement benefits generally

- Death benefits | 112 | 1132 |
- Disability pensions | 112 | 1130 |
- Legislative findings | 112 | 1127 |

Pension and relief funds

- Actuarial soundness
  - Minimum standards | 112 | 1128 |

Pension benefits

- Benefit payable | 112 | 1136 |
- Supplemental entitlement | 112 | 1135 |
- Calculation | 112 | 1135-1138 |

### NATURAL DEATH ACT:

Definitions | 85 | 850 |

Living will

- Declarant
  - Competency and intent | 85 | 856 |
- Transfer to other physician | 85 | 857 |
- Executing | 85 | 852 |
- Insurance
  - No legal impairment | 85 | 857 |

Life support

- Withholding
  - Assisting suicide
    - Expressly not to constitute | 85 | 857 |
    - Immunity from liability | 85 | 856 |
    - No legal impairment | 85 | 857 |
- Nonexisting
  - No legal presumption | 85 | 857 |
- Previously executed | 85 | 858 |
- Reciprocity | 85 | 858 |
- Revocation | 85 | 855 |
- Sample form | 85 | 853 |

Terminal condition

- Confirmation, documentation
  - Physician's duty | 85 | 855 |

Medical necessity

- Common law doctrine | 85 | 858 |
- Not abrogated | 85 | 858 |

Severability of article | 85 | 858 |
<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NATURAL RESOURCES:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fishing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Developmentally disabled residents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>115</td>
<td>1152</td>
</tr>
<tr>
<td>License, permit not required</td>
<td>115</td>
<td>1149</td>
</tr>
<tr>
<td>Groundwater Protection Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal and review procedures</td>
<td>117</td>
<td>1176</td>
</tr>
<tr>
<td>Article enacting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conflicting provisions</td>
<td>117</td>
<td>1178</td>
</tr>
<tr>
<td>Effective dates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal approval</td>
<td>117</td>
<td>1178</td>
</tr>
<tr>
<td>Purposes</td>
<td>117</td>
<td>1158</td>
</tr>
<tr>
<td>Severability</td>
<td>117</td>
<td>1178</td>
</tr>
<tr>
<td>Compliance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect</td>
<td>117</td>
<td>1177</td>
</tr>
<tr>
<td>Definitions</td>
<td>117</td>
<td>1159</td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds</td>
<td>117</td>
<td>1172, 1173</td>
</tr>
<tr>
<td>Schedule</td>
<td>117</td>
<td>1171</td>
</tr>
<tr>
<td>Groundwater</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agencies of government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Express authority</td>
<td>117</td>
<td>1163</td>
</tr>
<tr>
<td>Certification program</td>
<td>117</td>
<td>1170</td>
</tr>
<tr>
<td>Purity and quality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural Resources, Division</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead agency designation</td>
<td>117</td>
<td>1167</td>
</tr>
<tr>
<td>Additional powers, duties</td>
<td>117</td>
<td>1167</td>
</tr>
<tr>
<td>Regulatory agency</td>
<td>117</td>
<td>1163</td>
</tr>
<tr>
<td>Standards</td>
<td>117</td>
<td>1161</td>
</tr>
<tr>
<td>Additional and cumulative rights</td>
<td>117</td>
<td>1177</td>
</tr>
<tr>
<td>Groundwater Coordinating Committee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creation</td>
<td>117</td>
<td>1169</td>
</tr>
<tr>
<td>Groundwater Protection Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created and established</td>
<td>117</td>
<td>1172</td>
</tr>
<tr>
<td>Expenditures</td>
<td>117</td>
<td>1172</td>
</tr>
<tr>
<td>Groundwater Remediation Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created and established</td>
<td>117</td>
<td>1173</td>
</tr>
<tr>
<td>Expenditures</td>
<td>117</td>
<td>1173</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>117</td>
<td>1157</td>
</tr>
<tr>
<td>Natural Resources, Division</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead agency designation</td>
<td>117</td>
<td>1167</td>
</tr>
<tr>
<td>Additional powers, duties</td>
<td>117</td>
<td>1167</td>
</tr>
<tr>
<td>Unassigned facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulatory agency</td>
<td>117</td>
<td>1163</td>
</tr>
<tr>
<td>Public policy</td>
<td>117</td>
<td>1158</td>
</tr>
<tr>
<td>Rights and remedies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Existing, preserved</td>
<td>117</td>
<td>1177</td>
</tr>
<tr>
<td>Rule making</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Petition</td>
<td>117</td>
<td>1177</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cease and desist order</td>
<td>117</td>
<td>1176</td>
</tr>
<tr>
<td>Reconsideration</td>
<td>117</td>
<td>1176</td>
</tr>
<tr>
<td>Civil penalties</td>
<td>117</td>
<td>1173</td>
</tr>
<tr>
<td>Administrative</td>
<td>117</td>
<td>1174</td>
</tr>
<tr>
<td>Use of proceeds</td>
<td>117</td>
<td>1174</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>117</td>
<td>1175</td>
</tr>
<tr>
<td>Injunctions</td>
<td>117</td>
<td>1175</td>
</tr>
<tr>
<td>Water Resources Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority</td>
<td>117</td>
<td>1161</td>
</tr>
<tr>
<td>Groundwater standards</td>
<td>117</td>
<td>1161</td>
</tr>
</tbody>
</table>
## NATURAL RESOURCES—(continued):

Groundwater Protection Act—(continued):

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water standards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural Resources, Division</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead agency designation</td>
<td>117</td>
<td>1167</td>
</tr>
<tr>
<td>Additional powers, duties</td>
<td>117</td>
<td>1167</td>
</tr>
<tr>
<td>Regulatory agencies</td>
<td>117</td>
<td>1163</td>
</tr>
<tr>
<td>Underground petroleum storage tanks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corrective action</td>
<td>116</td>
<td>1153</td>
</tr>
<tr>
<td>“Owner” defined</td>
<td>116</td>
<td>1155</td>
</tr>
</tbody>
</table>

Wildlife

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Migratory wild birds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Possession</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exceptions</td>
<td>114</td>
<td>1149</td>
</tr>
<tr>
<td>Possession during open season</td>
<td>114</td>
<td>1148</td>
</tr>
<tr>
<td>Permit for additional period</td>
<td>114</td>
<td>1148</td>
</tr>
</tbody>
</table>

### NONINTOXICATING BEER:

Alcohol Beverage Control Commissioner

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrators, employees, agents</td>
<td>118</td>
<td>1183</td>
</tr>
<tr>
<td>Audit</td>
<td>118</td>
<td>1198</td>
</tr>
<tr>
<td>Oath and bond</td>
<td>118</td>
<td>1197</td>
</tr>
<tr>
<td>Responsibility</td>
<td>118</td>
<td>1183</td>
</tr>
<tr>
<td>Salary increase</td>
<td>118</td>
<td>1198</td>
</tr>
<tr>
<td>Sale of liquor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revocation</td>
<td>118</td>
<td>1199</td>
</tr>
<tr>
<td>Wholesale prices</td>
<td>118</td>
<td>1198</td>
</tr>
<tr>
<td>Barrel tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection</td>
<td>118</td>
<td>1186</td>
</tr>
<tr>
<td>Levy and imposition</td>
<td>118 1185 1215</td>
<td></td>
</tr>
<tr>
<td>Payment</td>
<td>118</td>
<td>1185</td>
</tr>
<tr>
<td>Reporting</td>
<td>118</td>
<td>1185</td>
</tr>
<tr>
<td>Brewpubs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Records</td>
<td>118 1189 1186 1217</td>
<td></td>
</tr>
<tr>
<td>Sale of beer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limitation to premises</td>
<td>119</td>
<td>1212</td>
</tr>
<tr>
<td>Brewers, manufacturers, distributors, dealers, brewpubs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brewpubs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale of beer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limitation to premises</td>
<td>119</td>
<td>1212</td>
</tr>
<tr>
<td>Distributors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When brewers may act as</td>
<td>119</td>
<td>1211</td>
</tr>
<tr>
<td>Franchise agreements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements</td>
<td>119</td>
<td>1224</td>
</tr>
<tr>
<td>Transfer</td>
<td>119</td>
<td>1226</td>
</tr>
<tr>
<td>Disputes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arbitration</td>
<td>119</td>
<td>1227</td>
</tr>
<tr>
<td>Notice</td>
<td>119</td>
<td>1226</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>119</td>
<td>1228</td>
</tr>
<tr>
<td>Labeling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Container proscriptions</td>
<td>119</td>
<td>1219</td>
</tr>
<tr>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bond</td>
<td>119</td>
<td>1214</td>
</tr>
<tr>
<td>Fee</td>
<td>119</td>
<td>1214</td>
</tr>
<tr>
<td>Brewpubs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bond</td>
<td>119</td>
<td>1214</td>
</tr>
<tr>
<td>Fee</td>
<td>119</td>
<td>1214</td>
</tr>
<tr>
<td>Class A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bond</td>
<td>119</td>
<td>1212</td>
</tr>
<tr>
<td>Bond</td>
<td>119</td>
<td>1215</td>
</tr>
</tbody>
</table>
# Index

<table>
<thead>
<tr>
<th>NONINTOXICATING BEER—(continued):</th>
<th>1745</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brewers, manufacturers, distributors, dealers, brewpubs—(continued):</td>
<td></td>
</tr>
<tr>
<td>License—(continued):</td>
<td></td>
</tr>
<tr>
<td>Class A—(continued):</td>
<td></td>
</tr>
<tr>
<td>Fee</td>
<td>119</td>
</tr>
<tr>
<td>Revocation</td>
<td>119</td>
</tr>
<tr>
<td>Prosecuting attorney Duty</td>
<td>119</td>
</tr>
<tr>
<td>Class B</td>
<td>119</td>
</tr>
<tr>
<td>Fee</td>
<td>119</td>
</tr>
<tr>
<td>Class B Distributors Bond</td>
<td>119</td>
</tr>
<tr>
<td>Fee</td>
<td>119</td>
</tr>
<tr>
<td>Fees generally</td>
<td>119</td>
</tr>
<tr>
<td>Tax:</td>
<td></td>
</tr>
<tr>
<td>Amount</td>
<td>119</td>
</tr>
<tr>
<td>Municipal</td>
<td>119</td>
</tr>
<tr>
<td>Records</td>
<td></td>
</tr>
<tr>
<td>Unpaid tax Collection</td>
<td>118,119</td>
</tr>
<tr>
<td>Penalty</td>
<td>118</td>
</tr>
<tr>
<td>Violations License</td>
<td></td>
</tr>
<tr>
<td>Revocation or suspension</td>
<td>118</td>
</tr>
<tr>
<td>Hearing</td>
<td>118</td>
</tr>
<tr>
<td>Notice</td>
<td>118</td>
</tr>
<tr>
<td>Judicial review</td>
<td>118</td>
</tr>
<tr>
<td>Monetary penalty</td>
<td>118</td>
</tr>
<tr>
<td>Nonintoxicating Beer Enforcement Fund Established</td>
<td>118</td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
</tr>
<tr>
<td>License</td>
<td></td>
</tr>
<tr>
<td>One capacity only</td>
<td>119</td>
</tr>
<tr>
<td>Licensee</td>
<td></td>
</tr>
<tr>
<td>Unlawful acts</td>
<td>119</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>119</td>
</tr>
<tr>
<td>Nonintoxicating Beer Enforcement Fund Established</td>
<td>118</td>
</tr>
<tr>
<td>Tax Procedures and Administration Act</td>
<td></td>
</tr>
<tr>
<td>Beer barrel tax included</td>
<td>118</td>
</tr>
<tr>
<td>Wine liter tax included</td>
<td>118</td>
</tr>
<tr>
<td>PESTICIDES:</td>
<td></td>
</tr>
<tr>
<td>Interagency Committee on Pesticides Repeal of article</td>
<td>120</td>
</tr>
<tr>
<td>POET LAUREATE:</td>
<td></td>
</tr>
<tr>
<td>Salary</td>
<td>121</td>
</tr>
<tr>
<td>PROBATION AND PAROLE:</td>
<td></td>
</tr>
<tr>
<td>Parole hearing or release date</td>
<td></td>
</tr>
<tr>
<td>Victim or member of immediate family Notification</td>
<td>122</td>
</tr>
<tr>
<td>PROFESSIONS AND OCCUPATIONS:</td>
<td></td>
</tr>
<tr>
<td>Auctioneers Advertising</td>
<td>123</td>
</tr>
<tr>
<td>Apprentice</td>
<td></td>
</tr>
<tr>
<td>Duties</td>
<td>123</td>
</tr>
<tr>
<td>Examination</td>
<td>123</td>
</tr>
<tr>
<td>Fee</td>
<td>123</td>
</tr>
</tbody>
</table>
### PROFESSIONS AND OCCUPATIONS—(continued):

**Auctioneers—(continued):**

<table>
<thead>
<tr>
<th>Complaints</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation</td>
<td>123</td>
<td>1240</td>
</tr>
<tr>
<td>Board of Review</td>
<td>123</td>
<td>1240</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contracts</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written required</td>
<td>123</td>
<td>1244</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Definitions</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>License</td>
<td>123</td>
<td>1233</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Applicants</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Examination</td>
<td>123</td>
<td>1236</td>
</tr>
<tr>
<td>Fee</td>
<td>123</td>
<td>1237</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Apprentice</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Examination</td>
<td>123</td>
<td>1238</td>
</tr>
<tr>
<td>Fee</td>
<td>123</td>
<td>1237</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nonresident</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedure for obtaining</td>
<td>123</td>
<td>1241</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bond</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensee</td>
<td>123</td>
<td>1234</td>
</tr>
<tr>
<td>Duties</td>
<td>123</td>
<td>1236</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nonresident</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedure for obtaining</td>
<td>123</td>
<td>1241</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Barbers and Beauticians</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>License of registration</td>
<td>132</td>
<td>1310</td>
</tr>
<tr>
<td>Cancellation, refusal to issue or renew</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grounds</td>
<td>132</td>
<td>1310</td>
</tr>
<tr>
<td>Booth or chair rental</td>
<td>132</td>
<td>1310</td>
</tr>
<tr>
<td>Notice to Board</td>
<td>132</td>
<td>1310</td>
</tr>
<tr>
<td>Registration fee</td>
<td>132</td>
<td>1310</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contractor Licensing Act</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor Licensing Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative duties</td>
<td>124</td>
<td>1252</td>
</tr>
<tr>
<td>Appointment</td>
<td>124</td>
<td>1250</td>
</tr>
<tr>
<td>Created</td>
<td>124</td>
<td>1250</td>
</tr>
<tr>
<td>Disciplinary powers</td>
<td>124</td>
<td>1257</td>
</tr>
<tr>
<td>Members</td>
<td>124</td>
<td>1250</td>
</tr>
<tr>
<td>Qualifications</td>
<td>124</td>
<td>1251</td>
</tr>
<tr>
<td>Term</td>
<td>124</td>
<td>1250</td>
</tr>
<tr>
<td>Quorum</td>
<td>124</td>
<td>1251</td>
</tr>
<tr>
<td>Record keeping</td>
<td>124</td>
<td>1261</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>124</td>
<td>1261</td>
</tr>
<tr>
<td>Termination</td>
<td>124</td>
<td>1264</td>
</tr>
<tr>
<td>Vacancies</td>
<td>124</td>
<td>1251</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contractors</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article governing</td>
<td>124</td>
<td>1247</td>
</tr>
<tr>
<td>Violations</td>
<td>124</td>
<td>1256</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>124</td>
<td>1256</td>
</tr>
<tr>
<td>Injunction</td>
<td>124</td>
<td>1256</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bid</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invitation</td>
<td>124</td>
<td>1256</td>
</tr>
<tr>
<td>Notice included</td>
<td>124</td>
<td>1256</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Building permits</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prerequisites to obtaining</td>
<td>124</td>
<td>1255</td>
</tr>
</tbody>
</table>
## PROFESSIONS AND OCCUPATIONS—(continued):

### Contractor Licensing Act—(continued):

#### Contractor Licensing Board—(continued):

<table>
<thead>
<tr>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>124</td>
<td>1254</td>
</tr>
<tr>
<td>Exemptions</td>
<td>124</td>
<td>1253</td>
</tr>
<tr>
<td>Fee</td>
<td>124</td>
<td>1254</td>
</tr>
<tr>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expiration</td>
<td>124</td>
<td>1255</td>
</tr>
<tr>
<td>Renewal</td>
<td>124</td>
<td>1256</td>
</tr>
<tr>
<td>Revocation</td>
<td>124</td>
<td>1255</td>
</tr>
<tr>
<td>Unlawful use</td>
<td>124</td>
<td>1253</td>
</tr>
<tr>
<td>Necessity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>124</td>
<td>1247</td>
</tr>
</tbody>
</table>

#### Labor, Division of

<table>
<thead>
<tr>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative duties</td>
<td>124</td>
<td>1260</td>
</tr>
<tr>
<td>Policy declared</td>
<td>124</td>
<td>1247</td>
</tr>
<tr>
<td>Reciprocity</td>
<td>124</td>
<td>1284</td>
</tr>
</tbody>
</table>

#### Medicine, surgery or podiatry

<table>
<thead>
<tr>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>License to practice</td>
<td>125</td>
<td>1265</td>
</tr>
<tr>
<td>Biennial renewal</td>
<td>126</td>
<td>1268</td>
</tr>
<tr>
<td>Continuing education</td>
<td>126</td>
<td>1269</td>
</tr>
<tr>
<td>Examination</td>
<td>125</td>
<td>1267</td>
</tr>
<tr>
<td>Inactive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renewal</td>
<td>126</td>
<td>1270</td>
</tr>
<tr>
<td>Renewal</td>
<td>126</td>
<td>1269</td>
</tr>
<tr>
<td>Continuing education</td>
<td>126</td>
<td>1269</td>
</tr>
<tr>
<td>Fee</td>
<td>126</td>
<td>1269</td>
</tr>
<tr>
<td>Requirements</td>
<td>125</td>
<td>1267</td>
</tr>
</tbody>
</table>

#### Osteopathic physician assistants

<table>
<thead>
<tr>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Osteopathy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certification by</td>
<td>130</td>
<td>1289</td>
</tr>
<tr>
<td>Disciplinary procedures</td>
<td>130</td>
<td>1291</td>
</tr>
<tr>
<td>Job descriptions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval</td>
<td>130</td>
<td>1290</td>
</tr>
<tr>
<td>Rules</td>
<td>130</td>
<td>1289</td>
</tr>
<tr>
<td>Definitions</td>
<td>130</td>
<td>1288</td>
</tr>
<tr>
<td>Disciplinary procedures</td>
<td>130</td>
<td>1291</td>
</tr>
<tr>
<td>Drugs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prescription of</td>
<td>130</td>
<td>1293</td>
</tr>
<tr>
<td>Application</td>
<td>130</td>
<td>1294</td>
</tr>
<tr>
<td>Independent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expressly prohibited</td>
<td>130</td>
<td>1294</td>
</tr>
<tr>
<td>Limitation</td>
<td>130</td>
<td>1293</td>
</tr>
</tbody>
</table>

#### Employment

<table>
<thead>
<tr>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation and duties</td>
<td>130</td>
<td>1292</td>
</tr>
<tr>
<td>Identification</td>
<td>130</td>
<td>1291</td>
</tr>
<tr>
<td>Legal responsibility</td>
<td>130</td>
<td>1290</td>
</tr>
<tr>
<td>Representation as physician</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unlawful</td>
<td>130</td>
<td>1233</td>
</tr>
<tr>
<td>Felony penalty</td>
<td>130</td>
<td>1293</td>
</tr>
</tbody>
</table>

#### Supervising Osteopaths

<table>
<thead>
<tr>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Job descriptions furnished by</td>
<td>130</td>
<td>1290</td>
</tr>
<tr>
<td>Legal responsibility</td>
<td>130</td>
<td>1290</td>
</tr>
<tr>
<td>Title</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unlawful use of</td>
<td>130</td>
<td>1293</td>
</tr>
</tbody>
</table>

#### Pharmacists

<table>
<thead>
<tr>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Out of state</td>
<td>128</td>
<td>1280</td>
</tr>
<tr>
<td>Registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renewal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual</td>
<td>128</td>
<td>1281</td>
</tr>
<tr>
<td>Fees</td>
<td>128</td>
<td>1280</td>
</tr>
</tbody>
</table>
## PROFESSIONS AND OCCUPATIONS—(continued):

<table>
<thead>
<tr>
<th>Pharmacy, Board of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drugs, medicines, etc</td>
</tr>
<tr>
<td>Controlled substances</td>
</tr>
<tr>
<td>Permit to handle</td>
</tr>
<tr>
<td>Fee</td>
</tr>
<tr>
<td>Legend drugs</td>
</tr>
<tr>
<td>Permit for manufacture</td>
</tr>
<tr>
<td>Application</td>
</tr>
<tr>
<td>Fee</td>
</tr>
<tr>
<td>Violation of provisions</td>
</tr>
<tr>
<td>Penalties</td>
</tr>
<tr>
<td>Members</td>
</tr>
<tr>
<td>Appointment</td>
</tr>
<tr>
<td>Qualifications</td>
</tr>
<tr>
<td>Terms</td>
</tr>
<tr>
<td>Pharmacies or drug stores</td>
</tr>
<tr>
<td>Conduct of business</td>
</tr>
<tr>
<td>Permit</td>
</tr>
<tr>
<td>Fees</td>
</tr>
<tr>
<td>Use of</td>
</tr>
<tr>
<td>Pharmacist</td>
</tr>
<tr>
<td>Pharmacist-in-charge</td>
</tr>
<tr>
<td>Mail order houses</td>
</tr>
<tr>
<td>Permits</td>
</tr>
<tr>
<td>Registration</td>
</tr>
<tr>
<td>Wholesale distributor</td>
</tr>
<tr>
<td>Exemption</td>
</tr>
<tr>
<td>Registration</td>
</tr>
<tr>
<td>Pharmacists</td>
</tr>
<tr>
<td>Out of state</td>
</tr>
<tr>
<td>Registration</td>
</tr>
<tr>
<td>Renewal</td>
</tr>
<tr>
<td>Annual</td>
</tr>
<tr>
<td>Fees</td>
</tr>
<tr>
<td>Powers and duties</td>
</tr>
<tr>
<td>Physician assistants</td>
</tr>
<tr>
<td>Certification</td>
</tr>
<tr>
<td>Renewal</td>
</tr>
<tr>
<td>Fee</td>
</tr>
<tr>
<td>Temporary</td>
</tr>
<tr>
<td>Continuing education</td>
</tr>
<tr>
<td>Definitions</td>
</tr>
<tr>
<td>Drug therapy</td>
</tr>
<tr>
<td>Continuing education</td>
</tr>
<tr>
<td>Duties</td>
</tr>
<tr>
<td>Limitations</td>
</tr>
<tr>
<td>Prescription drugs</td>
</tr>
<tr>
<td>Dispensing</td>
</tr>
<tr>
<td>Limitations</td>
</tr>
<tr>
<td>Refraction excluded</td>
</tr>
<tr>
<td>Psychologists and school psychologists</td>
</tr>
<tr>
<td>Board of examiners</td>
</tr>
<tr>
<td>Compensation</td>
</tr>
<tr>
<td>Funds</td>
</tr>
<tr>
<td>Members</td>
</tr>
<tr>
<td>Term</td>
</tr>
<tr>
<td>Officers</td>
</tr>
<tr>
<td>Powers and duties</td>
</tr>
<tr>
<td>Definitions</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>127</td>
<td>1273</td>
</tr>
<tr>
<td>127</td>
<td>1277</td>
</tr>
<tr>
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</tr>
<tr>
<td>127</td>
<td>1274</td>
</tr>
<tr>
<td>127</td>
<td>1276</td>
</tr>
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<td>127</td>
<td>1271</td>
</tr>
<tr>
<td>127</td>
<td>1276</td>
</tr>
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<td>1275</td>
</tr>
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<td>1276</td>
</tr>
<tr>
<td>127</td>
<td>1276</td>
</tr>
<tr>
<td>127</td>
<td>1275, 1276</td>
</tr>
<tr>
<td>127</td>
<td>1273</td>
</tr>
<tr>
<td>131</td>
<td>1302</td>
</tr>
<tr>
<td>131</td>
<td>1303</td>
</tr>
<tr>
<td>131</td>
<td>1303</td>
</tr>
<tr>
<td>131</td>
<td>1302</td>
</tr>
<tr>
<td>131</td>
<td>1302</td>
</tr>
<tr>
<td>131</td>
<td>1303</td>
</tr>
<tr>
<td>131</td>
<td>1295</td>
</tr>
</tbody>
</table>
# INDEX

PROFESSIONS AND OCCUPATIONS—(continued):

Psychologists and school psychologists—(continued):

<table>
<thead>
<tr>
<th>License</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application</td>
<td>131</td>
<td>1301</td>
</tr>
<tr>
<td>Eligibility requirements</td>
<td>131</td>
<td>1305, 1307</td>
</tr>
</tbody>
</table>

Psychology

<table>
<thead>
<tr>
<th>Firms practicing License required</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>131</td>
<td>1301</td>
</tr>
</tbody>
</table>

School psychologists

Doctoral applicants

<table>
<thead>
<tr>
<th>Eligibility</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>131</td>
<td>1308</td>
</tr>
</tbody>
</table>

Independent practitioner

<table>
<thead>
<tr>
<th>Eligibility</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>131</td>
<td>1307</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>License</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>131</td>
<td>1309</td>
</tr>
</tbody>
</table>

Display

<table>
<thead>
<tr>
<th>Renewal</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>131</td>
<td>1309</td>
</tr>
</tbody>
</table>

Fee

<table>
<thead>
<tr>
<th>Resident</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility</td>
<td>131</td>
<td>1306</td>
</tr>
</tbody>
</table>

PUBLIC DEFENDER:

Private practice of law

<table>
<thead>
<tr>
<th>Prohibition</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>133</td>
<td>1311</td>
</tr>
</tbody>
</table>

PUBLIC EMPLOYEES INSURANCE:

<table>
<thead>
<tr>
<th>Article governing</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>134</td>
<td>1320</td>
</tr>
</tbody>
</table>

Finance Board

<table>
<thead>
<tr>
<th>Rules and regulations</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial plan</td>
<td>134</td>
<td>1315</td>
</tr>
<tr>
<td>Annual</td>
<td>134</td>
<td>1319</td>
</tr>
<tr>
<td>Fiscal year 1992</td>
<td>134</td>
<td>1317</td>
</tr>
<tr>
<td>Initial</td>
<td>134</td>
<td>1315</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers and duties</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retired employees</td>
<td>134</td>
<td>1314</td>
</tr>
</tbody>
</table>

Deceased

<table>
<thead>
<tr>
<th>Dependents</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility</td>
<td>134</td>
<td>1321</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Eligibility of certain</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>State health care</td>
<td>134</td>
<td>1320, 1321</td>
</tr>
</tbody>
</table>

Balance billing

<table>
<thead>
<tr>
<th>Express prohibition</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exception</td>
<td>134</td>
<td>1325</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Departments and divisions</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooperation</td>
<td>134</td>
<td>1322</td>
</tr>
<tr>
<td>Plan</td>
<td>134</td>
<td>1322</td>
</tr>
<tr>
<td>Contents</td>
<td>134</td>
<td>1323</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purchase of</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Late payments</td>
<td>134</td>
<td>1324</td>
</tr>
</tbody>
</table>

PUBLIC MONEYS AND SECURITIES:

Debt Management Act of 1991

<table>
<thead>
<tr>
<th>Debt information reporting</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Management, Division</td>
<td>135</td>
<td>1329</td>
</tr>
</tbody>
</table>

Created

<table>
<thead>
<tr>
<th>Director</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>135</td>
<td>1327</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers and duties</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promulgation of rules</td>
<td>135</td>
<td>1328</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Definitions</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>135</td>
<td>1330</td>
</tr>
</tbody>
</table>

Uniform Securities Act

<table>
<thead>
<tr>
<th>Exemptions</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>NASDAQ/NMS</td>
<td>136</td>
<td>1330</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>136</td>
<td>1332</td>
</tr>
</tbody>
</table>
### PUBLIC PORT/WAYPORT AUTHORITY:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive director</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>137</td>
<td>1340</td>
</tr>
<tr>
<td>Compensation</td>
<td>137</td>
<td>1340</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>137</td>
<td>1338</td>
</tr>
<tr>
<td>Members</td>
<td>137</td>
<td>1338</td>
</tr>
<tr>
<td>Compensation</td>
<td>137</td>
<td>1339</td>
</tr>
<tr>
<td>Reimbursement in lieu of</td>
<td>137</td>
<td>1339</td>
</tr>
<tr>
<td>Qualifications</td>
<td>137</td>
<td>1338</td>
</tr>
<tr>
<td>Term</td>
<td>137</td>
<td>1339</td>
</tr>
<tr>
<td>Officers</td>
<td>137</td>
<td>1338</td>
</tr>
<tr>
<td>Definitions</td>
<td>137</td>
<td>1340</td>
</tr>
<tr>
<td>Expenses</td>
<td>137</td>
<td>1353</td>
</tr>
<tr>
<td>Preliminary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port revenue bonds</td>
<td>137</td>
<td>1347</td>
</tr>
<tr>
<td>Generally</td>
<td>137</td>
<td>1349</td>
</tr>
<tr>
<td>Trust agreements</td>
<td>137</td>
<td>1341</td>
</tr>
<tr>
<td>Powers and duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public port projects</td>
<td>137</td>
<td>1350</td>
</tr>
<tr>
<td>Tolls, rents, fees, charges, revenues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refunding bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorized</td>
<td>137</td>
<td>1354</td>
</tr>
<tr>
<td>Generally</td>
<td>137</td>
<td>1354</td>
</tr>
<tr>
<td>Remedies</td>
<td>137</td>
<td>1352</td>
</tr>
<tr>
<td>Reorganizing and combining</td>
<td>137</td>
<td>1338</td>
</tr>
<tr>
<td>Special operations fund</td>
<td>137</td>
<td>1346</td>
</tr>
<tr>
<td>Tax exemption</td>
<td>137</td>
<td>1352</td>
</tr>
<tr>
<td>Trust funds</td>
<td>137</td>
<td>1351</td>
</tr>
</tbody>
</table>

### PUBLIC SAFETY:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disappearance, missing</td>
<td>137</td>
<td>1358</td>
</tr>
<tr>
<td>Network to implement reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vital statistics</td>
<td>138</td>
<td>1358</td>
</tr>
<tr>
<td>Mechanism for reporting</td>
<td>138</td>
<td>1358</td>
</tr>
<tr>
<td>Notation on birth records</td>
<td>138</td>
<td>1359</td>
</tr>
<tr>
<td>Public schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Birth certificate required</td>
<td>138</td>
<td>1359</td>
</tr>
<tr>
<td>Failure to produce</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law-enforcement agency</td>
<td>138</td>
<td>1360</td>
</tr>
<tr>
<td>Notification</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Superintendent</td>
<td>118</td>
<td>1191</td>
</tr>
<tr>
<td>Powers</td>
<td>118,138</td>
<td>1192,1355</td>
</tr>
<tr>
<td>Salary increase</td>
<td>118</td>
<td>1191</td>
</tr>
<tr>
<td>Turnpike</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patroll</td>
<td>118</td>
<td>1194</td>
</tr>
<tr>
<td>Vital statistics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children</td>
<td>138</td>
<td>1358</td>
</tr>
<tr>
<td>Disappearance, missing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mechanism for reporting</td>
<td>138</td>
<td>1358</td>
</tr>
<tr>
<td>Network to implement reports</td>
<td>138</td>
<td>1358</td>
</tr>
<tr>
<td>Notation on birth records</td>
<td>138</td>
<td>1359</td>
</tr>
</tbody>
</table>

### PUBLIC SERVICE COMMISSION:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publication of information</td>
<td>139</td>
<td>1361</td>
</tr>
<tr>
<td>INDEX</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
<td>--------</td>
</tr>
<tr>
<td><strong>RADIOACTIVE WASTE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storage and disposal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>140</td>
<td>1362</td>
</tr>
<tr>
<td>Prohibitions</td>
<td>140</td>
<td>1363</td>
</tr>
<tr>
<td><strong>RAILROAD MAINTENANCE AUTHORITY:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Membership</td>
<td>142</td>
<td>1366</td>
</tr>
<tr>
<td>North Bend Rail Trail</td>
<td>141</td>
<td>1366</td>
</tr>
<tr>
<td><strong>REAL ESTATE BROKERS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions for</td>
<td>143</td>
<td>1368</td>
</tr>
<tr>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revocation</td>
<td>143</td>
<td>1369</td>
</tr>
<tr>
<td><strong>REAL PROPERTY:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate Appraiser Licensing and Certification Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>144</td>
<td>1371</td>
</tr>
<tr>
<td>Real estate appraisers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examination</td>
<td>144</td>
<td>1378</td>
</tr>
<tr>
<td>License and certification</td>
<td>144</td>
<td>1372</td>
</tr>
<tr>
<td>Classification</td>
<td>144</td>
<td>1376</td>
</tr>
<tr>
<td>Exception</td>
<td>144</td>
<td>1378</td>
</tr>
<tr>
<td>Fees</td>
<td>144</td>
<td>1376</td>
</tr>
<tr>
<td>Nonresidents</td>
<td>144</td>
<td>1379</td>
</tr>
<tr>
<td>Term</td>
<td>144</td>
<td>1377</td>
</tr>
<tr>
<td>Qualifications</td>
<td>144</td>
<td>1378</td>
</tr>
<tr>
<td>Real Estate Appraiser Licensing and Certification Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General powers and duties</td>
<td>144</td>
<td>1374</td>
</tr>
<tr>
<td><strong>RESOLUTIONS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CONCURRENT:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HCR 12, Requesting the Joint Committee on Government and Finance to</td>
<td></td>
<td>1669</td>
</tr>
<tr>
<td>continue the study of area health education centers (AHEC)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HCR 27, Study by Joint Committee on Government and Finance of</td>
<td></td>
<td>1670</td>
</tr>
<tr>
<td>accessibility to the State Capitol by the physically disabled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HCR 28, Raising a Joint Assembly to hear an address by the</td>
<td></td>
<td>1671</td>
</tr>
<tr>
<td>Honorable Robert C. Byrd, Senator of the Congress of the United</td>
<td></td>
<td></td>
</tr>
<tr>
<td>States</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HCR 32, Urging the U. S. Congress to enact a national health plan</td>
<td></td>
<td>1671</td>
</tr>
<tr>
<td>providing access to health care for all Americans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCR 13, Commending Honorable Robert C. Byrd for lifetime of service</td>
<td></td>
<td>1673</td>
</tr>
<tr>
<td>to state</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCR 19, Urging resolution of labor-management crisis at Ravenswood</td>
<td></td>
<td>1674</td>
</tr>
<tr>
<td>Aluminum Corporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>JOINT:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SJR 4, Proposing an amendment to the Constitution of the State,</td>
<td></td>
<td>1679</td>
</tr>
<tr>
<td>designated the Local Government Levy and Bond Issue Amendment</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>HOUSE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HR 9, Creating a Select Committee on Redistricting</td>
<td></td>
<td>1675</td>
</tr>
<tr>
<td>HR 18, Urging the President to support civil right initiatives to</td>
<td></td>
<td>1675</td>
</tr>
<tr>
<td>help minorities and women in this country reach their full potential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HR 21, Recognizing and commending the three medical schools for</td>
<td></td>
<td>1676</td>
</tr>
<tr>
<td>collaborative efforts in the development of foundation support for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>rural primary care centers</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SENATE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SR 8, Requesting that the United States government release</td>
<td></td>
<td>1677</td>
</tr>
<tr>
<td>information regarding WV POWs and MIAs still unaccounted for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SR 13, Commemorating death of Rueben G. Kirk III, the first West</td>
<td></td>
<td>1678</td>
</tr>
<tr>
<td>Virginian to die in Operation Desert Shield</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>SALVAGE YARDS: Definitions</td>
<td>145</td>
<td>1381</td>
</tr>
<tr>
<td>SHERIFFS: Fees charged by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See FEES AND ALLOWANCES.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUNSET: Corrections, Division of</td>
<td>153</td>
<td>1395</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Law Masters System</td>
<td>158</td>
<td>1399</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Geological and Economic Survey</td>
<td>154</td>
<td>1395</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governmental entities or programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Termination</td>
<td>146</td>
<td>1382</td>
</tr>
<tr>
<td>Labor-Management Council</td>
<td>148</td>
<td>1386</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lottery Commission</td>
<td>157</td>
<td>1399</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oil and Gas Conservation Commission</td>
<td>152</td>
<td>1391</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personnel, Division of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Termination</td>
<td>155</td>
<td>1396</td>
</tr>
<tr>
<td>Rural Resources Division</td>
<td>150</td>
<td>1387</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Soil Conservation Committee</td>
<td>151</td>
<td>1388</td>
</tr>
<tr>
<td>Continuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tourism and Parks, Division</td>
<td>147</td>
<td>1385</td>
</tr>
<tr>
<td>Termination date extended</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Veterans' Affairs Advisory Council, Labor-Management Relations Board, Minimum Wage Rate Board, Mental Retardation Advisory Committee, Savings and Loan Association Repeal of sections</td>
<td>149</td>
<td>1386</td>
</tr>
<tr>
<td>Women's Commission</td>
<td>156</td>
<td>1397</td>
</tr>
<tr>
<td>Continuation</td>
<td>173</td>
<td>1628</td>
</tr>
<tr>
<td>SURFACE MINING: Surface Coal Mining and Reclamation Act General revision</td>
<td>159</td>
<td>1401-1453</td>
</tr>
<tr>
<td>SYNTHETIC FUEL: Coal-based synthetic fuel industry Development and promotion Office of Community &amp; Industrial Development</td>
<td>160</td>
<td>1455</td>
</tr>
<tr>
<td>Synthetic motor, special fuel Coal-based liquids Industrial facilities producing Investment Tax credit</td>
<td>160</td>
<td>1458</td>
</tr>
<tr>
<td>TAXATION: Business franchise tax Business activities report</td>
<td>167</td>
<td>1553</td>
</tr>
<tr>
<td>Financial organizations Imposition of tax Payment to another state Tax credit</td>
<td>167</td>
<td>1546</td>
</tr>
<tr>
<td>Meaning of terms Updating Report by Commissioner of Banking</td>
<td>167</td>
<td>1579</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### INDEX

**TAXATION—(continued):**

**Business franchise tax—(continued):**

**Tax base**
- Apportionment................................................................. 167 1539
- Special rules........................................................................ 167 1546
- Financial organizations.................................................. 167 1546

**Corporation net income tax**

**Financial organizations**
- Imposition of tax................................................................ 167 1571
- Payment to another state
  - Tax credit........................................................................... 167 1578
- Meaning of terms................................................................... 167 1555
- Updating.................................................................................. 168 1580

**Report by Commissioner of Banking**........................................... 167 1579

**Tax base**
- Apportionment........................................................................ 167 1560
- Special rules............................................................................ 167 1571
- Financial organizations..................................................... 167 1671

**Hotel occupancy tax**

**Convention and visitor’s bureaus**
- Annual reports....................................................................... 161 1464
- Proceeds................................................................................ 161 1465
- Application.............................................................................. 161 1465

**Management Information Services Facility**

**Qualified investment**
- Tax credits........................................................................... 164 1481-1521

**Personal income tax**

**Updating meaning of terms**................................................. 166 1528

**Rehabilitated buildings investment**

**Definitions**........................................................................ 165 1523,1526

**Corporation net income tax credit**
- Carryback, carryforward..................................................... 165 1525
- Procedures............................................................................. 165 1526
- Termination............................................................................ 165 1527

**Personal income tax credit**
- Carryback, carryforward..................................................... 165 1523
- Procedures............................................................................. 165 1524
- Termination............................................................................ 165 1525

**Severance tax**

**Counties and municipalities**
- Additional tax for benefit
  - Credits not to apply.......................................................... 163 1473

**Taxpayer information**

**Confidentiality**
- Exceptions........................................................................... 162 1470
- Disclosure.............................................................................. 162 1470

**VETERANS:**

**Armed Forces**

**Members**
- Death of
  - Income taxes...................................................................... 170 1597

**Civil service system**
- Definitions........................................................................... 169,170 1583,1613

**Corporation net income tax**
- Military incentive tax credit............................................... 170 1600

**Desert Shield service**
- Combat pay exempt............................................................ 170 1598
- Tax returns
  - Extension of time............................................................ 170 1594

**Military Incentive Program**
- Definitions........................................................................... 170 1609
### VETERANS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military Incentive Program—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative intent</td>
<td>170</td>
<td>1608</td>
</tr>
<tr>
<td>Program administration</td>
<td>170</td>
<td>1612</td>
</tr>
<tr>
<td>Tax credit</td>
<td>170</td>
<td>1610</td>
</tr>
<tr>
<td>Amount</td>
<td>170</td>
<td>1610</td>
</tr>
<tr>
<td>Eligibility</td>
<td>170</td>
<td>1610</td>
</tr>
<tr>
<td>Restrictions and limitations</td>
<td>170</td>
<td>1611</td>
</tr>
<tr>
<td>Military incentive tax credit</td>
<td>170</td>
<td>1593, 1600</td>
</tr>
<tr>
<td>Military personnel or dependents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deceased</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Educational opportunities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicants</td>
<td>170</td>
<td>1607</td>
</tr>
<tr>
<td>Preference</td>
<td>170</td>
<td>1607</td>
</tr>
<tr>
<td>Continuing appropriation</td>
<td>170</td>
<td>1606</td>
</tr>
<tr>
<td>Tuition-free</td>
<td>170</td>
<td>1607</td>
</tr>
<tr>
<td>Income tax</td>
<td>170</td>
<td>1597</td>
</tr>
<tr>
<td>Motor vehicles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of title</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited tax exemption</td>
<td>170</td>
<td>1605</td>
</tr>
<tr>
<td>National Guard or Armed Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Active duty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Called by President</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leave of absence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Twenty-four working day period</td>
<td>170</td>
<td>1601</td>
</tr>
<tr>
<td>Performance of duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drills, parades, etc</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withholding tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreement</td>
<td>170</td>
<td>1599</td>
</tr>
<tr>
<td>Nonpartisan merit system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preference rating</td>
<td>169</td>
<td>1582</td>
</tr>
<tr>
<td>Personal income tax</td>
<td>170</td>
<td>1593</td>
</tr>
<tr>
<td>Military incentive tax credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Veterans' Affairs, Division</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creation</td>
<td>170</td>
<td>1587</td>
</tr>
<tr>
<td>Duties</td>
<td>170</td>
<td>1590</td>
</tr>
<tr>
<td>Veterans' Council</td>
<td>170</td>
<td>1588</td>
</tr>
<tr>
<td>Director</td>
<td>170</td>
<td>1589</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>170</td>
<td>1591</td>
</tr>
<tr>
<td>Salary</td>
<td>170</td>
<td>1589</td>
</tr>
<tr>
<td>Duties and functions</td>
<td>170</td>
<td>1589</td>
</tr>
<tr>
<td>Meetings</td>
<td>170</td>
<td>1589</td>
</tr>
<tr>
<td>Members</td>
<td>170</td>
<td>1590</td>
</tr>
<tr>
<td>Oath</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement</td>
<td>170</td>
<td>1590</td>
</tr>
</tbody>
</table>

### VOTER REGISTRATION:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerk of County Commission</td>
<td>171</td>
<td>1616</td>
</tr>
<tr>
<td>Registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deceased persons</td>
<td>171</td>
<td>1617</td>
</tr>
<tr>
<td>Cancellation of registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driver's license facilities</td>
<td>171</td>
<td>1618</td>
</tr>
<tr>
<td>Temporary offices</td>
<td>171</td>
<td>1618</td>
</tr>
<tr>
<td>Voter Registration-Driver's Licensing Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of portion</td>
<td>171</td>
<td>1621</td>
</tr>
</tbody>
</table>
## Index

<table>
<thead>
<tr>
<th>WEIRTON:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highways within city</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Load limitations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase</td>
<td>176</td>
<td>1666</td>
</tr>
</tbody>
</table>

| WHEELING:                     |     |      |
| Conditional zoning            | 177 | 1667 |

| WINE:                         |     |      |
| Wine Retailer's License       |     |      |
| Creation                      | 172 | 1623 |
| Fee                           | 172 | 1623 |

| WOMEN'S COMMISSION:           |     |      |
| Acceptance of funds           | 173 | 1630 |
| Administrative personnel      | 173 | 1630 |
| Annual report                 | 173 | 1630 |
| Continuation                  | 156,173 | 1397,1627 |
| Powers and duties             | 173 | 1629 |

| WORKERS' COMPENSATION:        |     |      |
| General revision              | 174 | 1633-1660 |

### FIRST EXTRAORDINARY SESSION, 1991

## APPROPRIATIONS:

| Supplemental                  |     |      |
| Department of Public Safety, Acct. No. 5700 | 1 | 1683 |
| Department of Public Safety, Acct. No. 8350 | 2 | 1684 |