ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1992
First Extraordinary Session, 1992
COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
DONALD L. KOPP
Clerk

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FOREWORD


Second Regular Session, 1992

The Second Regular Session of the 70th Legislature convened on January 8, 1992. The Constitutional sixty-day limit on the duration of the Session was midnight, March 7. The Session was, however, extended by several Proclamations of the Governor for the sole consideration of the Budget Bill, and the Legislature adjourned sine die at 11:30 a.m., Saturday, March 14, 1992.

Bills totaling 1,676 were introduced in the two houses during the session (1,068 House and 608 Senate). Of the 1,068 House Bills introduced there were 304 which were carried over from the First Regular Session of 1991. The Legislature passed 218 bills, 133 House and 85 Senate. The Governor vetoed two bills (S. B. 353, Standards for dog kennels, and S. B. 108, Registry for adoption of children). One bill, S. B. 336, Providing Maximum Search fee for health care records, became law without the signature of the Governor, leaving a net total of 216 bills which became law.

One hundred eight concurrent resolutions were introduced during the session, 61 House and 47 Senate, of which 17 House and 12 Senate were adopted. Thirty Joint Resolutions, proposing amendments to the State Constitution, were introduced in the two houses (24 House and 6 Senate). Two House Joint Resolutions were adopted by the Legislature, H. J. R. 109, Veterans Bonus Amendment, and H. J. R. 113, Redemption and Sale of Delinquent Lands Amendment. The House had 19 House Resolutions and the Senate had 41 Senate Resolutions introduced, of which 12 House and 39 Senate were adopted.

The Senate failed to pass 55 House bills passed by the House and 33 Senate bills failed passage by the House. House Bill 2041, Relating to mud flaps on trucks, was rejected by the Senate and the House adopted the conference report but rejected on final passage S. B. 125, Providing for licensure of midwives. Two House bills and five Senate bills died in conference.
First Extraordinary Session, 1992

The First Extraordinary Session convened at 11:30 A.M., Saturday, March 14, 1992, and adjourned sine die at 12:44 P.M., the same day.

The first Proclamation received, convening the Legislature in extraordinary session contained four items for consideration. The Governor issued a series of five proclamations, expanding the scope of the Session and increasing the number of items for consideration to five.

The Legislature passed four bills which were introduced, three House and one Senate. All four of the bills were approved by the Governor.

* * * * * * * * * * *

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 with buckram binding from the Division of Purchasing, Department of Administration, State Capitol, Charleston, WV 25305.

DONALD L. KOPP,
Clerk of the House of Delegates.
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# MEMBERS OF THE SENATE

## REGULAR SESSION, 1992

### OFFICERS

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

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<td>Wheeling</td>
<td>(House 63rd; 65th-67th; 69th)</td>
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<td>John G. Chernenko (D)</td>
<td>Weelsburg</td>
<td>66th-69th</td>
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<td>Second</td>
<td>Don Macnaughtan (D)</td>
<td>New Martinsville</td>
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<tr>
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<td>Larry Wiedebusch (D)</td>
<td>Glen Dale</td>
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<tr>
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<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
<td>Appt. 5/14/85, 67th; 68th-69th</td>
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<td>Hurricane</td>
<td>(House 65th; 66th-69th)</td>
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<td>Ravenswood</td>
<td>69th</td>
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<td>Homer Heck (D)</td>
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<td>Jailer</td>
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<td>Sammy D. Dalton (D)</td>
<td>Harts</td>
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<td>Billy Wayne Bailey, Jr. (D)</td>
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(R) Republicans .................................................. 1

TOTAL .......................................................... 34

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### Regular Session, 1992

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

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<td>Grant Preece (D)</td>
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<td>Jim Reid (D)</td>
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<td>Ridgeview</td>
<td>69th</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 Murensky (D)</td>
<td>Welch</td>
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*Note: *Kennedy E. Parlow represented Kenova in the 66th-69th legislative sessions.
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<td>Oceana</td>
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<td>W. Richard Staton (D)</td>
<td>Mullens</td>
<td>69th</td>
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<td>Twentieth</td>
<td>Gilbert E. Bailey (D)</td>
<td>Camp Creek</td>
<td>66th-68th</td>
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<td>William G. Carper, Jr. (D)</td>
<td>Bluefield</td>
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<td>Richard D. Flanigan (D)</td>
<td>Princeton</td>
<td>66th-69th</td>
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<td>69th-60th</td>
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<td>Mary Pearl Compton (D)</td>
<td>Union</td>
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<td>Robert S. Kiss (D)</td>
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<td>Pat Reed (D)</td>
<td>Beckley</td>
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<td></td>
<td>Jack J. Roop (D)</td>
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<td>66th-69th</td>
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<td>Tom Susman (D)</td>
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<td>68th-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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<td></td>
<td>Ann Calvert (R)</td>
<td>Charleston</td>
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<td>Ramona Tate Cerra (D)</td>
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<td>Joseph H. Farris (D)</td>
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<td>Ruth Goldsmith (R)</td>
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<td>David Grubb (D)</td>
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<td>Nancy Kessel (D)</td>
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<td>Charlotte R. Lane (R)</td>
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<td>Margaret Miller (R)</td>
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<td>Phyllis J. Rutledge (D)</td>
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<td>59th-61st; 69th</td>
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<td>Sharon Spencer (D)</td>
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<td>66th; 68th-69th</td>
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<td>Martha Yeager Walker (D)</td>
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<td>Charles H. Keenan (D)</td>
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<td>Tom Louis (D)</td>
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<td>Lucile S. Meadows (D)</td>
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<td>James J. Rowe (D)</td>
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<td>Joe Martin (D)</td>
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<td>Appt. 6/15/78; 63rd; 64th-69th</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>Robert J. Conley (R)</td>
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<td>Percy C. Ashcraft, II (D)</td>
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<td>Ron Fragale (D)</td>
<td>Nutter Fort</td>
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<td>Floyd Fuller (D)</td>
<td>Bridgeport</td>
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<td>Barbara Ann Warner (D)</td>
<td>Bridgeport</td>
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<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont</td>
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<td>Paul E. Prunty (R)</td>
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<td>William Ellsworth Stewart (D)</td>
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<td>Robert C. Beach (D)</td>
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<td>Greg Sayers (D)</td>
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<td>David Collins (D)</td>
<td>Davis</td>
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<td>David E. Miller (D)</td>
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<td>Thirty-Fourth</td>
<td>Allen V. Evans (R)</td>
<td>Dorcas</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>
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<td>Jerry L. Mezzataesta (D)</td>
<td>Romney</td>
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<td>Vicki V. Douglas (D)</td>
<td>Martinsburg</td>
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<td>Larry V. Faircloth (R)</td>
<td>Inwood</td>
<td>65th-69th</td>
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<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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</table>

1. Appointed to fill the vacancy created by the death of Kenneth Adkins.
2. Appointed to fill the vacancy created by the death of Walter Rollins.
3. Appointed to fill the vacancy created by the resignation of Paul M. Blake, Jr.

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

TOTAL ........................................... 100
COMMITTEES OF THE
HOUSE OF DELEGATES
Regular Session, 1992

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, Pethtel, 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, Phillips, Staton, Vest, Ashley, Border, Carmichael, Goldsmith, McKinley, Riggs and L. White.

*Delegated Gallagher was appointed as Vice Chairman of Insurance following the death of Delegate Adkins.

Constitutional Revision

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

Education

Ashcraft (Chairman), Prezioso (Vice Chairman), Beach, Compton, D. Cook, Hendricks, Keenan, Kessel, Lindsey, Mezzatesta, Phillips, Proudfoot, Schoonover, Spencer, Susman, Williams, Border, Goldsmith, Haskins, Leggett, G. Martin, Prunty and Richards.

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Finance

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

Government Organization

J. Martin (Chairman), Cerra (Vice Chairman), Beane, Carper, Dempsey, Fragale, Fullen, Higgins, 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, Lindsey, Louisos, D. Miller, Phillips, Proudfoot, Reed, Reid, Stewart, Walker, Wilson, Calvert, Carmichael, Haskins, M. Miller, Overington, Parriott, Prunty and Sims.

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, Wallace.

Delegate Lindsey was appointed to fill the vacancy created by death of Delegate Walter Rollins.
Political Subdivisions

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

Roads and Transportation


Rules

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

Delegate Anderson was appointed to the Committee on Rules to serve in place of Delegate Rollins.

JOINT

Enrolled Bills

Moore (Chairman), D. Cook (Vice Chairman), Overington and Willison.

Government and Finance

Chambers (Co-Chairman), Ashcraft, Murensky, Rollins, Rowe, Ashley and Burk.

Delegate Houvouras was appointed to the Joint Committee on Government and Finance to serve in place of Delegate Rollins.

Government Operations

J. Martin (Co-Chairman), Cerra, Love, Wallace and L. White.
Legislative Rule-Making Review
Grubb (Co-Chairman), Roop (Vice Chairman), Gallagher, Love, Burk and Faircloth.

Rules
Chambers (Co-Chairman), and Burk.

STATUTORY LEGISLATIVE COMMISSIONS
Interstate Cooperation
Pethtel (Chairman), Brown, Ferrell, Fullen, Michael, Lane and Overington.

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

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

Clerk's Note: Kenneth R. Adkins, 14th Delegate District, died while in office, on January 9, 1992.
Kenneth R. Adkins, Jr. was appointed in his stead.
Committees: Education, Industry and Labor and Political Subdivisions.
Walter Rollins, 14th Delegate District, died while in office, on February 9, 1992.
Kenny E. Partlow was appointed in his stead.
Committee: Education.
COMMITTEES OF THE SENATE
Regular Session, 1992

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.

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SENATE COMMITTEES

Health and Human Resources

Holliday (Chairman), Pritt (Vice Chairman), Blatnik, Chernenko, Craig, 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, Craig, 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, Craig, 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 Biley.

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.
SENATE COMMITTEES

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 article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abandoned mine land reclamation; setting forth a short title; providing legislative findings and intent and purpose of the article; specifying the jurisdiction and authority of the director; defining terms; objectives of abandoned land reclamation fund; specifying lands eligible for reclamation; creating certain special funds; powers and duties of the director regarding program, plans and reclamation projects; allowing the director to acquire and reclaim land adversely affected by past coal surface-mining practices; liens against reclaimed land; landowners petitions and appeals; priority of liens; filling voids and sealing tunnels; cooperative agreements; injunctive relief; water treatment plants; transfer of funds; interagency cooperation; and increasing from fifteen percent to thirty percent the maximum amount of state abandoned mine reclamation funds that may be used for water projects in the state.

Be it enacted by the Legislature of West Virginia:
That article three, 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 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-1. Short title.
§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.
§22-3-3. Definitions.
§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.
§22-3-5. Powers and duties of director; program plans and reclamation projects.
§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.
§22-3-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.
§22-3-8. Filling voids and sealing tunnels.
§22-3-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

§22-3-1. Short title.

This article shall be known and cited as the "Abandoned Mine Lands and Reclamation Act".

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

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 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 director of the division of environmental protection 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.

§22-3-3. Definitions.

(a) All definitions set forth in article three of chapter twenty-two-a of this code apply to those defined terms which also appear in this article, if applicable.

(b) For the purposes of this article the following words have the meanings ascribed to them in this subsection:

(1) "Director" means the director of the division of environmental protection;

(2) "Division" means the division of environmental protection; and

(3) "Secretary" means the secretary of the United States Department of Interior.

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

(a) All abandoned land reclamation funds available
ABANDONED MINE LAND RECLAMATION

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 director 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; and

(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 director may expend up to thirty 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 surface-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 director determines that the adverse effects occurred predominantly prior to the third day of August, one thousand nine hundred seventy-seven.

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

(A) A special account in the state treasury designated the "Reclamation and Restoration Fund" which is
ABANDONED MINE LAND RECLAMATION

hereby created. Moneys in the fund may be expended by the director 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 director 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. The 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 surface-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 the 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 the surface-mining operation became insolvent during that period, and as of the first day of October, one thousand nine hundred ninety-one, funds immediately available from proceeding relating to the insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation of the site: Provided, however, That the director, 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 (b) 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 contained in this article abridges or alters 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 director may expend money from the fund for the construction.

§22-3-5. Powers and duties of director; program plans and reclamation projects.

(a) The director shall submit to the secretary of the interior a state reclamation plan and annual projects to carry out the purposes of this article.

(b) That reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the
reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded and the legal authority and programmatic capability to perform the work in conformance with the provisions of this article.

(c) On an annual basis, the director shall submit to the secretary of the interior an application for the support of the state program and implementation of specific reclamation projects. The annual requests shall include information as may be requested by the secretary of the interior including:

(1) A general description of each proposed project;

(2) A priority evaluation of each proposed project;

(3) A statement of the estimated benefits in such terms as number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution and hazards of mine and coal refuse disposal area fires;

(4) An estimate of the cost for each proposed project;

(5) In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

(6) An identification of lands or interest therein to be acquired and the estimated cost; and

(7) In each year after the first in which a plan is filed under this article, an inventory of each project funded under the previous year’s grant, which inventory shall include details of financial expenditures on the project together with a brief description of the project, including the project’s location, the landowner’s name, acreage and the type of reclamation performed.

(d) The costs for each proposed project under this section shall include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs and other necessary administrative expenses.
§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

(a) If the director makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal surface-mining practices;

(2) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control or prevent should be taken;

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices are not known or readily available; or

(4) The owners will not give permission for the director, his or her agents, employees or contractors to enter upon the property to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices, then, upon giving notice by mail to the owners, if known, or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director, his or her agents, employees or contractors have the right to enter upon the property adversely affected by past coal surface-mining practices and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects.

The entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for the work and the benefits accruing to any premises so entered upon is chargeable against the land and mitigates or offsets any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry: Provided, That this provision is not intended to create new rights of action or eliminate existing immunities.
(b) The director, his or her agents, employees or contractors have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal surface-mining practices and to determine the feasibility of restoration, reclamation, abatement, control or prevention of the adverse effects. The entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

(c) The director may acquire any land by purchase, donation or condemnation, which is adversely affected by past coal surface-mining practices, if the director determines that acquisition of the land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices will serve recreation, historic, conservation or reclamation purposes or provide open space benefits;

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal surface-mining practices.

(d) Title to all lands acquired pursuant to this section shall be in the name of the state of West Virginia, by the West Virginia division of environmental protection. The price paid for land acquired under this section shall reflect the fair market value of the land as adversely affected by past coal surface-mining practices.

(e) The director is hereby authorized to transfer land obtained under subsection (c) of this section to the
76 secretary. The director may purchase the land from the  
77 secretary after reclamation at the fair market value less  
78 the state's original acquisition price.  
79 (f) The director may accept and local political  
80 subdivisions may transfer to the director land belonging  
81 to them to carry out the purposes set out in this article  
82 and in that event they shall have a preferential right to  
83 purchase the land after reclamation at the fair market  
84 value less the political subdivision's cost of acquisition,  
85 but at no time shall the director sell the land to a  
86 political subdivision at a price less than the cost of the  
87 acquisition and reclamation of the land: Provided, That  
88 if any land sold to a political subdivision under this  
89 subsection is not used for a valid public purpose as  
90 specified by the director in the terms and conditions of  
91 the sales agreement, then all rights, title and interest  
92 in the land shall revert to the West Virginia division of  
93 environmental protection. Any moneys received from  
94 the sale shall be deposited in the abandoned land  
95 reclamation fund.  
96 (g) Where land acquired pursuant to this section is  
97 considered to be suitable for industrial, commercial,  
98 residential or recreational development, the director  
99 may sell the land by public sale under a system of  
100 competitive bidding at not less than fair market value  
101 and pursuant to regulations promulgated to ensure that  
102 the lands are put to proper use consistent with state and  
103 local land use plans.  
104 (h) The director, if requested and after appropriate  
105 public notice, shall hold a public hearing in the county  
106 in which land acquired pursuant to this section is  
107 located. The hearing shall be held at a time which shall  
108 afford local citizens and government the maximum  
109 opportunity to participate in the decision concerning the  
110 use and disposition of the land after restoration,  
111 reclamation, abatement, control or prevention of the  
112 adverse effects of past coal surface-mining practices.  
113 (i) In addition to the authority to acquire land under  
114 other provisions of this section, the director is authorized  
115 to use money in the fund to acquire land from any
federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal surface-mining practices which constitute an emergency as provided in section 410 of Public Law 95-87, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. The activities shall be accomplished under such terms and conditions as the director shall require, which may include transfers of land with or without monetary consideration: Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association or corporation. No part of the funds provided under this article may be used to pay the actual construction costs of housing. The director may carry out the purposes of this subsection directly or he or she may make grants and commitments for grants, and may advance money under such terms and conditions as he or she may require to any department, agency or political subdivision of this state, or any public body or nonprofit organization designated by the director.

§22-3-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

(a) Within six months after the completion of a project to restore, reclaim, abate, control or prevent adverse effects of past coal surface-mining practices on a privately owned land, the director shall itemize the moneys so expended and may file a statement thereof in the office of the clerk of the county commission in the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement,
control or prevention of adverse effects of past coal
surface-mining practices, if the moneys so expended
result in a significant increase in property value. The
statement constitutes a lien upon the land. The lien shall
not exceed the amount determined by the appraisal to
be the increase in the market value of the land as a
result of the restoration, reclamation, abatement, control
or prevention of the adverse effects of past coal surface-
mining practices. No lien may be filed against the
property of any person in accordance with this subsec-
tion, who owned the surface prior to the second day of
May, one thousand nine hundred seventy-seven, and who
neither consented to, nor participated in, nor exercised
control over the mining operation which necessitated the
reclamation performed hereunder.

(b) The landowner may petition the director within
sixty days of the filing of the lien to determine the
increase in the market value of the land as a result of
the restoration, reclamation, abatement, control or
prevention of the adverse effects of past coal surface-
mining practices. The amount reported to be the
increase in value of the premises constitutes the amount
of lien and shall be recorded with the statement herein
provided. Any party aggrieved by the decision may
appeal to the circuit court of the county in which the
land is located.

(c) The statement filed pursuant to subsection (a) of
this section constitutes a lien upon the land as of the date
of the expenditure of the moneys and has priority as a
lien second only to the lien of real estate taxes imposed
upon the land.

§22-3-8. Filling voids and sealing tunnels.

(a) The Legislature declares that voids, open and
abandoned tunnels, shafts and entryways and subsi-
dence resulting from any previous coal surface-mining
operation constitute a hazard to the public welfare and
safety and that surface impacts of any underground or
surface-mining operation may degrade the environment.
The director is authorized to fill the voids, seal the
abandoned tunnels, shafts and entryways, and reclaim
surface impacts of underground or surface mines and 
remove water and other matter from mines which the 
director determines could endanger life and property, 
constitute a hazard to the public welfare and safety or 
degrade the environment.

(b) In those instances where coal mine waste piles are 
being reworked for conservation purposes, the incre-
mental costs of disposing of the wastes from such 
operations by filling voids and sealing tunnels may be 
eligible for funding, if the disposal of those wastes meets 
the purposes of this article.

(c) The director may acquire by purchase, donation, 
easement or otherwise such interest in land as he or she 
determines necessary to carry out the provisions of this 
section.

§22-3-9. General and miscellaneous powers and duties of 
director; cooperative agreements; injunctive 
relief; water treatment plants and facilities; 
transfer of funds and interagency coop­er­ation.

(a) The director is authorized to engage in any work 
and to do all things necessary and proper, including 
promulgation of rules and regulations, to implement and 
administer the provisions of this article.

(b) The director is authorized to engage in cooperative 
projects under this article with any other agency of the 
United States of America, any state, county or munic-
ipal agency or subdivision thereof.

(c) The director may request the attorney general, who 
is hereby authorized to initiate, in addition to any other 
remedies provided for in this article, in any court of 
competent jurisdiction, an action in equity for an 
injunction to restrain any interference with the exercise 
of the right to enter or to conduct any work provided 
in this article.

(d) The director has the authority to construct and 
operate a plant or any facilities for the control and 
treatment of water pollution resulting from mine 

drainage. The extent of this control and treatment may
be dependent upon the ultimate use of the water:
Provided, That this subsection shall not repeal or
supersede any portion of the applicable federal or state
water pollution control laws and no control or treatment
under this section may be less than that required under
any applicable federal or state water pollution control
law. The construction of any facilities may include
major interceptors and other facilities appurtenant to
the plant.

(e) All departments, boards, commissions and agen-
cies of the state shall cooperate with the director by
providing technical expertise, personnel, equipment,
materials and supplies to implement and administer the
provisions of this article.

CHAPTER 2
(H. B. 4755—By Delegates Muresnsky and Burk)

[Passed March 5, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article eight,
chapter thirty-six of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to redesignation of funds in the trust and expense funds.

Be it enacted by the Legislature of West Virginia:

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

§36-8-18. Deposits of funds.

(a) All funds received under this article, including the
proceeds from the sale of abandoned property under
section seventeen of this article, shall forthwith be
deposited by the state treasurer in the general fund.

(b) All operating expenses and administrative ex-
penses incurred by the treasurer in the administration
and enforcement of the provisions of this article shall be
paid from an appropriation from the general revenue
ABANDONED WELL ACT

9 fund. The treasurer is further directed to make prompt
10 payment of claims duly allowed as hereinafter provided
11 from the general revenue fund.
12
13 (c) Before making any deposit to the general fund, the
14 state treasurer shall record the name and last-known
15 address of each person appearing from the holder's
16 reports to be entitled to the abandoned property, and the
17 name and last-known address of each insured person or
18 annuitant, and with respect to each policy or contract
19 listed in the report of a life insurance corporation, its
20 number, the name of the corporation and the amount
21 due. Such records shall be available for public inspec-
22 tion at all reasonable business hours.

CHAPTER 3

(Com. Sub. for H. B. 4476—By Mr. Speaker, Mr. Chambers, and Delegate Lane)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two-b of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article five, relating generally to abandoned wells;
providing that the article may be cited as “The West
Virginia Abandoned Well Act”; setting forth legislative
findings and a declaration of policy and purpose;
defining certain terms; requiring financial responsibil-
ity for all wells; establishing a priority system for
plugging abandoned wells; defining the amount of
financial responsibility for all wells; authorizing
interested persons to plug an abandoned well; providing
for arbitration; authorizing civil penalties; authorizing
the promulgation of legislative rules; setting forth a
hearing procedure; preserving existing rights and
remedies; and providing for conflicting provisions.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two-b 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, to read as follows:

ARTICLE 5. THE WEST VIRGINIA ABANDONED WELL ACT.

§22B-5-1. Short title.
§22B-5-2. Legislative findings; legislative statement of policy and purpose.
§22B-5-3. Definitions.
§22B-5-5. Financial responsibility—Amount.
§22B-5-6. Establishment of priorities for plugging expenditures.
§22B-5-7. Right of interested person to plug, replug and reclaim abandoned wells.
§22B-5-8. Arbitration; fees and costs.
§22B-5-9. Civil penalties.
§22B-5-10. Rule making; procedure; judicial review.
§22B-5-11. Existing rights and remedies preserved.
§22B-5-12. Conflicting provisions.

§22B-5-1. Short title.

This article may be cited as "The West Virginia Abandoned Well Act."

§22B-5-2. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds and declares that:

(1) Oil and gas have been continuously produced in West Virginia for over one hundred years, during which time operators of wells have been required by the laws of this state to plug wells upon cessation of use;

(2) The plugging requirements for certain older oil and gas and other wells may not have been sufficient to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, nor to allow for enhanced recovery of oil, gas or other mineral resources of this state;

(3) Many wells may exist in West Virginia which are abandoned and either not plugged or not properly plugged in a manner to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, to allow for enhanced recovery of oil, gas and other mineral resources,
generally to protect the environment and mineral resources of this state, as aforesaid;

(4) Requirements for financial responsibility to assure plugging of abandoned wells have not been required in this state for older wells, and adequate financial responsibility should be established with respect to all wells;

(5) Programs and policies should be implemented to foster, encourage and promote through the fullest practical means the proper plugging of abandoned wells to protect the environment and mineral resources of this state;

(6) Criteria should be established with respect to priorities for the expenditure of moneys available for plugging abandoned wells and identifying those abandoned wells which, as a matter of public policy, should be plugged first; and

(7) The plugging of many abandoned wells may be accomplished through the establishment of rights and procedures allowing interested persons to apply for a permit to plug an abandoned well.

(b) The Legislature hereby declares that it is in the public interest and it is the public policy of this state, to foster, encourage and promote the proper plugging of all wells at the time of their abandonment to protect the environment and mineral resources of this state.

§22B-5-3. Definitions.

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

(a) “Abandoned well” means any well which is required to be plugged under the provisions of section nineteen, article one of this chapter and regulations promulgated pursuant thereto.

(b) “Director” means for the purpose of this article, the director of the division of environmental protection as established in section two, article one, chapter twenty-two of this code or such other person as the director may delegate his duties pursuant to section
seven, article one, chapter twenty-two of this code.

(c) "Interested Party" means, for the purpose of this article, any owner, operator or lessee of the surface, oil, gas, water, coal or other mineral resource under, on, adjacent or in close proximity to any lands upon which an abandoned well exists, and whose lands, rights or interests are or might be affected by such abandoned well.


(a) Operators of all wells, not otherwise required to demonstrate financial responsibility through bonding or otherwise in accordance with the provisions of article one of this chapter, shall, no later than the first day of July, one thousand nine hundred ninety-three, demonstrate financial responsibility in accordance with the methods and in the amounts prescribed by this article.

(b) If the operator demonstrates to the satisfaction of the director that an unjust hardship to an operator will occur as a result of the financial responsibility requirements of this article:

(1) The director may suspend such financial responsibility requirements to a date no later than the first day of July, one thousand nine hundred ninety-five; or

(2) The director may authorize an operator to demonstrate such financial responsibility by supplying twenty percent of any required amount by no later than the first day of July, one thousand nine hundred ninety-four; forty percent no later than the first day of July, one thousand nine hundred ninety-five; sixty percent no later than the first day of July, one thousand nine hundred ninety-six; eighty percent by the first day of July, one thousand nine hundred ninety-seven; and one hundred percent by the first day of July, one thousand nine hundred ninety-eight.

(c) The operator making a demonstration of financial responsibility pursuant to this section shall provide the director with information sufficient to establish the location and identification of the well, any well completion, recompletion and reworking records which may
31 exist and such other information as the director may
32 reasonably require.

§22B-5-5. Financial responsibility — Amount.

1 The financial responsibility requirements applicable
2 to all wells shall be as set forth in section twenty-six,
3 article one of this chapter, except that the amount of
4 financial responsibility through bonding or otherwise, as
5 provided for in said section, for an individual well shall
6 be in the amount of five thousand dollars. In lieu of
7 separate, single well bonds, an operator may either
8 furnish a blanket bond in the sum of fifty thousand
9 dollars in accordance with the provisions of subsection
10 (c), section twenty-six, article one of this chapter, or if
11 the operator has previously provided a blanket bond in
12 the sum of fifty thousand dollars which remains in
13 effect, the operator may cover wells subject to this
14 article by such existing blanket bond.

§22B-5-6. Establishment of priorities for plugging
expenditures.

1 (a) Within one year of the effective date of this article,
2 the director shall promulgate legislative rules establish-
3 ing a priority system by which available funds from the
4 oil and gas reclamation fund, established pursuant to
5 section twenty-nine, article one of this chapter, will be
6 expended to plug abandoned wells. The rules shall, at
7 a minimum, establish three primary classifications to be
8 as follows:

9 (1) Wells which are an immediate threat to the
10 environment or which may hinder or impede the
11 development of mineral resources of this state so as to
12 require immediate plugging;

13 (2) Wells which are not an immediate threat to the
14 environment or which do not hinder or impede the
15 development of mineral resources of this state but which
16 should be plugged consistent with available resources;
17 and

18 (3) Wells which are not a threat to the environment
19 and which do not hinder or impede the development of
20 mineral resources of this state and for which plugging
may be deferred for an indefinite period.

(b) Such classifications shall, among other things, take into consideration the following factors, as appropriate:

(1) The age of the well;
(2) The length of time the well has been abandoned;
(3) The casing remaining in the well;
(4) The presence of any leaks either at the surface or underground;
(5) The possibility or existence of groundwater contamination;
(6) Whether the well is located in an area to be developed for enhanced recovery;
(7) Whether the well hinders or impedes mineral development; and
(8) Whether the well is located in close proximity to population.

§22B-5-7. Right of interested person to plug, replug and reclaim abandoned wells.

(a) Upon twenty days' advance written notice, it shall be lawful for any interested person, the operator or the director to enter upon the premises where any abandoned well is situated and properly plug or replug such abandoned well, and to reclaim any area disturbed by such plugging or replugging in the manner required by article one of this chapter. Such notice shall be served by certified mail, returned receipt requested, or such other manner as is sufficient for service of process in a civil action, upon any owner of the surface of the land upon which such abandoned well exists, upon any oil and gas lessee of record with the director and upon any owner or operator of such abandoned well of record with the director, or in the event there is no such lessee, owner or operator of record with the director, by posting such notice in a conspicuous place at or near such abandoned well. The notice given the surface owner shall include a statement advising the surface owner of the right to repairs or damages as provided in this
section and the potential right to take any casing, equipment or other salvage. Such notice shall be on forms approved by the director.

(b) Any interested person who plugs a well pursuant to the provisions of this section shall, to the extent damage or disturbance results from such plugging, either repair the damage or compensate the surface owner for (i) the reasonable cost of repairing or replacing any water well, (ii) the reasonable value of any crops destroyed, damaged or prevented from reaching market, (iii) the reasonable cost of repair to personal property up to the value of the replacement value of personal property of like age, wear and quality, (iv) lost income or expense incurred, and (v) reasonable costs to reclaim or repair real property including roads.

(c) The interested person who is plugging the well pursuant to the provisions of this section, may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by including notice of such election in the written notice mandated by subsection (a) of this section. Should such interested person who is plugging the well not give such notice of election, the surface owner may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by giving written notice of such election to the interested person who is plugging the well at least ten days in advance of such plugging. In the event such notice is given, such interested person who is plugging the well may leave such casing, equipment or salvage at a location which will not adversely affect any reclamation of a disturbed area. In the event the surface owner does not give notice of an election to take such casing, equipment or salvage as provided herein, such interested person who plugs the well shall properly dispose thereof. Nothing in this subsection shall be construed to require or create a duty upon such interested person who plugs the well to protect or pull casing or otherwise take any action or incur any expense to retrieve or protect any casing, equipment or salvageable material:

Provided, That nothing contained in this section may be
construed to relieve the interested person from the responsibility to perform in accordance with the requirements of this article, article one of this chapter, or any condition of the permit.

(d) Prior to releasing any bond which is obtained in connection with plugging or replugging an abandoned well under the provisions of this section, the director shall obtain from the interested person who has obtained the bond a copy of a letter that such interested person has sent to the surface owner advising that reclamation has been completed.

(e) Where an interested person who intends to plug an abandoned well pursuant to this section is unable to obtain a bond in the full amount required by section twenty-six, article one of this chapter, the director may authorize a bond in a lesser amount; which lesser amount shall be equal or greater than the estimated cost of reclaiming the surface areas disturbed by the plugging operation: Provided, That an owner or operator of a well shall comply with the financial responsibility provisions of section five of this section and section twenty-six, article one of this chapter.

(f) In the event the owner or operator of a well fails or has failed to plug a well in accordance with laws and regulations in effect at the time the well is or was first subject to plugging requirements, any interested person who plugs or replugs such well pursuant to the provisions of this section may recover from the owner or operator of such well all reasonable costs incidental to such plugging or replugging, including any compensation provided for in this section. In the event funds from the oil and gas reclamation fund established pursuant to section twenty-nine, article one of this chapter are used to plug or replug such well, the director shall be entitled to recover from the owner or operator of such well any amounts so expended from the fund. Any amounts so recovered by the director shall be deposited in said fund.

§22B-5-8. Arbitration; fees and costs.

(a) If the interested person who plugs a well and the
surface owner are unable to agree as to the adequacy
of the repairs performed or the amount of compensation
to which the surface owner may be entitled, either party
upon written notice to the other may elect to have such
issue finally determined by binding arbitration pursuant
to article ten, chapter fifty-five of this code.

(b) The adequacy of the repairs or compensation to
which the surface owner may be entitled shall, if such
election is made, be determined by a panel of three
disinterested arbitrators. The first arbitrator shall be
chosen by the party electing to arbitrate in his notice
of election; the second arbitrator shall be chosen by the
other party within ten days after receipt of the notice
of election; and the third arbitrator shall be chosen
jointly by the first two arbitrators within twenty days
thereafter. If they are unable to agree upon the third
arbitrator within twenty days, then the two arbitrators
are hereby empowered to and shall forthwith submit the
matter to the court under the provisions of section one,
aver article ten, chapter fifty-five of this code, so that, among
other things, the third arbitrator can be chosen by the
judge of the circuit court of the county wherein the
surface estate lies.

(c) The following persons shall be deemed interested
and not be appointed as arbitrators: Any person who is
personally interested in the land on which the plugging
is being performed or has been performed, or in any
interest or right therein, or in the compensation and any
damages to be awarded therefor, or who is related by
blood or marriage to any person having such personal
interest, or who stands in the relation of guardian and
ward, master and servant, principal and agent, or
partner, real estate broker, or surety to any person
having such personal interest, or who has enmity
against or bias in favor of any person who has such
personal interest or who is the owner of, or interested
in, such land or the oil and gas development thereof. No
person shall be deemed interested or incompetent to act
as arbitrator by reason of his being an inhabitant of the
county, district or municipal corporation wherein the
land is located, or holding an interest in any other land
(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the required repairs or the amount of compensation to be paid to the surface owner. However, no award requiring repairs or compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of his own arbitrator and one half of the compensation of the third arbitrator, and his own costs.

§22B-5-9. Civil penalties.

(a) Any person who fails to plug an abandoned well within thirty days, or upon a showing of good cause, within a longer period as determined by the director not to exceed one hundred eighty days, from the date such plugging is ordered by the director, shall be liable for a civil penalty of twenty-five thousand dollars which penalty shall be recovered in a civil action in the circuit court wherein the abandoned well is located.

(b) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section shall be deposited into the oil and gas reclamation fund established pursuant to section twenty-nine, article one of this chapter.

§22B-5-10. Rule making; procedure; judicial review.

(a) The director shall have the power and authority to promulgate legislative rules, procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code in order to carry out and implement the provisions of this article.

(b) Any hearings or proceedings before the director on any matter other than rule making shall be conducted and heard by the director or a representative designated by him and shall be in accordance with the provisions of article five, chapter twenty-nine-a of this
(c) Any person having an interest which is or may be adversely affected, who is aggrieved by an order of the director issued pursuant to this article, or by the issuance or denial of a permit pursuant to this article or by the permit's terms or conditions, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§22B-5-11. Existing rights and remedies preserved.

(a) It is the purpose of this article to provide additional and cumulative remedies to address abandoned wells in this 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 in the exercise of their rights to suppress nuisance or to abate any pollution now or hereafter existing, or to recover damages.

(b) An order of the director, the effect of which is to find that an abandoned well exists, or in ordering an abandoned well to be plugged, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state of West Virginia.

(c) Nothing contained in this article shall be construed to place any duty or responsibility on the landowner, well owner or operator or lessee to plug a well in addition to those set forth in article one of this chapter.
§22B-5-12. Conflicting provisions.

1 The provisions of this article shall be in addition to
2 and supplement all other provisions of article one of this
3 chapter and rights with respect to plugging or replug­
4 ging wells. Nothing in this article shall be construed to
5 eliminate the permit requirement for plugging and
6 replugging wells. In the event of any inconsistency or
7 conflict between any provision of this article and any
8 provision of this code, the provisions of this article shall
9 control.

CHAPTER 4
(H. B. 4093—By Delegates Love and Wallace)

[Passed March 7, 1992; 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 department of agriculture, marketing and develop­
ment division; duties; and continuation.

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. Marketing and development division; duties;
continuation.

1 (a) In recognition that article ten, chapter four of this
2 code requires a performance audit of the rural resource
3 division of the department of agriculture and that
4 performance standards must be stated before such audit
5 can be performed, the rural resources division is hereby
6 formally established and renamed the marketing and
7 development division in the department of agriculture.
8 The duties of the division are to establish marketing,
9 promotional and development programs to advance
West Virginia agriculture in the domestic and international markets; to provide grading, inspection and market news services to the various elements of the West Virginia agricultural industry; and to regulate and license individuals involved in the marketing of agricultural products.

(b) 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 the marketing and development division should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the marketing and development division shall continue to exist until the first day of July, one thousand nine hundred ninety-five.

CHAPTER 5

(H. B. 4758—By Delegate Mezzatesta)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to legislative findings; payment of annual fee by owners of farm woodlands, farm woodlots, residential woodlands, timberland and managed timberland to benefit the division of forestry; amount of annual fees; issuance of stamps; forwarding of fees to state treasury; expenditures of fees; transfer and appropriation of excess funds; uses of the funds; reports by county assessors; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That article one-a, 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 six, to read as follows:
ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-6. Payment of annual fee by owners of farm woodlands, farm woodlots, residential woodlands, timberland and managed timberland to benefit division of forestry.

(a) Legislative findings. — The Legislature finds that the division of forestry provides vital services to private, nonindustrial owners of wooded land and hereby declares that it is the policy of this state to assist woodland owners in the protection, conservation and enhancement of their wooded lands by facilitating cooperative efforts to protect all of the wooded lands of the state from insect depredation, tree disease and forest fires and to provide technical forestry assistance to individual private owners in the management and protection of their wooded lands.

(b) Assessment of annual fee to benefit division of forestry. — Any owner of real property assessed as farm woodlands, farm woodlots, residential woodlands, timberland or managed timberland shall pay an annual fee to be included on the property tax bill for the farm woodland, farm woodlot, residential woodland, timberland or managed timberland. The owner shall pay the fee to the sheriff when the ad valorem property taxes on the property for the first half of the then current year are paid to the sheriff.

The fee for each parcel of property assessed in whole or in part as farm woodland, farm woodlot or residential woodland, as those types of property are defined in accordance with regulations promulgated or to be promulgated by the department of tax and revenue, is two dollars per year: Provided, That no owner shall pay a fee on more than three parcels of the above-described property situate in the same county. The fee for each parcel of property assessed in whole or in part as timberland or managed timberland, as those types of property are defined in accordance with regulations promulgated by the department of tax and revenue, is ten dollars per year: Provided, however, That no owner shall pay a fee on more than twenty parcels of timber-
land and managed timberland situate in the same county.

No owner shall pay more than one fee for any one parcel in any county. If an owner has property taxes assessed against any individual parcel in more than one of the classifications against which a fee is charged under this section, the owner shall pay the highest applicable fee for that parcel.

Upon payment of the fee, the sheriff shall affix a stamp to the appropriate property tax receipt. The stamp shall be designed by the director of the division of forestry and a sufficient number of stamps shall be provided to each county sheriff.

The sheriff shall forward the fees collected pursuant to this section to the state tax commissioner at the same time that the sheriff remits the revenues from the board of public works regular levies to the state, and the fees shall be deposited in a separate account in the state treasury. Expenditures for the purposes set forth in this section are not authorized from collections, but are to be made only through appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code.

Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this section may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

The purposes of the funds in the account created for the deposit of the fees required by this section are to supplement normal funding for the division of forestry and include, but are not limited to, salaries for division of forestry employees, implementation of a fire protection plan, contributions toward costs incurred in fighting forest fires and training firefighters, other in-service training, forest resource surveys, purchases of equipment, insect and tree disease control, reforestation, silvicultural assistance to private landowners, preservation of water quality through fire control, erosion
control, reclamation and replanting.

In order for the director of the division of forestry to project the number of stamps to be required in each county and the amount of revenue which may be realized by the fee imposed by this section, each county assessor shall forward to the state tax commissioner the number of landowners in the county that own parcels assessed as (1) managed timberland or timberland and (2) residential woodland, farm woodlot or farm woodlands, and each county assessor shall attempt to estimate how many fees will be paid in each category. The tax commissioner shall review each county's list, make any corrections and additions as may be necessary, notify the appropriate county assessor of any correction or addition, and forward each county's list, as well as statewide totals, to the director of the division of forestry.

The tax commissioner, on or before the first day of July, one thousand nine hundred ninety-two, and thereafter as necessary, shall promulgate such regulations as may be necessary to effectuate the provisions of this section in accordance with article three, chapter twenty-nine-a of this code.

CHAPTER 6

(Com. Sub. for H. B. 4669—By Mr. Speaker, Mr. Chambers, and Delegate J. Martin)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-b, relating to sediment control during timber operations generally; providing for a short title and legislative purpose of article; defining certain terms; requiring timber operations license; providing application requirements; imposing an application and annual fee; providing for suspension and revocation of license;
authorizing the imposition of compliance orders;
authorizing the imposition of cease and desist orders;
requiring notification of timbering operations and the
contents and methods thereof; requiring certification for
supervisors of timbering operations; providing for a
certification program; imposing application and annual
certification fees; providing for renewal of certification
and requiring triennial completion of certification
program; authorizing the creation of a committee on
best management practices; creating the timbering
operations enforcement fund; providing for a right of
entry; permitting the director to issue orders; creating
conference panels; providing for the powers and duties
of the conference panels; establishing civil penalties;
providing an appeal process; authorizing the promulga­
tion of rules; requiring cooperation of state agencies;
requiring an annual report; and providing for the effect
on other laws.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article one-b, to read
as follows:

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL
TIMBER HARVESTING OPERATIONS.

§19-B-1. Short title.
§19-B-2. Legislative findings, intent and purpose of article.
§19-B-3. Definitions.
§19-B-4. Timbering license required; requirement for license; annual fee;
rules and regulations.
§19-B-5. Compliance orders, suspension of timbering operating license.
§19-B-6. Notification of duration of timbering operations; requirements
thereof.
§19-B-7. Certification of persons supervising timbering operations,
timbering operations to be supervised, promulgation of rules
and regulations.
§19-B-8. Timbering operations enforcement fund.
§19-B-9. Right of entry.
§19-B-10. Orders of the director.
§19-B-11. Creation of conference panels; authority.
§19-B-12. Civil penalties.
§19-B-14. Effect on other laws.

§19-B-1. Short title.
This article shall be known and cited as the "Logging Sediment Control Act."

§19-1B-2. Legislative findings, intent and purpose of article.

The Legislature hereby finds that some activities associated with the commercial harvesting of timber results in the exposure of soil and that, if uncontrolled, such exposed soil can erode resulting in gullying, soil slippages and sediment deposition in streams.

It is the policy of this state to strengthen and extend the present sediment control activities of this state by implementing operator licensing, logger certification and logging operations notification programs through the division of forestry.

§19-1B-3. Definitions.

(a) "Best management practices" means sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting.

(b) "Chief" means the chief of the section of water resources of the division of natural resources, or his or her designee.

(c) "Director" means the director of the division of forestry of the department of commerce, labor and environmental resources, or his or her authorized designee.

(d) "Operator" means any person who conducts timbering operations.

(e) "Timbering operations" means activities directly related to the severing or removal of standing trees from the forest as a raw material for commercial processes or purposes. For the purpose of this article, timbering operations shall not include the severing of evergreens grown for and severed for the traditional Christmas holiday season, nor the severing of trees incidental to ground-disturbing construction activities, including well sites, access roads and gathering lines for oil and gas.
natural gas operations, nor the severing of trees for
maintaining existing, or during construction of, rights-
of-way for public highways or public utilities or any
company subject to the jurisdiction of the federal energy
regulatory commission unless the trees so severed are
being sold or provided as raw material for commercial
wood product purposes, nor the severing of trees by an
individual on the individual’s own property for his or
her individual use provided that the individual does not
have the severing done by a person whose business is
the severing or removal of trees.

(f) “Sediment” means solid particulate matter, usually
soil or minute rock fragments, moved by wind, rainfall
or snowmelt into the streams of the state.

§19-1B-4. Timbering license required; requirement for
license; annual fee; rules and regulations.

(a) After the first day of September, one thousand
nine hundred ninety-two, no person may conduct
timbering operations, purchase timber or buy logs for
resale until he or she has obtained the license pursuant
to this article from the division and met all other
requirements pertaining to his or her timbering
operation or other wood product business contained in
this article.

(b) An applicant for a license shall submit an
application on a form to be designed and provided by
the director. A fee of fifty dollars shall be submitted
with each application and with each annual renewal of
the license. The application shall, at a minimum, contain
the following information:

(1) Name, address and telephone number of the
applicant, and if the applicant is a business entity other
than a sole proprietor, the names and addresses of the
principals, officers and resident agent of the business
entity;

(2) The applicant’s West Virginia business registra-
tion number or a copy of the current West Virginia
business registration certificate. The division of forestry
shall submit such information and a list of all applicants
(3) Any other information required by the director.

c) The director shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code which provide procedures by which a license may be acquired, suspended or revoked under this article. The Legislature expressly finds that such legislative rules are the proper subject of emergency legislative rules which may be promulgated in accordance with the provision of section fifteen, article three, section twenty-nine-a of this code.

d) The director shall prescribe a form providing the contents and manner of posting notice at the timbering operation. The notice shall include, at a minimum, the operator's name and license number.

§19-1B-5. Compliance orders, suspension of timbering operating license.

(a) Upon a finding by the chief that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the chief shall notify the director of the location of the site, the problem associated with the site, and any suggested corrective action. Upon the failure of the director to take appropriate action within three days of providing notice to the director, the chief may seek relief through the conference panel in accordance with section eleven of this article.

(b) Upon notification of the chief or upon a finding by the director that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the director shall issue a written compliance order requiring the person conducting the timber operation to take corrective action. The order shall mandate compliance within a reasonable and
practical time, not to exceed ten days. The person
subject to the order may appeal the order within forty-
eight hours of its issuance to the conference panel in
accordance with section eleven of this article.

(c) In any circumstance where observed damage or
circumstances on a logging operation, in the opinion of
the director, are sufficient to endanger life or result in
uncorrectable soil erosion or water pollution, or if the
operator is not licensed pursuant to this article, or if a
certified logger is not supervising the operation, the
director shall order the immediate suspension of the
timber operation and the operation shall remain
suspended until the corrective action mandated in the
compliance order suspending the operation is instituted.
The director shall not issue an order cancelling the
suspension order until compliance is satisfactory or until
overruled on appeal. Failure to comply with any
compliance order shall be a violation of this article. The
person subject to the order may appeal to the conference
panel in accordance with the provisions of section eleven
of this article.

(d) The director may suspend the license of any person
conducting a timbering operation or the certification of
any certified logger supervising a timbering operation,
for no less than thirty nor more than ninety days, if the
person is found in violation of this article or article five-
a, chapter twenty of this code, for a second time within
any two-year period: Provided, That one or more
violations for the same occurrence may constitute only
one violation for purposes of this subsection.

(e) The director may revoke the license of any person
conducting timbering operations or the certification of
any certified logger if the person is found in violation
of this article or article five-a, chapter twenty of this
code, for a third time within any two-year period: Provided, That one or more violations for the same occurrence may constitute only one violation for pur-
poses of this subsection. A revoked license shall not be
subject to reissue during the licensing period for which
it was issued.
(f) The director shall notify the chief of any order issued or any suspension or revocation of a license pursuant to this section within three days of the date of the director's action.

§19-1B-6. Notification of duration of timbering operations; requirements thereof.

(a) After the first day of September, one thousand nine hundred ninety-two, in addition to any other requirement of this article, no person may conduct timbering operations unless the person notifies the director of the specific location on which the timbering operations are to be conducted. The notification shall be made in a manner designated by the director. The notification shall include, at a minimum, the following:

1. The specific topographic location where the timbering operations are to be conducted;
2. The approximate dates that the timbering operation will begin and end;
3. The approximate acreage over which timbering operations are contemplated;
4. The names and addresses of the owner or owners of the timber to be harvested and, if different, the names and addresses of the owner or owners of the property upon which the timber is located;
5. A sketch map of the proposed logging operation, including haul roads, landings and stream crossings;
6. A description of the sediment control practices to be used by the logger during the timber harvesting operation;
7. An acknowledgement that the operator will conduct the operations in compliance with the provisions of this article and any applicable rules and regulations promulgated pursuant to this article;
8. A certification satisfactory to the director that all permits required under state law have been obtained or applied for and that all pertinent requirements for obtaining any permit applied for, but not yet obtained,
(9) The name or names of the person or persons who
will be supervising the timbering operations at the site
of the operations and his or her logger certification
numbers: Provided, That no logger certification number
shall be required until after the certification program
has been developed.

(b) The notification shall be made within at least three
days of the beginning of the operation.

(c) Further notice shall be given if the operation is to
be, for any reason, closed more than seven days before
the estimated date for closing provided under subdivi-
sion (2), subsection (a) of this section.

§19-1B-7. Certification of persons supervising timbering
operations, timbering operations to be su-
pervised, promulgation of rules and
regulations.

(a) After the first day of July, one thousand nine
hundred ninety-three, any individual supervising any
timbering operation must be certified pursuant to this
article.

(b) The director is responsible for the development of
standards and criteria for establishment of a regularly
scheduled program of education, training and examina-
tion that all persons must successfully complete in order
to be certified to supervise any timbering operation. The
program for certified loggers shall provide, at a
minimum, for education and training in the safe conduct
of timbering operations, in first aid procedures, and in
the use of best management practices to prevent, in-so-
far as possible, soil erosion on timbering operations. The
goals of this program will be to assure that timbering
operations are conducted in accordance with applicable
state and federal safety regulations in a manner that is
safest for the individuals conducting the operations and
that they are performed in an environmentally sound
manner.

(c) The director shall provide for such programs by
using the resources of the division, other appropriate
state agencies, educational systems, and other qualified
persons. Each inspector under the jurisdiction of the
chief shall attend a certification program free of charge
and complete the certification requirements of this
section.

(d) The director shall promulgate legislative rules in
accordance with article three, chapter twenty-nine-a, of
this code, which provide the procedure by which
certification pursuant to this article may be obtained
and shall require the payment of an application fee and
an annual renewal fee of fifty dollars.

(e) Upon a person's successful completion of the
certification requirements, the director shall provide
that person with proof of the completion by issuing a
numbered certificate and a wallet-sized card to that
group. The division shall maintain a record of each
certificate issued and the person to whom it was issued.

(f) A certification granted pursuant to this section
shall be renewable only for two succeeding years. For
the third renewal and every third renewal thereafter,
the licensee shall first attend a program designed by the
director to update the training.

(g) After the first day of July, one thousand nine
hundred ninety-three, every timbering operation must
have at least one person certified pursuant to this section
supervising the operation at any time the timbering
operation is being conducted and all timbering opera-
tors shall be guided by the West Virginia forest practice
standards and the West Virginia silvicultural best
management practices in selecting practices approp-
riate and adequate for reducing sediment movement
during a timber operation.

(h) The director shall, at no more than three year
intervals after the effective date of this article, convene
a committee to review the best management practices
so as to ensure that they reflect and incorporate the most
current technologies. The committee shall, at a min-
imum, include a person doing research in the field of
silvicultural best management practices, a person doing
research in the field of silviculture, two loggers certified
under this article, a representative of the water
resources section of the division of natural resources,
and a representative of an environmentally active
organization. The director shall chair the committee and
may adjust the then current best management practices
according to the suggestions of the committee in time
for the next certification cycle.

§19-1B-8. Timbering operations enforcement fund.

1 There is created in the state treasury a special
2 revolving fund designated the “Timbering Operations
3 Enforcement Fund.” All fees collected pursuant to this
4 article shall be deposited into the fund: Provided, That
5 amounts deposited in the fund which are found from
time to time to exceed the amounts necessary to
6 effectuate the purposes of this article may be redesign-
7 nated for other purposes by appropriation by the
8 Legislature.
9
10 This fund shall be appropriated to the division of
11 forestry to be used for the administration and enforce-
12 ment of the provisions of this article and for no other
13 purpose.

§19-1B-9. Right of entry.

1 The director or the chief has the right to enter upon
2 any property for the purpose of making inspections to
3 ensure that the provisions of this article and any rules
4 promulgated pursuant thereto are being complied with.

§19-1B-10. Orders of the director.

1 Notwithstanding the provisions of section five of this
2 article, whenever the director determines that any
3 person has violated a provision of this article or any
4 rules promulgated pursuant thereto, he or she may enter
5 an order directing the person to cease the violation and,
6 where appropriate, to take such action to remediate
7 damage created or to take action appropriate for the
8 specific site.
9
10 Any person having an interest which is or may be
11 adversely affected by any order of the director may file
12 an appeal in accordance with the provisions of section
§19-1B-11. Creation of conference panels; authority.

(a) Each forestry district in this state shall contain an informal conference panel composed of three persons which shall act on behalf of the state to decide appeals of orders of the director. One member of the panel shall be selected by the director, one member shall be selected by the chief and one member shall be selected by agreement between the chief and the director. If a vacancy exists on the panel, the vacancy shall be filled by whomever made the initial selection. The members of the panel shall serve without compensation.

(b) Upon appeal of a decision under this section or upon petition by the chief, pursuant to the provisions of subsection (a), section five of this article, the panel shall hold an informal conference affirming, modifying or vacating an order of the director, or issuing an order in the name of the director. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notice of its decision to the parties. The decision of the panel shall be final unless reversed, vacated or modified on appeal to the circuit court of the county wherein the cause for the decision arose.

(c) A party aggrieved by a decision of a panel may appeal to the circuit court of the county wherein the cause for the order arose. Such appeal must be filed with the circuit court within twenty days of the date of decision of the panel and shall be heard de novo by the court. The court may reverse, vacate or modify the decision of the panel. The decision of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases.

§19-1B-12. Civil penalties.

The director may seek and recover a civil penalty for a violation of any provision of this article, any rule, regulation or order of the director in the circuit court of the county in which the violation occurred, in an
amount not exceeding two thousand five hundred dollars
for the first offense and not exceeding five thousand
dollars for any subsequent offense.

Any penalty recovered pursuant to this section shall
be deposited in the state treasury to the credit of the
timbering operations enforcement fund.

Any person aggrieved by a decision of the circuit
court pursuant to this section may appeal the circuit
court order to the supreme court of appeals.

§19-1B-13. Cooperation of other state agencies.

All state agencies shall cooperate with the director in
the director's efforts to ensure that persons conducting
timbering operations are doing so in compliance with all
applicable provisions of state law, and the director shall
cooperate with such other state agencies to enforce their
statutory and regulatory responsibilities and duties.
Cooperation shall include the sharing of information
necessary or helpful to the accomplishment of such
responsibilities and duties. The director shall notify the
chief of commencement of timbering operations. The
chief and the director each shall submit an annual
report on the progress and effectiveness of the programs
incorporated in this article to the governor, the speaker
of the House of Delegates and the president of the
Senate.

§19-1B-14. Effect on other laws.

Nothing in this article relieves any person conducting
timbering operations from complying with any other
provision of this code.

CHAPTER 7
(S. B. 65—By Senators Spears, Brackenrich and Boley)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]
thirty-one, as amended; and to amend and reenact section one, article two-b, chapter nineteen, relating to the artificial coloring of meat and meat products; and continuation of the meat inspection program.

Be it enacted by the Legislature of West Virginia:

That section eight, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one, article two-b, chapter nineteen 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 of this article, 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.

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 meat inspection program should be continued and reestablished. Accordingly, notwithstanding 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-eight.
CHAPTER 8

(Com. Sub. for H. B. 2816—By Delegates Mezzatesta and D. Miller)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-nine, relating to the production of nontraditional agriculture products; definitions; promulgation of rules; responsibility for damages; penalties.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-nine, to read as follows:

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

§19-29-1. Nontraditional agriculture; authority.

The commissioner of agriculture is hereby empowered and shall devise means of advancing the nontraditional agricultural products in the state, and in the performance of such duty, he or she shall have the authority to call upon any department, division, or officer of the state or county to cooperate with him or her in promoting nontraditional agricultural products in the state.

These nontraditional products are to be considered as agricultural activities.

Only after consultation with the division of natural resources and the department of health and human resources, the commissioner shall promulgate rules, in accordance with chapter twenty-nine-a of this code, for...
the promotion, marketing, and regulation of nontraditional agriculture.

The commissioner shall have the authority under this article to restrict the importation and commercial production of any species of nontraditional agriculture which in his or her opinion is not in the best interest of the industry or of the public.

Nothing in this article shall affect the division of natural resources' authority as provided in articles one, two, three, and seven, chapter twenty of this code.


(a) "Aquaculture" means the commercial production of fish and/or other aquatic life.

(b) "Commissioner" means the commissioner of agriculture or his or her designee.

(c) "Domestic purposes" means for the purposes of food production, for resale as breeding stock or for the sale of immature stock for the purposes of further feeding.

(d) "Nontraditional agriculture" means the production of animals domesticated from wild stock, either native or nonnative, and are being confined, bred, and/or fed for domestic purposes, except that white-tailed deer (Odocoileus virginianus) and all its subspecies shall not be included; aquaculture; or other agricultural products as defined in this article.

§19-29-3. Health requirements.

Only after consultation with the division of natural resources and the department of health and human resources, the commissioner shall promulgate rules, in accordance with chapter twenty-nine-a of this code, dealing with the health standards for nontraditional agriculture.

§19-29-4. Inspection of animals, meat and meat products.

The commissioner shall promulgate rules, in accordance with chapter twenty-nine-a of this code, to include inspection of the meat from nontraditional agriculture.
intended for sale in commercial outlets. All nontraditional agriculture needing to be slaughtered shall be slaughtered in an inspected slaughterhouse.

§19-29-5. Owners’ responsibilities.

It is the responsibility of the owner to take all reasonable action to maintain the nontraditional agriculture on property owned or leased by the owner, including the construction of fences or other barriers and housing of a suitable design. Owners of nontraditional agriculture shall be responsible for damages and subject to fines as set out in article eighteen of this chapter.

CHAPTER 9

(H. B. 4643—By Delegates Gallagher and Pethel)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, four, five, six, seven and eight of said article; to redesignate section eleven-a as section twelve and to amend and reenact section twelve; to redesignate section eleven-b as section thirteen and to amend and reenact section thirteen; to redesignate section eleven-c as section eighteen and to amend and reenact section eighteen; to redesignate section twelve as section twenty; to further amend said article by adding thereto five new sections, designated sections fourteen, fifteen, sixteen, seventeen and nineteen, all relating to air pollution control generally; repealing the effective date of regulations; defining terms; providing for composition of the commission, terms, meetings, compensation; prescribing the powers and duties of the commission; amending the advisory councils’ membership; authorizing the commission to promulgate rules; creating the air pollution education and environment fund; modifying the time requirements for filing notice with the
secretary of state; authorizing the commission to establish an operating permit program; authorizing the commission to impose fees; authorizing the director to suspend, modify or revoke and reissue permits for violations; allowing conference and hearing on permit actions; authorizing the issuance of cease and desist orders; authorizing permit suspension, modification and revocation; providing for administrative and judicial appeals of permit actions; providing for appeals of orders generally, procedure; providing for the imposition of a stay upon motion for certain permit actions; providing for appeals to the circuit court of Kanawha County if the parties agree and to remove automatic stay provisions for other orders; authorizing the imposition of civil penalties; defining the crime of knowing misrepresentation and providing penalties therefor; defining the crime for violation of the article, permit or rule and providing penalties therefor; amending the civil and criminal penalties for violations of the article; allowing limited access to confidential records; providing for record and data maintenance generally; allowing inspection of certain records; requiring permits for construction, modification or relocation for stationary sources of air pollution; providing for a maximum time for the issuance or renewal of construction, modification or relocation permits; allowing for permit consolidation; providing for an inspection and maintenance program for motor vehicles; imposing an inspection fee; requiring operating permits for stationary sources of air pollution; and establishing a small business environmental compliance assistance program and advisory panel.

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

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

ARTICLE 20. AIR POLLUTION CONTROL.

§16-20-2. Definitions.
§16-20-4. Air pollution control commission—Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.
§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.
§16-20-6. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to commission; hearings, subpoenas, etc.; orders and findings of commission.
§16-20-7. Appeals from orders of commission.
§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.
§16-20-12. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.
§16-20-13. Construction modification or relocation permits required for stationary sources of air pollutants.
§16-20-14. Operating permits required for stationary sources of air pollution.
§16-20-16. Administrative review of permit actions.
§16-20-18. Motor vehicle pollution, inspection and maintenance.
§16-20-19. Small business environmental compliance assistance program, compliance advisory panel.
§16-20-20. Severability.

§16-20-2. Definitions.

1 The terms used in this article are defined as follows:
2 (a) "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.
3 (b) "Commission" means the air pollution control commission created pursuant to the provisions of this article.
(c) "Commissioner" means a member of the air pollution control commission.

(d) "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

(e) "Discharge" means any release, escape or emission of air pollutants into the air.

(f) "Statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

(g) "Director" means the person appointed by the air pollution control commission to act as the director or the director's designated representative.

§16-20-4. Air pollution control commission — Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.

The "air pollution control commission," heretofore created, shall continue in existence as an agency of the state and shall consist of seven members, including the commissioner of the bureau of public health and the commissioner of agriculture, or their designees, both of whom shall be members ex officio, and five other members to be appointed by the governor with the advice and consent of the Senate, two of whom shall be representative of industries engaged in business in this state, and three of whom shall be representative of the public at large. The three appointed members of the commission in office on the effective date of this article shall, unless sooner removed, continue to serve until their terms expire and until their successors have been appointed and have qualified. On or before June fifteen, one thousand nine hundred sixty-seven, the governor shall appoint one member to serve until June thirty, one
thousand nine hundred seventy, and one member to serve until June thirty, one thousand nine hundred seventy-one, or until their successors have been appointed and have qualified. As the terms of the three appointed members of the commission in office on the effective date of this article expire and as the terms of the two members to be appointed by the governor on or before June fifteen, one thousand nine hundred sixty-seven, expire, members shall be appointed for overlapping terms of five years, so that one term expires each year, or until their successors have been appointed and have qualified. Any vacancy in the office of an appointed member of the commission shall be filled by appointment by the governor for the unexpired term of the appointed member whose office shall be vacant.

The ex officio members of the commission shall receive no salary or remuneration for their services as such but they shall be reimbursed, out of moneys appropriated for such purpose, for all reasonable and necessary expenses actually incurred in the discharge of their duties as such.

As compensation for his services on the commission, each appointed member shall receive, out of moneys appropriated for such purpose, the sum of seventy-five dollars for each day or substantial portion thereof that he is actually engaged in the work of the commission. Each member shall also be entitled to be reimbursed, out of moneys appropriated for such purpose, for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the commission.

At its first meeting the commission shall elect from its membership a chairman, and at the first meeting in each fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year. At similar times the commission shall elect from its membership a vice chairman and appoint a secretary. The secretary need not be a member of the commission. The vice chairman shall preside over the meetings and hearings of the commission in the absence of the chairman. The commission shall appoint and
employ a director and such personnel as may be
required, whose duties shall be defined by the com-
mission and whose compensation, to be fixed by the
commission, shall be paid out of the state treasury, upon
the requisition of the commission, from moneys approp-
riated for such purposes.

The commission may establish rules for the regulation
of its affairs and the conduct of all proceedings before
it. All proceedings of the commission shall be entered
in a permanently bound record book, properly indexed,
and the same shall be carefully preserved. Copies of
orders entered by the commission, as well as copies of
papers or documents filed with it, or the records of
proceedings before the commission, shall be attested by
the secretary of the commission. The commission shall
meet at such times and places as may be agreed upon
by the commissioners, or upon the call of the chairman
of the commission or any two commissioners, all of
which meetings shall be general meetings for the
consideration of any and all matters which may properly
come before the commission.

§16-20-5. Air pollution control commission — Powers and
duties; legal services; rules; public hearings.

(a) The commission is hereby authorized and
empowered:

(1) To develop ways and means for the regulation and
control of pollution of the air of the state;

(2) To advise, consult and cooperate with other
agencies of the state, political subdivisions of the state,
other states, agencies of the federal government,
industries, and with affected groups in furtherance of
the declared purposes of this article;

(3) To encourage and conduct such studies and
research relating to air pollution and its control and
abatement as the commission may deem advisable and
necessary;

(4) To promulgate legislative rules in accordance with
the provisions of chapter twenty-nine-a of this code not
inconsistent with the provisions of this article, relating
to the control of air pollution: Provided, That no rule of
the commission shall specify a particular manufacturer
of equipment nor a single specific type of construction
nor a particular method of compliance except as
specifically required by the "Federal Clean Air Act," as
amended, nor shall any such rule apply to any aspect
of an employer-employee relationship: Provided, how-
ever, That no legislative rule or program of the
commission hereafter adopted shall be any more
stringent than any federal rule or program except to the
limited extent that the commission first makes a specific
written finding for any such departure that there exists
scientifically supportable evidence for such rule or
program reflecting factors unique to West Virginia or
some area thereof;

(5) To enter orders requiring compliance with the
provisions of this article and the rules lawfully promul-
gated hereunder;

(6) To consider complaints, subpoena witnesses,
administer oaths, make investigations and hold hearings
relevant to the promulgation of rules and the entry of
compliance orders hereunder;

(7) To encourage voluntary cooperation by municipal-
ities, counties, industries and others in preserving the
purity of the air within the state;

(8) To employ personnel, including specialists and
consultants, purchase materials and supplies, and enter
into contracts necessary, incident or convenient to the
accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or
place on or at which a source of air pollutants is located
or is being constructed, installed or established at any
reasonable time for the purpose of ascertaining the state
of compliance with this article and rules in force
pursuant thereto. No person shall refuse entry or access
to any authorized representative of the commission who
requests entry for purposes of inspection, and who
presents appropriate credentials; nor shall any person
obstruct, hamper or interfere with any such inspection:
Provided, That nothing contained in this article shall be
construed to allow a search of a private dwelling, including the curtilage thereof, without a proper warrant;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources; and the commission may cooperate with any public or private agency or person and receive therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of the “Air Pollution Education and Environment Fund” which is hereby created in the state treasury. The moneys collected pursuant to this article which are directed to be deposited in the air pollution education and environment fund must be deposited in a separate account in the state treasury and expenditures for purposes set forth in this article are not authorized from collection but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as it may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the commission about all matters pertaining to the regula-
tion, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the commission such information as the director may require in a form or manner prescribed by him for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the commission;

(16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended: Provided, That in preparing and submitting each such plan the commission shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: Provided, however, That nothing herein contained shall be construed to affect plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(17) Whenever the commission achieves informally, by letter, or otherwise, an agreement with any person that said person will cease and desist in any act resulting in the discharge of pollutants or do any act to reduce or eliminate such discharge, such agreement shall be embodied in a consent order and entered as, and shall have the same effect as, an order entered after a hearing.
137 as provided in section six of this article; and
138 (18) To promulgate legislative rules, in accordance
139 with the provisions of chapter twenty-nine-a of this code,
140 providing for the following:
141 (A) Procedures and requirements for permit applica-
142 tions and modifications and the review thereof;
143 (B) Imposition of permit application fees;
144 (C) Establishment of criteria for construction, modi-
145 fication, relocation and operating permits;
146 (D) Imposition of permit fees and of certificate fees:
147 Provided, That any person subject to operating permit
148 fees pursuant to section fourteen of this article shall be
149 exempt from imposition of the certificate fee; and
150 (E) Imposition of penalties and interest for the
151 nonpayment of fees.
152 The fees, penalties and interest shall be deposited in
153 a special account in the state treasury designated the
154 "Air Pollution Control Commission Fund" which is
155 hereby continued to be appropriated for the sole purpose
156 of paying salaries and expenses of the commission and
157 its employees to carry out the provisions of this article:
158 Provided, That the fees, penalties and interest collected
159 for operating permits required by section fourteen of
160 this article shall be expended solely to cover all
161 reasonable direct and indirect costs required to admin-
162 ister the operating permit program. The fees collected
163 pursuant to this subdivision must be deposited in a
164 separate account in the state treasury and expenditures
165 for purposes set forth in this article are not authorized
166 from collections but are to be made only in accordance
167 with appropriation and in accordance with the provi-
168 sions of article three, chapter twelve of this code and
169 upon fulfillment of the provisions set forth in article two,
170 chapter five-a of the code. Amounts collected which are
171 found from time to time to exceed the funds needed for
172 the purposes set forth in this article may be transferred
173 to other accounts or funds and redesignated for other
174 purposes by appropriation of the Legislature: Provided,
175 however, That for fiscal year one thousand nine hundred
ninety-three, expenditures are permitted from collections without appropriation by the Legislature.

(19) Receipt of any money by the commission as a result of the entry of any consent order shall be deposited in the state treasury to the credit of the air pollution education and environment fund.

(b) The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

(c) No rule of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be in at least one county in each affected air quality control region defined by the commission. A copy of any proposed rule of the commission shall be filed in the office of the secretary of state at least thirty days and not more than sixty days prior to the scheduled date of any such hearing. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule to the commission within thirty days after such hearing. After such thirty-day period, no views or comments shall be received in writing or otherwise, unless formally solicited by the commission. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party in which event the prevailing rates for such transcripts will be required from such interested party.
§16-20-6. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to commission; hearings, subpoenas, etc.; orders and findings of commission.

If, from any investigation made by him or from any complaint filed with him, the director shall be of the opinion that a person is violating the provisions of this article, or any rules and regulations promulgated pursuant thereto, he shall make and enter an order directing such person to cease and desist such activity. The director shall fix a reasonable time in such order by which such activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter such order.

If, after any investigation made by him, or his designated representative, or from any complaint filed with him, the director shall be of the opinion that a permit holder is violating the provisions of this article, or any rules or regulations promulgated pursuant thereto, or any order of the director, or any provision of a permit, the director may issue notice of intent to suspend, modify or revoke and reissue such permit. Upon notice of the director's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order shall be considered a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter such order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the commission.

The director shall cause a copy of any such order to
be served upon such person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of such final order has been served may appeal such order to the air pollution control commission in the following manner except as otherwise provided in this section. The person so appealing shall be known as the appellant and the director shall be known as the appellee. Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the commission for such purpose, with the commission within fifteen days after the date upon which the appellant received a copy of the order. The notice of appeal shall set forth the order complained of and the grounds upon which the appeal is based.

Upon motion of the appellant, the commission may, by informal conference at which the appellant may be present and held no later than five business days after issuance of an order, stay the effect of the order complained of until final determination thereof is made by the commission. A copy of the notice of appeal shall be filed by the commission with the director within eight days after the notice of appeal is filed with the commission.

Within seven days after receipt of his copy of the notice of appeal, the director shall prepare and certify to the commission a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the director's file relating to the matter in question. The commission shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code, shall apply to and govern the hearing on appeal authorized by the provisions of this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, except that any such appeal hearing shall be held in the county wherein the alleged statutory air pollution complained of originated or as agreed to among the parties.
Any such appeal hearing shall be conducted by a quorum of the commission. For the purpose of conducting any such appeal hearing, any member of the commission and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the commission, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

Any such hearing shall be held within thirty days after the date upon which the commission received the timely notice of appeal, unless there is a postponement or continuance. The commission may postpone or continue any hearing on its own motion, or upon application of the appellant or the appellee for good cause shown. The director shall be represented at any such hearing by the attorney general or his assistants. At any such hearing the appellant may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

After such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall make and enter an order affirming, modifying or vacating the order of the director, or shall make and enter such order as the director should have entered.

Such 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 the appellant, and his attorney of record, if any, and upon the appellee in person or by registered or certified mail. The order of the commission shall be final unless vacated or modified upon judicial review thereof in accordance with the
provisions of section seven of this article.

§16-20-7. Appeals from orders of commission.

Any person whose interest shall have been substantially affected by an order of the commission may appeal from such order or decision by filing with the commission a written notice of appeal. Such notice shall be filed within thirty days from the date notice of the order or decision of the commission was given to such person, and shall be signed by him or his attorney. Within thirty days from the receipt of the notice of appeal, the commission shall prepare and forward to the appellant or his attorney a copy of a full transcript of the proceedings, together with a copy of the order or decision of the commission and a copy of the notice of appeal, and at the same time shall file a transcript of the proceedings before the commission and the other documents mentioned above with the clerk of the circuit court herein designated. All documents shall be duly certified by the secretary of the commission. The court shall thereafter have complete jurisdiction of the matter.

The appeal shall be taken to the circuit court of the county wherein the alleged statutory air pollution complained of originated or in Kanawha County upon agreement between the parties. The court shall fix a time for the hearing of the appeal and shall, after such hearing, without a jury, by order entered of record, affirm, modify or set aside in whole or in part the order of the commission. The said court shall make findings of fact and conclusions of law based upon the transcript of the proceedings before the commission and upon any additional evidence adduced before said court, the right to adduce such additional evidence being hereby reserved to the commission or to any person substantially affected by the order of the commission. In the event the circuit court shall affirm or modify the commission's order that a statutory air pollution exists under the provisions of this article, the order of the court shall specify that such pollution shall be corrected within a reasonable period of time to be fixed therein. The commission or any person whose interests shall have been substantially affected by the final order of the
40 circuit court may appeal to the supreme court of appeals
41 in the manner prescribed by law.

42 Any order appealed to the commission, the circuit
43 court or to the supreme court shall have full force and
44 effect during the pendency of the appeal except the
45 order may be stayed within the full discretion of the
46 commission or the respective court based upon consid-
47 erations as provided by general law.

§16-20-8. Penalties; recovery and disposition; duties of
prosecuting attorneys.

1 (a) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant
3 to this article shall be subject to a civil penalty not to
4 exceed ten thousand dollars for each day of such
5 violation, which penalty shall be recovered in a civil
6 action brought by the commission in the name of the
7 state of West Virginia in the circuit court of any county
8 wherein such person resides or is engaged in the activity
9 complained of or in the circuit court of Kanawha
10 County. The amount of the penalty shall be fixed by the
11 court without a jury: Provided, That any such person
12 shall not be subject to such civil penalties unless such
13 person shall have been given written notice thereof by
14 the director: Provided, however, That for the first such
15 minor violation, if such person corrects the violation
16 within such time as was specified in the notice of
17 violation issued by the director, no such civil penalty
18 may be recovered: Provided further, That if such person
19 fails to correct such minor violation or for any serious
20 or subsequent serious or minor violation, such person
21 shall be subject to civil penalties imposed pursuant to
22 this section from the first day of such violation notwith-
23 standing the date of the issuance or receipt of the notice
24 of violation. The commission shall, by rule and regula-
25 tion subject to the provisions of chapter twenty-nine-a
26 of this code, determine the definitions of serious and
27 minor violations. The amount of any such penalty
28 collected by the commission shall be deposited in the
29 general revenue of the state treasury according to law.

30 (b) (1) Any person who knowingly misrepresents any
material fact in an application, record, report, plan or
other document filed or required to be maintained under
the provisions of this article or any rules promulgated
by the commission thereunder is guilty of a misdemea-
or, and, upon conviction thereof, shall be fined not
more than twenty-five thousand dollars or imprisoned in
the county jail not more than six months or both fined
and imprisoned.

(2) Any person who knowingly violates any provision
of this article, any permit or any rule or order issued
pursuant to this article is guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not more than
twenty-five thousand dollars for each day of such
violation or imprisoned in the county jail not more than
one year or both fined and imprisoned.

(c) Upon a request in writing from the commission,
it shall be the duty of the attorney general and the
prosecuting attorney of the county in which any such
action for penalties accruing under this section or
section nine of this article may be brought to institute
and prosecute all such actions on behalf of the
commission.

(d) For the purpose of this section, violations on
separate days shall be considered separate offenses.

§16-20-12. Records, reports, data or information; confi-
dentiality; proceedings upon request to inspect or copy.

All air quality data, emission data, permits, com-
pliance schedules, commission orders and any other
information required by a federal implementation
program (all for convenience hereinafter referred to in
this section as "records, reports, data or information")
obtained under this article shall be available to the
public, except that upon a showing satisfactory to the
director, by any person, that records, reports, data or
information or any particular part thereof, to which the
director has access under this article if made public,
would divulge methods or processes entitled to protec-
tion as trade secrets of such person, the director shall
consider such records, reports, data or information or
such particular portion thereof confidential: Provided, that such confidentiality shall not apply to the types and amounts of air pollutants discharged and that such records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environment protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: Provided, however, that such officers, employees or authorized representatives of the state or federal environmental protection agency protect such records, reports, data or information to the same degree required of the director by this section. The commission shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of such a request, the director or his designate shall: (a) Advise the person making such request of the time and place at which he may inspect and copy the documents; or (b) deny the request, stating in writing the reasons for such denial. For purposes of judicial appeal, a written denial by the director or his designate shall be deemed an exhaustion of administrative remedies. Any person whose request for information is denied in whole or in part may appeal from such denial by filing with the director a notice of appeal. Such notice shall be filed within thirty days from the date the request for information was denied, and shall be signed by the person whose request was denied or his attorney. The appeal shall be taken to the circuit court of Kanawha County, where it shall be heard without a jury. The scope of review shall be limited to the question of whether the records, reports, data or other information, or any particular part thereof (other than emission data), sought to be inspected or copied, would, if made public, divulge methods or processes entitled to protection as trade secrets. The said
court shall make findings of fact and conclusions of law based upon the evidence and testimony. The director, the person whose request was denied, or any other person whose interest shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

§16-20-13. Construction, modification or relocation permits required for stationary sources of air pollutants.

No person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as hereinafter provided.

The commission shall by rule and regulation specify the class or categories of stationary sources to which this section shall apply. Application for permits shall be made upon such form, in such manner, and within such time as the rule and regulation shall prescribe and shall include such information, as in the judgment of the director, will enable him to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules and regulations promulgated thereunder.

The director shall, within a reasonable time not to exceed twelve months for major sources, as defined by the commission, and six months for all other sources after the receipt of a complete application, issue such permit unless he determines that the proposed construction, modification or relocation will not be in accordance with this article or rules and regulations promulgated thereunder, in which case he shall issue an order for the prevention of such construction, modification or relocation.

For the purposes of this section, a modification is deemed to be any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by such source above a de minimis level set by the commission.
§16-20-14. Operating permits required for stationary sources of air pollution.

No person may operate a stationary source of air pollutants without first obtaining an operating permit as hereinafter provided. The commission shall promulgate legislative rules, in accordance with chapter twenty-nine-a of this code, which specify classes or categories of stationary sources which shall be required to obtain an operating permit. The legislative rule shall provide for the form and content of the application procedure including time limitations for obtaining the required permits. Any person who has filed a timely and complete application for a permit or renewal thereof required by this section, and who is abiding by the requirements of this article and the rules promulgated pursuant thereto, shall be deemed to be in compliance with the requirements of this article and any regulation promulgated thereunder until a permit is issued or denied. Any legislative rule promulgated pursuant to the authority granted by this section shall be equivalent to and consistent with rules and regulations adopted by the administrator of United States environmental protection agency pursuant to Title IV and Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7651 et seq. and 42 U.S.C. §7661 et seq., respectively: Provided, That such legislative rule may deviate from the federal rules and regulations where a deviation is appropriate to implement the policy and purpose of this article taking into account such factors unique to West Virginia.


For permits required by sections thirteen and fourteen of this article, the commission may incorporate the required permits with an existing permit or consolidate the required permits into a single permit.

§16-20-16. Administrative review of permit actions.

Any person whose interest may be affected, including, but not necessarily limited to the applicant and any person who participated in the public comment process, by a permit issued, modified or denied by the director
may appeal such action of the director to the commission pursuant to section six of this article.


Any person whose interest may be affected, including, but not necessarily limited to, the applicant and any person who participated in the public comment process or the administrative review process, by an order issued by the commission pursuant to section sixteen of this article, may appeal such order to the circuit court of Kanawha County pursuant to section seven of this article.

§16-20-18. Motor vehicle pollution, inspection and maintenance.

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this article, the commission may provide by legislative rule for the control of emissions from motor vehicles. Such legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The commission shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved, or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law or legislative rule, no person shall fail to maintain in good working order or remove, dismantle, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules and regulations of the commission to be maintained in or on the vehicle. Any such failure to maintain
in good working order or removal, dismantling, or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration for the vehicle by the department of transportation, division of motor vehicles. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The department of transportation, division of motor vehicles, department of administration, information and communication services division, and the department of public safety shall make available technical information and records to the commission to implement the legislative rule regarding motor vehicle pollution, inspection and maintenance. The commission shall promulgate a legislative rule establishing motor vehicle pollution, inspection and maintenance standards and imposing an inspection fee at a rate sufficient to implement the motor vehicle inspection program.

(d) The commission shall promulgate a legislative rule requiring maintenance of features of equipment in or on motor vehicles for the purpose of controlling emissions therefrom, and no motor vehicle may be issued a division of motor vehicles registration certificate, or the existing registration certificate shall be revoked, unless the motor vehicle has been found to be in compliance with the commission’s legislative rule.

(e) The remedies and penalties provided in section eighteen of this article and section one, article three, chapter seventeen-a of this code, shall apply to violations hereof, and no provisions of sections eight or nine of this article shall apply thereto.

(f) As used in this section “motor vehicle” shall have the same meaning as in chapter seventeen-c of this code.

§16-20-19. Small business environmental compliance assistance program, compliance advisory panel.

The secretary of the department of commerce, labor,
and environmental resources shall establish a small business stationary source technical and environmental compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

(a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the governor to represent the general public;

(b) One member selected by the speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(d) One member selected by the president of the Senate who is an owner or who represents owners of small business stationary sources;

(e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources;

(f) One member selected by the commission to represent the commission.

§16-20-20. Severability.

The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sections or parts of the article or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this article would have been adopted if such invalid or unconstitutional provision, section or part had not been included therein.
AN ACT to amend and reenact sections four and nine, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend section twenty-three, article three, chapter seventeen-a of said code; and to amend and reenact sections two and three, article eight, chapter sixty of said code, relating to alcohol beverage control special investigators; registration plates for vehicles operated by inspectors of the office of the alcohol beverage control commissioner; and requiring caterers and party supply stores to obtain licenses for the sale of beer and wine.

Be it enacted by the Legislature of West Virginia:

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

Chapter
11. Taxation.
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
60. Alcohol Beverage Control Act.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees and agents; administration and enforcement expenses.

§11-16-9. Amount of license tax: Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.
§11-16-4. 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 eleven special
investigators who shall be nonclassified exempt em-
ployees 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 commis-
sioner 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 administra-
 tion enforcement, after the amount of such fees and
other charges shall be certified by the court to the
auditor.

§11-16-9. Amount of license tax; Class A and Class B
retail dealers; purchase and sale of nonin-
toxicating beer permitted; distributors;
brewers; brewpubs.

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 nonintoxicating 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 and caterer or party supply store, 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 legislative rules pursuant to chapter twenty-nine-a of this code necessary to carry this provision into effect. Caterers or party supply stores will be required to purchase the appropriate licenses from the alcohol beverage control administration.
(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.

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-3-23. 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 sixteen 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
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.
64 Magistrates shall have concurrent jurisdiction with
circuit and criminal courts for the enforcement of this
66 section.

CHAPTER 60. ALCOHOL BEVERAGE
CONTROL ACT.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.
§60-8-3. Licenses; fees; general restrictions.

§60-8-2. Definitions.

1 Unless the context in which used clearly requires a
different meaning, as used in this article:
2 "Commissioner" or "commission" means the West
3 Virginia alcohol beverage control commissioner.
4 "Distributor" means any person whose principal place
5 of business is within the state of West Virginia, and who
6 is engaged in selling or distributing wine to retailers or
7 private wine restaurants and selling or distributing
8 port, sherry and Madeira wines to wine specialty shops
9 under authority of this article and actually maintains a
10 warehouse in this state for the distribution of wine.
11 "Fortified wine" shall mean any wine to which brandy
12 or other alcohol has been added and shall include dessert
13 wines which are not fortified.
14 "Grocery store" means any retail establishment,
15 commonly known as a grocery store, supermarket,
16 delicatessen, caterer or party supply store, where food,
17 food products and supplies for the table are sold for
18 consumption off the premises with average monthly
19 sales (exclusive of sales of wine) of not less than five
20 hundred dollars and an average monthly inventory
21 (exclusive of inventory of wine) of not less than three
22 thousand dollars. The term "grocery store" shall also
23 include and mean a separate and segregated portion of
24 any other retail store which is dedicated solely to the
25 sale of food, food products and supplies for the table for
26 consumption off the premises with average monthly
27 sales with respect to such separate or segregated portion
28 (exclusive of sales of wine) of not less than three
29 thousand dollars and an average monthly inventory
(exclusive of inventory of wine) of not less than three thousand dollars.

“Licensee” means the holder of a license granted under the provisions of this article.

“Private wine restaurant” means a restaurant which:

(1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

“Retailer” means any person licensed to sell wine at retail to the public at his established place of business for off-premises consumption and who is licensed to do so under authority of this article.

“Supplier” means any manufacturer, producer, processor, distributor or supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

“Tax” includes within its meaning interest, additions to tax and penalties.

“Taxpayer” means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article and any person claiming a refund of tax.

“Varietal wine” means any wine labeled according to the grape variety from which such wine is made.

“Vintage wine” or “vintage-dated wine” means wines from which the grapes used to produce such wine are harvested during a particular year or wines produced from the grapes of a particular harvest in a particular region of production.

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes,
other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code.

“Wine specialty shop” means a retailer who shall deal principally in the sale of table wine, certain fortified wines, wine accessories and food or foodstuffs normally associated with wine and (1) who shall maintain a representative number of such wines for sale in his inventory which are designated by label as varietal wine, vintage, generic and/or according to region of production and the inventory shall contain not less than fifteen percent vintage or vintage-dated wine by actual bottle count and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.

§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 retailer's 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, a caterer or party supply store which is a
grocery store as defined in section two of this article and
which is licensed as a Class A retail dealer in nonintox-
icating beer may be a retailer under this article:
Provided, however, That any delicatessen, caterer or
party supply store 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, chapter seventeen and in any other media, including, but not limited to, newspaper, radio, television, magazines and direct mail solicitation.
AN ACT to amend and reenact section six-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing county commissions to contract with or reimburse other counties, private associations or societies, or municipalities to provide care, maintenance, control and destruction of dogs and cats.

Be it enacted by the Legislature of West Virginia:

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

§19-20-6a. Authority of county commission to contract with private society, other county or municipality for the care and control of dogs and cats.

1 In addition to the powers granted to county commissions by section six of this article, the county commission of each county may contract with or reimburse any private incorporated society or association, county commission or municipality for the care, maintenance, control or destruction of dogs and cats.

CHAPTER 12
(Com. Sub. for S. B. 20—By Senators Burdette, Mr. President, and Boley)

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.

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-three.

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

"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 automat-
If the amount collected exceeds the amount designated "from collections," the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by article two, chapter five-a of the code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 ten 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 if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund transferred to the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted:

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

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

Funds of the state of West Virginia not heretofore classified as to purpose and existing within the funds of 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.
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§18. Total appropriations.
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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-three.

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-three.

**LEGISLATIVE**

*1—Senate*

**Acct. No. 1010**

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
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</thead>
<tbody>
<tr>
<td><strong>Fiscal Year</strong></td>
<td><strong>Fiscal Year</strong></td>
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<tr>
<td>1992-93</td>
<td>1992-93</td>
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<tr>
<td>Compensation of Members</td>
<td>$277,000</td>
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<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
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<td>Expenses of Members</td>
<td>$258,000</td>
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<tr>
<td>Repairs and Alterations</td>
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<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$561,000</td>
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<tr>
<td>Computer Supplies</td>
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<tr>
<td>Computer Systems</td>
<td>$85,000</td>
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<tr>
<td>Printing Blue Book</td>
<td>$150,000</td>
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<tr>
<td>Employee Benefits</td>
<td>$254,760</td>
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<tr>
<td><strong>Total</strong></td>
<td>$2,865,760</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 1991-92 are to remain in full force and effect and are hereby reappropriated to June 30, 1993. Any balances so reappropriated may be transferred and credited to the 1992-93 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 or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the senate, for any bills for supplies and services that may have been incurred by
the senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the senate offices, the requisitions for the same to be accompanied by bills to be filed with the auditor.

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

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

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

Acct. No. 1020

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Compensation of Members</td>
<td>$898,478</td>
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<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
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<td>Expenses of Members</td>
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<td>Current Expenses and Contingent Fund</td>
<td>$1,495,427</td>
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<tr>
<td>Total</td>
<td>$3,611,261</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 1991-92 are to remain in full force and effect and are hereby reappropriated to June 30, 1993. Any balances so reappropriated may be transferred and credited to the 1992-93 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 or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the house of delegates, for any bills for supplies and services that may have been incurred by the house of delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the house of delegates' offices, the requisitions for the same to be accompanied by bills to be filed with the auditor.

The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the house resolution, and the compensation of all personnel shall be as fixed in such house resolution for the session, or fixed by the speaker, with the approval of the house committee on rules, during and between sessions of the Legislature, notwith-
standing such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the 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>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance</td>
<td>$4,258,041</td>
</tr>
<tr>
<td>Legislative Printing</td>
<td>$891,000</td>
</tr>
<tr>
<td>Legislative Rule-Making Review Committee</td>
<td>$178,800</td>
</tr>
<tr>
<td>Legislative Computer System</td>
<td>$554,059</td>
</tr>
<tr>
<td>Joint Standing Committee on Education</td>
<td>$44,360</td>
</tr>
<tr>
<td>Joint Commission on Vocational-Technical-Occupational Education</td>
<td>$50,000</td>
</tr>
<tr>
<td>Total</td>
<td>$5,976,260</td>
</tr>
</tbody>
</table>

The appropriation for Joint Expenses for the fiscal year 1991-92 is to remain in full force and effect and is hereby reappropriated to June 30, 1993. Any balances so reappropriated may be transferred and credited to the 1992-93 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>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$21,668,989</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>200,000</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>2,980,000</td>
</tr>
<tr>
<td>Judges' Retirement System</td>
<td>1,751,093</td>
</tr>
<tr>
<td>Other Court Costs</td>
<td>2,175,000</td>
</tr>
<tr>
<td>Judicial Training Program</td>
<td>400,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund</td>
<td>700,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>1,655,020</td>
</tr>
<tr>
<td>Public Employees' Retirement Matching</td>
<td>1,864,576</td>
</tr>
<tr>
<td>Public Employees' Insurance Matching</td>
<td>2,500,000</td>
</tr>
<tr>
<td>Total</td>
<td>$35,894,678</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93. Any balances so reappropriated may be transferred and credited to the 1992-93 accounts.

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

The appropriation for Judges' Retirement System is to be transferred to the judges' retirement fund, in accordance with the law relating thereto, upon requisition of the administrative director of the supreme court of appeals.
## EXECUTIVE

### 5—Governor’s Office
(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1200</td>
<td>Salary of Governor</td>
<td>$72,000</td>
</tr>
<tr>
<td>1200</td>
<td>Unclassified</td>
<td>$1,245,667</td>
</tr>
<tr>
<td>1200</td>
<td>Total</td>
<td>$1,317,667</td>
</tr>
</tbody>
</table>

### 6—Governor’s Office—Custodial Fund
(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1230</td>
<td>Unclassified—Total</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)

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1240</td>
<td>Civil Contingent Fund—Total</td>
<td>$1,792,952</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation (account no. 1240-06) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

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

### 8—Governor’s Office—Center for Professional Development
(WV Code Chapter 18A)
Acct. No. 1245

1 Center for Professional Development—Total ...... $ — $ 930,000

Any unexpended balance remaining in the appropriation for Center for Professional Development (account no. 1245-10) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

Any unexpended balance remaining in the appropriation for Early Childhood Development (account no. 1245-09) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93 and redesignated as Governor's Office—Governor's Cabinet on Children and Families (account no. 1255-09).

9—Governor’s Office—
Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Acct. No. 1255

1 Governor’s Cabinet on
2 Children and Families—
3 Total ......................... $ — $ 430,000

10—Auditor’s Office—
General Administration

(WV Code Chapter 12)

Acct. No. 1500

1 Salary of Auditor ......... $ — $ 46,800
2 Personal Services ......... — 1,494,038
3 Annual Increment ......... — 29,916
4 Employee Benefits ......... — 500,042
5 Office Automation ......... — 500,000
6 Unclassified ............... — 540,000
7 Total ......................... $ — $ 3,110,796
### Appropriations

#### 11—Treasurer’s Office

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Acct. No. 1600</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Treasurer</td>
<td>$50,400</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$457,610</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$6,048</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$136,532</td>
</tr>
<tr>
<td>5</td>
<td>Abandoned Property</td>
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</tr>
<tr>
<td>6</td>
<td>Program</td>
<td>$200,000</td>
</tr>
<tr>
<td>7</td>
<td>Unclassified</td>
<td>$228,622</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$1,079,212</td>
</tr>
</tbody>
</table>

#### 12—Attorney General

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

<table>
<thead>
<tr>
<th>Acct. No. 2400</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney General</td>
<td>$50,400</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$1,787,640</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$12,384</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$507,342</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$648,882</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$3,006,648</td>
</tr>
</tbody>
</table>

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such spending unit’s specifically appropriated account or from accounts appropriated by general language contained within this bill.

#### 13—Secretary of State

(WV Code Chapters 3, 5 and 59)

<table>
<thead>
<tr>
<th>Acct. No. 2500</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Secretary of State</td>
<td>$43,200</td>
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<tr>
<td>2</td>
<td>Personal Services</td>
<td>$456,391</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$5,832</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$160,556</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$216,039</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$882,018</td>
</tr>
</tbody>
</table>
### Ch. 12] Appropriations

#### 14—State Elections Commission  
(WV Code Chapter 3)  
Acct. No. 2600

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$10,616</td>
</tr>
</tbody>
</table>

#### 15—Department of Agriculture  
(WV Code Chapter 19)  
Acct. No. 5100

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$46,800</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$1,936,382</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$34,992</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$744,078</td>
</tr>
<tr>
<td>Gypsy Moth Program</td>
<td>$750,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$1,801,656</td>
</tr>
<tr>
<td>Total</td>
<td>$4,064,686</td>
</tr>
</tbody>
</table>

#### 16—Department of Agriculture—Soil Conservation Committee  
(WV Code Chapter 19)  
Acct. No. 5120

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$337,700</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,364</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$107,808</td>
</tr>
<tr>
<td>Soil Conservation Projects</td>
<td>$304,758</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$755,630</td>
</tr>
<tr>
<td>Total</td>
<td>$755,630</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (account no. 5120-18) and Soil Conservation Projects (account no. 5120-20) at the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.
17—Department of Agriculture—
Marketing and Development Division
(Matching Fund)

(WV Code Chapter 19)

Acct. No. 5130

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$377,477</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$6,192</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$142,828</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$181,162</td>
</tr>
</tbody>
</table>

Total: $707,659

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>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$290,579</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$5,490</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$108,525</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>476,329</td>
</tr>
</tbody>
</table>

Total: $460,964

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.

19—Department of Agriculture—
Agricultural Awards

(WV Code Chapter 19)

Acct. No. 5150
Ch. 12] APPROPRIATIONS 103

1 Agricultural Awards .......... $ — $ 60,066
2 Fairs and Festivals........... — $ 175,598
3 Total ........................ $ — $ 235,664

DEPARTMENT OF ADMINISTRATION

20—Department of Administration—
Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 2105

1 Unclassified—Total ........ $ — $ 261,297

21—Division of Finance

(WV Code Chapter 5A)

Acct. No. 2110

1 Personal Services .......... $ — $ 518,526
2 Annual Increment .......... — $ 6,290
3 Employee Benefits .......... — $ 142,490
4 National Governors'
  Association ................. — $ 63,580
6 Southern States
7 Energy Board ............... — $ 28,732
8 GAAP Project ............... — $ 1,750,000
9 Unclassified ............... — $ 534,886
10 Total ........................ $ — $ 3,044,504

Any unexpended balances remaining in the appropri-
ations for GAAP Project (account no. 2110-41 and
account no. 2111-41) at the close of the fiscal year 1991-
92 are hereby reappropriated for expenditure during
the fiscal year 1992-93.
### 22—Division of Purchasing

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$560,362</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$7,059</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$155,283</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$98,483</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$821,187</td>
</tr>
</tbody>
</table>

The division of highways shall reimburse account no. 8148-42 within the division of purchasing for all actual expenses incurred pursuant to the provisions of section thirteen, article two-a, chapter seventeen of the code.

### 23—Division of General Services

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$489,484</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$11,160</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$204,401</td>
</tr>
<tr>
<td>Fire Service Fee</td>
<td>$13,440</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$744,466</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,462,951</td>
</tr>
</tbody>
</table>

### 24—Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$4,800</td>
</tr>
</tbody>
</table>

### 25—Board of Risk and Insurance Management

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$3,754,116</td>
</tr>
</tbody>
</table>

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

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

26—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1 Unclassified—Total ........ $ — $ 20,000
2 To pay expenses of members of the commission on uniform state laws.

27—Public Defender Services

(WV Code Chapter 29)

Acct. No. 5900

1 Personal Services ........ $ — $ 227,547
2 Annual Increment ........ — 2,520
3 Employee Benefits ........ — 69,283
4 Appointed Counsel Fees and Public Defender Corporations........ — 12,015,969
5 Unclassified ............... — 73,171
6 Total ....................... $ — $ 12,388,490

Any unexpended balances remaining in the appropriations for Unclassified (account no. 5900-18) and Appointed Counsel Fees and Public Defender Corpora-
tions (account no. 5900-41) at the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.

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

Acct. No. 6015

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$410,454</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,068</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$112,548</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$111,445</td>
</tr>
<tr>
<td>Total</td>
<td>$638,515</td>
</tr>
</tbody>
</table>

29—Public Employees Retirement System
(WV Code Chapter 5)

Acct. No. 6140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplemental Benefits for</td>
<td>$1,793,175</td>
</tr>
<tr>
<td>Annuitants—Total</td>
<td>$1,793,175</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.

30—Public Employees Insurance Agency
(WV Code Chapter 5)

Acct. No. 6150

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplemental for Retirees' Premiums—</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$1,000,000</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 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.

31—Ethics Commission

(WV Code Chapter 6B)

Acct. No. 6180

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>Employee Benefits</th>
<th></th>
<th>Unclassified</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>$</td>
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<td>$</td>
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</tr>
<tr>
<td>3</td>
<td>$</td>
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<td>$</td>
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<td>4</td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

Total $ 365,642

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

32—Office of Community and Economic Development

(WV Code Chapter 5B)

Acct. No. 1210

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>Annual Increment</th>
<th></th>
<th>Employee Benefits</th>
<th></th>
<th>Competitive Grants</th>
<th></th>
<th>Partnership Grants</th>
<th></th>
<th>National Youth</th>
<th></th>
<th>Science Camp</th>
<th></th>
<th>Local Economic Development Partnerships</th>
<th></th>
<th>Unclassified</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$</td>
<td></td>
<td>$</td>
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</tr>
<tr>
<td>2</td>
<td>$</td>
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<tr>
<td>4</td>
<td>$</td>
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<td>$</td>
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<td>$</td>
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<td>$</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Partnership Grants (account no. 1210-15) and Guaranteed Work Force Grant (account no. 1210-21) at
15 the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.

16 The above appropriation for Local Economic Development Partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities created under the plan developed by the council for community and economic development under the provisions of section three, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon criteria developed under the provisions of section three, article two, chapter five-b of this code and based upon a formula whereby funding assistance may not exceed twenty-five thousand dollars per county served by a regional economic development corporation or authority.

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

Acct. No. 4500

1 Personal Services .......... $ — $ 849,677
2 Annual Increment .......... — $ 11,034
3 Employee Benefits ......... — $ 338,925
4 Unclassified ............... 315,916 160,696
5 Total ....................... $ 315,916 $ 1,360,332

34—Division of Tourism and Parks
(WV Code Chapter 5B)

Acct. No. 4625

1 Unclassified—Total ........ $ — $ -0-
2 Personal Services .......... — $ 4,239,031
3 Annual Increment .......... — $ 81,108
4 Employee Benefits .......... — $ 1,629,220
5 Total ....................... $ — $ 5,949,359

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.

35—Division of Forestry
(WV Code Chapter 19)

Acct. No. 4650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,014,731</td>
</tr>
<tr>
<td>Annual Increment</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$804,697</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$1,727,870</td>
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<tr>
<td>Total</td>
<td>$2,908,118</td>
</tr>
</tbody>
</table>

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

36—Board of Coal Mine Health and Safety
(WV Code Chapter 22)

Acct. No. 4720

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$43,378</td>
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<tr>
<td>Annual Increment</td>
<td>$324</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$13,695</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$847</td>
</tr>
<tr>
<td>Total</td>
<td>$58,244</td>
</tr>
</tbody>
</table>

37—Interstate Commission on Potomac River Basin
(WV Code Chapter 29)

Acct. No. 4730

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia’s Contribution to the Interstate Commission on Potomac River Basin—</td>
<td>$36,045</td>
</tr>
</tbody>
</table>
### West Virginia's

**Contribution to the Ohio River Valley Water Sanitation Commission—**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$98,280</td>
</tr>
</tbody>
</table>

### Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

**Acct. No. 4750**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$6,536</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>$3,734</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>$54,756</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$65,026</td>
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</tbody>
</table>

### Air Pollution Control Commission

(WV Code Chapter 16)

**Acct. No. 4760**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$428,574</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$6,480</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$138,125</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$140,040</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$713,219</td>
</tr>
</tbody>
</table>

### Division of Environmental Protection

(WV Code Chapter 22)

**Acct. No. 4775**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,269,012</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$32,384</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$778,165</td>
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<td>4</td>
<td>Unclassified</td>
<td>$585,212</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$3,664,773</td>
</tr>
</tbody>
</table>
### 42—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Acct. No. 4780

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,103,691</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$26,100</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$1,030,471</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$416,840</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,525,925</strong></td>
</tr>
</tbody>
</table>

The above Unclassified appropriation from general revenue includes funding to secure federal and other contracts and may be transferred to a special revolving fund (account no. 8590-43) for the purpose of providing advance funding for such contracts.

### 43—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>Personal Services</td>
<td>$1,144,649</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$20,726</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$360,259</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$461,937</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,605,880</strong></td>
</tr>
</tbody>
</table>

### 44—Department of Commerce, Labor and Environmental Resources—Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 5321

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARC Assessment</td>
<td>$59,954</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$441,157</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$501,111</strong></td>
</tr>
</tbody>
</table>

### 45—Water Resources Board

(WV Code Chapter 20)
### Appropriations

#### Acct. No. 5640

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$5640</td>
<td>$60,152</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>$900</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td>$18,690</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td></td>
<td>$35,487</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$115,229</td>
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</table>

#### Division of Natural Resources

(WV Code Chapter 20)

#### Acct. No. 5650

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$5650</td>
<td>$1,962,128</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>$31,608</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td>$637,108</td>
</tr>
<tr>
<td>4</td>
<td>Black Fly Control</td>
<td></td>
<td>$216,000</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td></td>
<td>$39,468,846</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$39,468,846</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Waste Water Treatment Revolving Fund (account no. 5650-20) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

### Department of Education

#### State Department of Education

(WV Code Chapters 18 and 18A)

#### Acct. No. 2860

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2860</td>
<td>$2,508,968</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>$36,419</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td>$704,970</td>
</tr>
<tr>
<td>4</td>
<td>WVA Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Information System</td>
<td></td>
<td>$2,443,752</td>
</tr>
<tr>
<td>6</td>
<td>34/1000 Waiver</td>
<td></td>
<td>$500,000</td>
</tr>
<tr>
<td>7</td>
<td>Increased Enrollment</td>
<td></td>
<td>$1,359,780</td>
</tr>
<tr>
<td>8</td>
<td>Coordinator-Educational</td>
<td></td>
<td>$40,000</td>
</tr>
<tr>
<td>9</td>
<td>Medical Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Faculty and Course Devel-</td>
<td></td>
<td>$35,000</td>
</tr>
<tr>
<td></td>
<td>opment Intern Study</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Personal Services</td>
<td>Annual Increment</td>
</tr>
<tr>
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<td>-------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 665,000</td>
<td>$ 8,658</td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the appropriation for Computer Basic Skills (account no. 2860-41) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.
Any unexpended balances remaining in the appropriations for Wood Products—Forestry Vocational Program (account no. 2890-47 and account no. 2891-47) at the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.

50—State Department of Education—
State Aid to Schools

(WV Code Chapters 18 and 18A)

Acct. No. 2950

<table>
<thead>
<tr>
<th>1 Professional Educators</th>
<th>$</th>
<th>$621,053,055</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Service Personnel</td>
<td>—</td>
<td>190,432,754</td>
</tr>
<tr>
<td>3 Fixed Charges</td>
<td>—</td>
<td>70,436,969</td>
</tr>
<tr>
<td>4 Transportation</td>
<td>—</td>
<td>27,504,625</td>
</tr>
<tr>
<td>5 Administration</td>
<td>—</td>
<td>7,000,000</td>
</tr>
<tr>
<td>6 Other Current Expenses</td>
<td>—</td>
<td>91,948,731</td>
</tr>
<tr>
<td>7 Improve Instructional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 Basic Foundation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Allowances</td>
<td>—</td>
<td>1,065,058,615</td>
</tr>
<tr>
<td>11 Less Local Share</td>
<td>—</td>
<td>(169,932,997)</td>
</tr>
<tr>
<td>12 Total Basic State Aid</td>
<td>—</td>
<td>895,125,618</td>
</tr>
<tr>
<td>13 Public Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 Insurance Agency</td>
<td>—</td>
<td>112,027,065</td>
</tr>
<tr>
<td>15 Teachers’ Retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 System</td>
<td>—</td>
<td>122,926,602</td>
</tr>
</tbody>
</table>
| 17 Incentive for Adminis-
  trative Efficiency       | —   | -0-         |
| 18 Increased Enrollment  | —   | -0-         |
| 19 Rural Counties        | —   | -0-         |
| 20 School Media Improve-
  ment Grant Program       | —   | -0-         |
| 21 Unclassified          | 2,000,000 | -0- |
| 22 Total                | $2,000,000 | $1,130,079,285 |

The amount of one million dollars is included as an additional appropriation to the school building capital improvements fund created pursuant to chapter eigh-
Ch. 12] APPROPRIATIONS 115

28 teen, article nine-d, section six of the code. Such amount shall be used as debt service for revenue bonds to be issued by the school building authority pursuant to chapter eighteen, article nine-d, section eight of the code to finance needs projects to be selected by the school building authority which were not previously funded by the school building authority due to lack of money. Such amount is in addition to any amounts deposited in such fund pursuant to chapter eighteen, article nine-a, section ten of the code. The proceeds of the revenue bonds to be issued by the school building authority for such projects shall not be deemed to be available for distribution by the school building authority within the meaning of chapter eighteen, article nine-d, section fifteen and shall be earmarked solely for such needs projects and necessary costs and reserves of the bond issue. Such bond proceeds shall be allocated and expended solely on the basis of need and efficient use of resources, such basis to be determined by the authority in accordance with the provisions of chapter eighteen, article nine-d, section fifteen of the code.

51—State Department of Education—Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1 Special Education—
   2 Counties ....................... $    —    $ 7,410,668
   3 Special Education—
   4 Institutions .................... —  2,269,202
   5 Education of Institutionalized Juveniles ...... —  2,969,021
   7 Unclassified ....................  26,295,000 — 0-
   8 Total ........................ $26,295,000  $ 12,648,891

52—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Acct. No. 3330
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$4,811,419</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$4,717</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$1,402,855</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$991,249</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$7,210,285</td>
</tr>
</tbody>
</table>

53—State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$127,331</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$3,011</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$44,970</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$163,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$338,312</td>
</tr>
</tbody>
</table>

54—State Board of Rehabilitation—Division of Rehabilitation Services
(WV Code Chapter 18)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,807,307</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$91,628</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$1,244,961</td>
</tr>
<tr>
<td>4</td>
<td>Workshop Development</td>
<td>$1,700,000</td>
</tr>
<tr>
<td>5</td>
<td>Case Services</td>
<td>$2,845,117</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>$32,082,259</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$9,740,334</td>
</tr>
</tbody>
</table>

DEPARTMENT OF EDUCATION AND THE ARTS

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

<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></td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------</td>
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</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$56,875,033</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$418,949</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$13,961,192</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$2,118,291</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td><strong>$73,373,465</strong></td>
</tr>
</tbody>
</table>

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>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>Personal Services</td>
<td>$115,278,146</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$850,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$17,157,955</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$2,151,241</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td><strong>$135,437,342</strong></td>
</tr>
</tbody>
</table>

57—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System

(WV Code Chapters 18B and 18C)

Acct. No. 2800

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$696,752</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$8,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$162,000</td>
</tr>
<tr>
<td>4</td>
<td>Higher Education</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Grant Program</td>
<td>$3,795,000</td>
</tr>
<tr>
<td>6</td>
<td>Tuition Contract Program</td>
<td>$606,000</td>
</tr>
<tr>
<td>7</td>
<td>Minority Doctoral</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Fellowship</td>
<td>$100,000</td>
</tr>
<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>
</tr>
<tr>
<td>13</td>
<td>Humanities Council</td>
<td>$100,000</td>
</tr>
<tr>
<td>14</td>
<td>WVNET</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>15</td>
<td>Marshall University—</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Southern West Virginia</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td>--------------</td>
<td></td>
</tr>
<tr>
<td>Community College—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 + 2 Program</td>
<td>160,000</td>
<td></td>
</tr>
<tr>
<td>Micro Computer Labs for Teacher Education</td>
<td>750,000</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>109,850</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9,237,602</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Higher Education Grant Program (account no. 2800-07) and Asbestos Litigation (account no. 2800-21) at the close of the fiscal year 1991-92 are hereby reappropriated for expenditures during the fiscal year 1992-93.

### 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>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>School of Osteopathic Medicine</td>
<td>5,263,930</td>
</tr>
<tr>
<td>Marshall Medical School</td>
<td>9,403,523</td>
</tr>
<tr>
<td>WVU—School of Health Sciences</td>
<td>33,167,862</td>
</tr>
<tr>
<td>WVU—School of Health Sciences—Charleston Division</td>
<td>3,270,790</td>
</tr>
<tr>
<td>Health Sciences Scholarship Fund</td>
<td>150,000</td>
</tr>
<tr>
<td>WVNET</td>
<td>-0-</td>
</tr>
<tr>
<td>Primary Health Education Program Support</td>
<td>4,000,000</td>
</tr>
<tr>
<td>Rural Health Initiative Site Support</td>
<td>2,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>57,256,105</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (account no. 2855-56) and Rural Health Initiative Site Support (account no. 2855-58) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditures during the fiscal year 1992-93.
21 year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.

23 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 299,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 45,144</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ 994,999</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$ 299,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 5,318,501</td>
</tr>
</tbody>
</table>

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

9 Any unexpended balance remaining in the appropriation for Unclassified (account no. 2910-25) for the WNPB transmitter at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

60—Library Commission

(WV Code Chapter 10)

Acct. No. 3500

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 966,602</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 22,860</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ 339,707</td>
</tr>
<tr>
<td>Books and Films</td>
<td>$ 150,000</td>
</tr>
<tr>
<td>Services to State</td>
<td></td>
</tr>
<tr>
<td>Institutions</td>
<td>$ 156,310</td>
</tr>
<tr>
<td>Services to Blind</td>
<td></td>
</tr>
<tr>
<td>and Handicapped</td>
<td>$ 42,729</td>
</tr>
<tr>
<td>Grants to Public</td>
<td></td>
</tr>
</tbody>
</table>
61—Division of Culture and History
(WV Code Chapter 29)

Acct. No. 3510

1 Personal Services ........ $ — $ 1,342,045
2 Annual Increment ........ $ — 20,826
3 Employee Benefits ........ $ — 446,492
4 Unclassified ............ $ 1,554,225 $ 2,471,151
5 Total ................... $ 1,554,225 $ 4,280,514

The Unclassified appropriation includes funding for the Arts Funds, Department Programming Funds, Grants, Fairs and Festivals and Camp Washington Carver and shall be expended only upon authorization of the division of culture and history and in accordance with the provisions of chapter five-a 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.

62—Department of Education and the Arts—Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 5332

1 Unclassified ............. $ — $ 182,065
2 Any unexpended balance remaining in the appropriation for Unclassified (account no. 5332-23) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.
### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

**63—Division of Health—Central Office**

(WV Code Chapter 16)

**Acct. No. 4000**

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$5,331,820</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>3 Reclassification</td>
<td>$57,660</td>
</tr>
<tr>
<td>4 Annual Increment</td>
<td>$85,000</td>
</tr>
<tr>
<td>5 Employee Benefits</td>
<td>$1,793,178</td>
</tr>
<tr>
<td>6 Corporate Nonprofit</td>
<td>—</td>
</tr>
<tr>
<td>7 Community Health</td>
<td>—</td>
</tr>
<tr>
<td>8 Centers—F.M.H.A.</td>
<td>—</td>
</tr>
<tr>
<td>9 Mortgage Finance</td>
<td>$150,269</td>
</tr>
<tr>
<td>10 Appalachian States Low Radioactive Waste Commission</td>
<td>—</td>
</tr>
<tr>
<td>11 Level Radioactive</td>
<td>—</td>
</tr>
<tr>
<td>12 Waste Commission</td>
<td>$55,968</td>
</tr>
<tr>
<td>13 Hemophilia Program</td>
<td>—</td>
</tr>
<tr>
<td>14 Safe Drinking Water</td>
<td>—</td>
</tr>
<tr>
<td>15 Program</td>
<td>$440,000</td>
</tr>
<tr>
<td>16 Unclassified</td>
<td>—</td>
</tr>
<tr>
<td>17 Total</td>
<td>$11,832,067</td>
</tr>
</tbody>
</table>

Notwithstanding the provisions of section two, amounts of the appropriation in the above line item designated personal services reclassification may be transferred to the personal services line item or to other line items to be used solely for the purposes of providing the necessary funding for the personal services reclassification.

**64—Division of Human Services**

(WV Code Chapters 9, 48 and 49)

**Acct. No. 4050**

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$14,866,432</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>3 Reclassification</td>
<td>—</td>
</tr>
<tr>
<td>4 Annual Increment</td>
<td>$275,607</td>
</tr>
<tr>
<td>5 Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>6 Corporate Nonprofit</td>
<td>—</td>
</tr>
<tr>
<td>7 Community Health</td>
<td>—</td>
</tr>
<tr>
<td>8 Centers—F.M.H.A.</td>
<td>—</td>
</tr>
<tr>
<td>9 Mortgage Finance</td>
<td>—</td>
</tr>
<tr>
<td>10 Appalachian States Low Radioactive Waste Commission</td>
<td>—</td>
</tr>
<tr>
<td>11 Level Radioactive</td>
<td>—</td>
</tr>
<tr>
<td>12 Waste Commission</td>
<td>—</td>
</tr>
<tr>
<td>13 Hemophilia Program</td>
<td>—</td>
</tr>
<tr>
<td>14 Safe Drinking Water</td>
<td>—</td>
</tr>
<tr>
<td>15 Program</td>
<td>—</td>
</tr>
<tr>
<td>16 Unclassified</td>
<td>—</td>
</tr>
<tr>
<td>17 Total</td>
<td>$358,280</td>
</tr>
</tbody>
</table>
Employee Benefits .......... 5,772,370
OSCAR and FAMIS .......... 15,061,621 3,483,820
Medical Services .......... 850,000,000 131,421,871
Family Law Masters ........ 320,000 971,488
Women's Commission ....... — 51,365
Commission on
               Hearing Impaired .... — 41,280
Public Assistance ........ 85,255,426 24,562,852
Emergency Assistance ...... — 1,410,216
Social Services .......... — 26,300,348
Family Preservation
               Program ............. — 1,565,000
JOBS Program ............. 8,909,058 4,030,896
Education Medical
               Services—Personnel .... 1,200,000 1,200,000
Office of Community
               JOBS Program .......... — 125,000
Unclassified ............. 51,746,488 11,988,345
Total .................. $1,012,492,593 $228,425,170

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.

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 or in the case of incest or rape.

Notwithstanding the provisions of section two, 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 item: Provided further, That funds in the personal services reclassification line item may be transferred to the personal services line item or other
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46 line items to be used solely for the purpose of providing
47 the necessary funding for the personal services reclassification.

65—Commission on Aging
(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Acct. No. 4060</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ................ $</td>
</tr>
<tr>
<td>2 Annual Increment ...................</td>
</tr>
<tr>
<td>3 Employee Benefits ..................</td>
</tr>
<tr>
<td>4 Local Programs</td>
</tr>
<tr>
<td>5 Senior Citizens Centers—</td>
</tr>
<tr>
<td>6 Construction and</td>
</tr>
<tr>
<td>7 Silver Haired Legislature ..</td>
</tr>
<tr>
<td>8 Area Agencies</td>
</tr>
<tr>
<td>9 Ombudsman .........................</td>
</tr>
<tr>
<td>10 Unclassified ......................</td>
</tr>
<tr>
<td>11 Total .................. $10,942,000</td>
</tr>
</tbody>
</table>

16 Any unexpended balance remaining in the appropriation for Senior Citizens Centers—Land Acquisition, Construction and Repairs and Alterations (account no. 4060-10) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during fiscal year 1992-93.

66—Consolidated Medical Service Fund

<table>
<thead>
<tr>
<th>Acct. No. 4190</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Foster Grandparents</td>
</tr>
<tr>
<td>2 Institutional Facilities</td>
</tr>
<tr>
<td>3 Personal Services</td>
</tr>
<tr>
<td>4 Employee Benefits ...............</td>
</tr>
<tr>
<td>5 Poison Control Hotline.......</td>
</tr>
<tr>
<td>Item</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>9 Special Olympics</td>
</tr>
<tr>
<td>10 State Aid to Local Agencies</td>
</tr>
<tr>
<td>11 Women, Infants and Children</td>
</tr>
<tr>
<td>13 Maternal and Child Health</td>
</tr>
<tr>
<td>14 Clinics, Clinicians and Medical Contracts</td>
</tr>
<tr>
<td>16 and Fees</td>
</tr>
<tr>
<td>17 Preventive Revaccination</td>
</tr>
<tr>
<td>18 Primary Care Uncompensated Care Fund</td>
</tr>
<tr>
<td>20 Primary Care Revolving Loan Fund</td>
</tr>
<tr>
<td>21 Primary Care Support</td>
</tr>
<tr>
<td>23 Program</td>
</tr>
<tr>
<td>24 Epidemiology Research</td>
</tr>
<tr>
<td>25 Grants to Counties and EMS Entities</td>
</tr>
<tr>
<td>27 Behavioral Health</td>
</tr>
<tr>
<td>28 Program—Total</td>
</tr>
<tr>
<td>30 Behavioral Health</td>
</tr>
<tr>
<td>31 Program—Unclassified</td>
</tr>
<tr>
<td>32 Behavioral Health</td>
</tr>
<tr>
<td>33 Program—Community Centers</td>
</tr>
<tr>
<td>35 Family Support Act</td>
</tr>
<tr>
<td>36 Influenza Vaccine</td>
</tr>
<tr>
<td>37 Early Intervention</td>
</tr>
<tr>
<td>38 In-Home Services For Senior Citizens</td>
</tr>
<tr>
<td>39 Cancer Registry</td>
</tr>
<tr>
<td>40 Behavioral Health Holding</td>
</tr>
<tr>
<td>42 Account</td>
</tr>
<tr>
<td>43 Unclassified</td>
</tr>
<tr>
<td>44 Total</td>
</tr>
</tbody>
</table>

The Behavioral Health Program—Community Programs line item within account no. 4190 has been reduced from fiscal year 1992 recognizing that the medicaid provider tax will provide the state match for federal funds formerly provided through a certified match allocation to this line. When allocating funds
from this line item through contracts with providers, the
department shall contractually require such providers
to maintain at least the current level of services to non-
medicaid patients. In addition, the department shall
take into account the fact that certain providers will
realize a greater increase in revenue from the provider
tax than other providers and that not all providers and
services are subject to the provider tax.

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.

The division of health shall not expend or encumber
any funds from the above line "Behavioral Health
Holding Account" until such time as the Legislature
shall transfer said funds to other lines or accounts
within the department of health and human services for
expenditure.

Notwithstanding the provisions of section two,
amounts of the appropriation in the above line item
designated personal services reclassification may be
transferred to the personal services line item or to other
line items to be used solely for the purpose of providing
the necessary funding for the personal services
reclassification.

Additional funds have been appropriated in account
no. 8500 for the operation of the institutional facilities.

67—Department of Health and Human Resources—
Office of the Secretary
(WV Code Chapter 5F)
Acct. No. 5343

| Unclassified—Total .......... $ | — $ 174,354 |
### APPROPRIATIONS

**68—Human Rights Commission**  
(WV Code Chapter 5)  
Acct. No. 5980

|   | Description                        | Amount   |  
|---|------------------------------------|----------|---
| 1 | Personal Services                  | — $367,025 |   
| 2 | Annual Increment                   | — $6,567  |   
| 3 | Employee Benefits                  | — $132,192|   
| 4 | Unclassified                        | $111,280 | $124,493  
| 5 | Total                              | $111,280 | $630,277  

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

**69—Office of Emergency Services**  
(WV Code Chapter 15)  
Acct. No. 1300

|   | Description                        | Amount   |  
|---|------------------------------------|----------|---
| 1 | Personal Services                  | — $163,974|   
| 2 | Annual Increment                   | — $3,096  |   
| 3 | Employee Benefits                  | — $66,669 |   
| 4 | Unclassified                        | $599,720 | $9,017   
| 5 | Total                              | $599,720 | $242,756  

**70—Board of Probation and Parole**  
(WV Code Chapter 62)  
Acct. No. 3650

|   | Description                        | Amount   |  
|---|------------------------------------|----------|---
| 1 | Salaries of Members of Board of Probation and Parole | — $84,900 |   
| 2 | Personal Services                  | — $36,000 |   
| 3 | Annual Increment                   | — $684   |   
| 4 | Employee Benefits                  | — $35,460|   
| 5 | Unclassified                        | — $18,931|   
| 6 | Total                              | — $175,975|   

**71—Division of Corrections—Central Office**
Ch. 12] APPROPRIATIONS 127

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$331,044</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$6,156</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$102,677</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$121,122</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$560,999</td>
</tr>
</tbody>
</table>

72—Division of Corrections—
Correctional Units

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$13,325,856</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$224,640</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$4,672,816</td>
</tr>
<tr>
<td>4</td>
<td>Payment to Counties and/or Regional Jails</td>
<td>$850,000</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$8,724,637</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$27,797,949</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.

Any unexpended balance remaining in the appropriations for Davis Center—Capital Outlay at the close of the fiscal year 1991-92 shall expire to the state general revenue fund.*

* Clerk's Note: The last sentence of the paragraph, beginning on line 24, was deleted by the Governor.)
### 73—Division of Veterans’ Affairs—Veterans’ Home
(WV Code Chapter 9A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>4010</td>
<td>Personal Services</td>
<td>$290,904</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>$5,508</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>$128,007</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>$836,850</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$836,850</td>
<td>$424,419</td>
</tr>
</tbody>
</table>

### 74—Division of Veterans’ Affairs
(WV Code Chapter 9A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>4040</td>
<td>Personal Services</td>
<td>$691,943</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>$14,292</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>$304,514</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Veteran’s Field Offices</td>
<td>$135,800</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>$9,034</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$1,155,583</td>
<td></td>
</tr>
</tbody>
</table>

### 75—Department of Military Affairs and Public Safety—Office of the Secretary
(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>5354</td>
<td>Unclassified—Total</td>
<td>$164,435</td>
<td></td>
</tr>
</tbody>
</table>

### 76—Division of Public Safety
(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>5700</td>
<td>Personal Services</td>
<td>$14,360,411</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>$87,084</td>
<td></td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>4,565,654</td>
</tr>
<tr>
<td>Court Judgment</td>
<td>-0-</td>
</tr>
<tr>
<td>Trooper Class</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>3,451,297</td>
</tr>
<tr>
<td>Total</td>
<td>$ 953,067</td>
</tr>
<tr>
<td></td>
<td>$ 23,464,446</td>
</tr>
</tbody>
</table>

#### 77—Adjutant General—State Militia

(WV Code Chapter 15)

Acct. No. 5800

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 249,021</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>5,976</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>95,169</td>
</tr>
<tr>
<td>College Education Fund</td>
<td>720,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>4,509,522</td>
</tr>
<tr>
<td>Total</td>
<td>$ 4,509,522</td>
</tr>
<tr>
<td></td>
<td>$ 4,169,050</td>
</tr>
</tbody>
</table>

The College Education Fund line item above shall be the total annual appropriation for awarding scholarships. The secretary of the department of military affairs and public safety shall devise a method to equitably reimburse all eligible participants on a prorata basis should the appropriation be insufficient to cover total annual eligible expenses.

#### 78—Fire Commission

(WV Code Chapter 29)

Acct. No. 6170

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 451,336</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>7,740</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>152,207</td>
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<tr>
<td>Unclassified</td>
<td>115,394</td>
</tr>
<tr>
<td>Total</td>
<td>$ 726,677</td>
</tr>
</tbody>
</table>

#### DEPARTMENT OF TAX AND REVENUE

#### 79—Tax Division

(WV Code Chapter 11)

Acct. No. 1800
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$8,975,863</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$150,300</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$2,945,164</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$5,686,065</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$17,757,392</td>
</tr>
</tbody>
</table>

80—Division of Professional and Occupational Licenses—
State Athletic Commission
(WV Code Chapter 29)
Acct. No. 4790

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$4,865</td>
</tr>
</tbody>
</table>

81—Racing Commission
(WV Code Chapter 19)
Acct. No. 4950

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$-0-</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$-0-</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$-0-</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

82—Department of Tax and Revenue—
Office of the Secretary
(WV Code Chapter 5F)
Acct. No. 5365

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$175,859</td>
</tr>
</tbody>
</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>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Public Transportation</td>
<td>$-0-</td>
</tr>
<tr>
<td>2</td>
<td>Civil Air Patrol</td>
<td>$79,152</td>
</tr>
</tbody>
</table>
3 Unclassified -0- 156,996
4 Total .................. $ -0- $ 236,148

5 Any unexpended balance remaining in the appropriation for Public Transportation (account no. 5376-41) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93 and transferred to the division of public transit.

84—Division of Public Transit
(WV Code Chapter 17)
Acct. No. 5380

1 Unclassified—Total ........ $15,931,887 $ 384,206

85—Railroad Maintenance Authority
(WV Code Chapter 29)
Acct. No. 5690

1 Personal Services ........ $ — $ 403,355
2 Annual Increment .......... — $ 6,534
3 Employee Benefits .......... — $ 259,816
4 Unclassified .............. 584,000 $ 98,827
5 Total .................... $ 584,000 $ 768,532

6 Any unexpended balance remaining in the appropriation for Capital Outlay (account no. 5690-23) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

MISCELLANEOUS BOARDS AND COMMISSIONS

86—Board of Investments
(WV Code Chapter 12)
Acct. No. 1900

1 Personal Services .......... $ — $ 1,176,013
2 Annual Increment .......... — $ 10,924
3 Employee Benefits .......... — $ 392,091
4 Unclassified .............. — $ 2,176,276
5 Total .................... $ — $ 3,755,304
87—Board of Investments—
School Building Sinking Fund

(WV Code Chapter 12)

Acct. No. 1905

1 Debt Service—Total ........ $ —  $ 12,012,500
2 Any unexpended balance remaining in the appropriation for Board of Investments—School Building Sinking Fund (account no. 1905-06) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

88—Board of Investments—
Pneumoconiosis Loan

(WV Code Chapter 23)

Acct. No. 1910

1 Debt Service—Total ........ $ —  $ 6,480,000
2 Total TITLE II, Section 1—
3 General Revenue ............. —  $2,060,692,264

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-three.

Sec. 4. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code, the following amounts, as itemized, for expenditures during the fiscal year one thousand nine hundred ninety-three.
Ch. 12] Appropriations

LEGISLATIVE

89—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>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1992-93</td>
<td>1992-93</td>
</tr>
</tbody>
</table>

1. Personal Services ........... $ — $ 110,778
2. Annual Increment ........... — 900
3. Employee Benefits .......... — 36,105
4. Unclassified ............... 250,000 25,000
5. Total ..................... $ 250,000 $ 172,783

These funds are intended to be expended for court costs and administrative costs and federal reimbursement for compensation paid to crime victims.

EXECUTIVE

90—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>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1992-93</td>
<td>1992-93</td>
</tr>
</tbody>
</table>

1. Personal Services ........... $ — $ 44,087
2. Annual Increment ........... — 648
3. Employee Benefits .......... — 14,021
4. Unclassified ............... — 11,058
5. Total ..................... $ — $ 69,814

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

#### 91—Department of Agriculture
(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>201,091</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>1,800</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td>65,524</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td></td>
<td>482,417</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>750,832</td>
</tr>
</tbody>
</table>

#### 92—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></th>
<th>Student and Farm Loans—Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>375,000</td>
</tr>
</tbody>
</table>

#### 93—General John McCausland Memorial Farm
(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>8,793</td>
</tr>
<tr>
<td></td>
<td>360</td>
</tr>
<tr>
<td></td>
<td>10,851</td>
</tr>
<tr>
<td></td>
<td>54,144</td>
</tr>
<tr>
<td></td>
<td>74,148</td>
</tr>
</tbody>
</table>

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

#### 94—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>Personal Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>207,450</td>
</tr>
</tbody>
</table>
### 95—West Virginia Health Care Planning Commission

(WV Code Chapter 16)

Acct. No. 8429

**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>Unclassified—Total</td>
<td>$570,000</td>
</tr>
</tbody>
</table>

### 96—Governor’s Office—Economic Development Authority Insurance Fund

(WV Code Chapter 17)

Acct. No. 8431

**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>Davis Center—</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Capital Outlay</td>
<td>$300,000</td>
</tr>
<tr>
<td>3</td>
<td>Senior Center—</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Land Acquisitions, Construction and Repairs and Alterations</td>
<td>$125,000</td>
</tr>
<tr>
<td>5</td>
<td>Capitol Complex— Maintenance</td>
<td>$500,000</td>
</tr>
<tr>
<td>6</td>
<td>Soil Conservation Projects</td>
<td>$500,000</td>
</tr>
<tr>
<td>7</td>
<td>WSWP-TV—Capital Outlay</td>
<td>$199,000</td>
</tr>
<tr>
<td>8</td>
<td>Armory Construction—</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Capital Outlay</td>
<td>$750,000</td>
</tr>
<tr>
<td>10</td>
<td>Guaranteed Work Force</td>
<td>$500,000</td>
</tr>
<tr>
<td>11</td>
<td>Partnership Grants</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>12</td>
<td>Port Authority for River Port Feasibility Study</td>
<td>$150,000</td>
</tr>
<tr>
<td>13</td>
<td>ARC Assessment</td>
<td>$476,000</td>
</tr>
<tr>
<td>14</td>
<td>Local School Boards’ Technical Corrections</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Refund Account</td>
<td>$500,000</td>
</tr>
<tr>
<td>16</td>
<td></td>
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</tr>
<tr>
<td>17</td>
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<td>18</td>
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</tr>
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<td>19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Total</td>
<td>$6,000,000</td>
</tr>
</tbody>
</table>
DEPARTMENT OF ADMINISTRATION

97—Division of Purchasing—Revolving Fund

(WV Code Chapter 5A)

Acct. No. 8140

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$707,620</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$19,400</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$270,814</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$571,527</td>
</tr>
<tr>
<td>Total</td>
<td>$1,569,361</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.

98—Division of Information Systems and Communications

(WV Code Chapter 5A)

Acct. No. 8151

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,540,340</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$45,543</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$972,449</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$883,178</td>
</tr>
<tr>
<td>Total</td>
<td>$5,441,510</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 the division to provide information processing services to user agencies. These services include, but are not limited to, data processing equipment, office automation and telecommunications.

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

99—Division of Personnel
(WV Code Chapter 29)
Acct. No. 8402

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,955,406</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$35,640</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$613,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$527,365</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,131,411</strong></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

100—Office of Community and Economic Development
(WV Code Chapter 5B)
Acct. No. 8045

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any unexpended balance remaining in the appropriation for Energy Assistance (account no. 8045-43) at the</td>
<td></td>
</tr>
</tbody>
</table>
close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

101—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>Budget</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$166,435</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>576</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>38,645</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>65,274</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$270,930</td>
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</tr>
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</table>

102—Division of Labor—Contractor Licensing Board Fund
(WV Code Chapter 21)
Acct. No. 8128
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Budget</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$458,268</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>3,258</td>
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</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>176,678</td>
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</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>661,796</td>
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</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,300,000</td>
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</tbody>
</table>

103—Division of Natural Resources
(WV Code Chapter 20)
Acct. No. 8300
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Budget</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$5,446,093</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>91,980</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>1,959,651</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Wonderful West</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Virginia Magazine</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Capital Improvements and Land Purchase</td>
<td>1,000,000</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Unclassified</td>
<td>2,987,788</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$11,485,512</td>
<td></td>
</tr>
</tbody>
</table>
10 The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of natural resources.

13 Any unexpended balances remaining in the appropriations for Land Purchases and Buildings (account no. 8300-09) and Renovation of Dams (account no. 8300-11) at the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.

104—Division of Natural Resources—Underground Storage Tanks Administrative Fund

(WV Code Chapter 20)

Acct. No. 8302

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>$</th>
<th>300,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Annual Increment</td>
<td></td>
<td>2,448</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td></td>
<td>105,248</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td></td>
<td>134,030</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>Total</strong></td>
<td>$</td>
<td><strong>541,726</strong></td>
</tr>
</tbody>
</table>

105—Division of Natural Resources—Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Acct. No. 8303

TO BE PAID FROM SPECIAL REVENUE FUND

|     | Unclassified—Total | $ | 50,000 |

106—Division of Natural Resources—Nongame Fund

(WV Code Chapter 20)

Acct. No. 8304

TO BE PAID FROM SPECIAL REVENUE FUND
### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$79,300</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$432</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$24,392</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$114,876</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$219,000</td>
</tr>
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</table>

**107—Division of Natural Resources—Use and Development—P.L.C.**

(WV Code Chapter 20)

Acct. No. 8306

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$116,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$2,340</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$42,292</td>
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<tr>
<td>4</td>
<td>Land Purchase</td>
<td>$0</td>
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<tr>
<td>5</td>
<td>Independence Hall—Renovation</td>
<td>$50,000</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>$79,500</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$290,132</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for land purchase (account no. 8306-41) at the close of fiscal year 1991-92 is hereby reappropriated for expenditure during fiscal year 1992-93.

**108—Division of Natural Resources—Closure Cost Assistance Fund**

(WV Code Chapter 20)

Acct. No. 8311-30

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

**109—Division of Natural Resources—Groundwater Planning**

(WV Code Chapter 20)

Acct No. 8312

TO BE PAID FROM SPECIAL REVENUE FUND
1. **Personal Services** $55,678
2. **Annual Increment** $252
3. **Employee Benefits** $16,207
4. **Unclassified** $246,842
5. **Total** $318,979

---

**110—Division of Natural Resources—Recycling Assistance Fund**

(WV Code Chapter 20)

Acct. No. 8325-52

TO BE PAID FROM SPECIAL REVENUE FUND

| 1. Personal Services | $30,000 |
| 2. Annual Increment | $180 |
| 3. Employee Benefits | $13,615 |
| 4. Unclassified | $4,720,467 |
| **Total** | $4,764,262 |

---

**111—Division of Natural Resources—Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

Acct. No. 8323

TO BE PAID FROM SPECIAL REVENUE FUND

| 1. Personal Services | $272,544 |
| 2. Annual Increment | $3,096 |
| 3. Employee Benefits | $112,058 |
| 4. Unclassified | $399,106 |
| **Total** | $786,804 |

---

**112—Division of Natural Resources—Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

Acct. No. 8326

TO BE PAID FROM SPECIAL REVENUE FUND

| 1. Personal Services | $215,000 |
2. Employee Benefits ........... 69,818
3. Unclassified ................ 1,110,182
4. Total ...................... $ 1,395,000

113—Division of Natural Resources—
Solid Waste Enforcement Fund
(WV Code Chapter 20)
Acct. No. 8327
TO BE PAID FROM SPECIAL REVENUE FUND

1. Personal Services ........... $ 2,249,483
2. Annual Increment ............ 23,304
3. Employee Benefits .......... 760,659
4. Unclassified ................ 590,175
5. Total ...................... $ 3,623,621

114—Air Pollution Control Commission
(WV Code Chapter 16)
Acct. No. 8390
TO BE PAID FROM SPECIAL REVENUE FUND

1. Personal Services ........... $ 489,000
2. Employee Benefits .......... 178,600
3. Unclassified ................ 800,524
4. Total ...................... $ 1,468,124

115—Division of Banking—
Lending and Credit Rate Board
(WV Code Chapter 47A)
Acct. No. 8393
TO BE PAID FROM SPECIAL REVENUE FUND

1. Personal Services ........... $ 10,586
2. Employee Benefits .......... 4,372
3. Unclassified ................ 9,680
4. Total ...................... $ 24,638
### 116—Division of Banking

(WV Code Chapter 31A)

Acct. No. 8395

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$854,419</td>
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<tr>
<td>Annual Increment</td>
<td>$5,436</td>
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<tr>
<td>Employee Benefits</td>
<td>$264,954</td>
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<tr>
<td>Unclassified</td>
<td>$440,548</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,565,357</strong></td>
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### 117—Solid Waste Management Board

(WV Code Chapter 20)

Acct. No. 8461

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$263,284</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$2,340</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$81,082</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$2,060,590</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,407,296</strong></td>
</tr>
</tbody>
</table>

### 118—Division of Forestry—

Timberland Enforcement Operations

(WV Code Chapter 19)

Acct. No. 8475

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td><strong>$60,000</strong></td>
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</table>

### 119—Division of Forestry—

Woodlands and Timberlands
Stamp Fund

(WV Code Chapter 19)

Acct. No. 8476

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td><strong>$400,000</strong></td>
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</table>
120—Division of Forestry  
(WV Code Chapter 19) 
Acct. No. 8478

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
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<tr>
<th></th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,692</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$54,042</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$406,348</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$678,082</td>
</tr>
</tbody>
</table>

121—Division of Environmental Protection—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>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$8,243,119</td>
</tr>
</tbody>
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122—Division of Environmental Protection—Oil and Gas Reclamation Trust  
(WV Code Chapter 22B) 
Acct. No. 8538

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$450,000</td>
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</tbody>
</table>

123—Division of Environmental Protection—Oil and Gas Operating Permits  
(WV Code Chapter 22B) 
Acct. No. 8539

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
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<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$180,000</td>
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</tbody>
</table>
### 124—Division of Environmental Protection—Mines and Minerals Operations Fund

(WV Code Chapter 22)

<table>
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</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,860,000</td>
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<tr>
<td>Annual Increment</td>
<td>$14,727</td>
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<tr>
<td>Employee Benefits</td>
<td>$630,000</td>
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<tr>
<td>Unclassified</td>
<td>$495,273</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

### 125—Geological and Economic Survey

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Acct. No. 8589</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$30,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$2,865</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$167,135</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$200,000</td>
</tr>
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</table>

### 126—Bureau of Employment Programs—Workers' Compensation Fund

(WV Code Chapter 23)

<table>
<thead>
<tr>
<th>Acct. No. 9000</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
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<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$10,992,542</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$155,214</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

**127—State Board of Rehabilitation—**
**Division of Rehabilitation Services—**
**West Virginia Rehabilitation Center—Special Account**

(WV Code Chapter 18)

Acct. No. 8137

<table>
<thead>
<tr>
<th>Item</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services—Total</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$600,000</td>
</tr>
<tr>
<td>3</td>
<td>Workshop Development</td>
<td>$200,000</td>
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<td>4</td>
<td>Total</td>
<td>$800,000</td>
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</table>

**128—State Department of Education—**
**FFA-FHA Conference Center**

(WV Code Chapter 18)

Acct. No. 8244

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$489,500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$6,925</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$196,627</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$312,948</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,006,000</td>
</tr>
</tbody>
</table>

**129—State Department of Education—**
**School Building Authority**

(WV Code Chapter 18)
### Ch. 12] APPROPRIATIONS 147

**Acct. No. 8245**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$</td>
<td>$340,374</td>
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<tr>
<td>Annual Increment</td>
<td>—</td>
<td>2,412</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>—</td>
<td>81,259</td>
</tr>
<tr>
<td>Unclassified</td>
<td></td>
<td>196,013</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$620,058</td>
</tr>
</tbody>
</table>

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

### DEPARTMENT OF EDUCATION AND THE ARTS

130—*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>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$</td>
<td>$3,985,000</td>
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<tr>
<td>Capital Repairs</td>
<td></td>
<td>3,000,000</td>
</tr>
<tr>
<td>and Alterations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Projects</td>
<td></td>
<td>500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$7,485,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years' and the 1991-92 appropriations are hereby reappropriated for expenditure during the fiscal year 1992-93.

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

131—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>
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<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$ 2,150,000</td>
</tr>
<tr>
<td>2</td>
<td>Capital Repairs and Alterations</td>
<td>$ 1,800,000</td>
</tr>
<tr>
<td>3</td>
<td>Miscellaneous Projects</td>
<td>-0-</td>
</tr>
<tr>
<td>4</td>
<td>Equipment—All Institutions</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Capital Improvements—</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>New Greenbrier</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Center Replacement</td>
<td>$ 250,000</td>
</tr>
<tr>
<td>8</td>
<td>Fairmont State College—</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Clarksburg Center—</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Advanced Technology</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Center</td>
<td>$ 750,000</td>
</tr>
<tr>
<td>12</td>
<td>Southern West Virginia</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Community College—</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Boone County Campus—</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Relocation Planning</td>
<td>$ 25,000</td>
</tr>
<tr>
<td>16</td>
<td>Southern West Virginia</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Community College—</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>McDowell County Center</td>
<td>$ 125,000</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td>$ 6,100,000</td>
</tr>
</tbody>
</table>

21 Any unexpended balances remaining in the prior years' and 1991-92 appropriations are hereby reappropriated for expenditure during the fiscal year 1992-93.

24 The total amount of this appropriation shall be paid from the special capital improvement fund created in section eight, article ten, chapter eighteen-b of the code.

27 Projects are to be paid on a cash basis and made available from the date of passage.

132—State College and University Systems—
State System Registration Fee—
Revenue Bond Construction Fund
Any unexpended balances remaining in the prior years' and 1991-92 appropriations are hereby reappropriated for expenditure during the fiscal year 1992-93.

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

Projects are to be available from the date of passage.

133—State College System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

1 Debt Service .................... $ — $ 3,375,000
2 Building and Campus
3 Renewal ....................... — 3,000,000
4 Capital Improvements
5 (New) ....................... — 1,520,000
6 Facilities Planning
7 and Administration ...... — 175,000
8 Total ....................... $ — $ 8,070,000

Any unexpended balances remaining in the prior years' and 1991-92 appropriations are hereby reappropriated for expenditure during the fiscal year 1992-93.

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.
134—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

1. Any unexpended balances remaining in the prior
years' and 1991-92 appropriations are hereby reappropriated
for expenditure during the fiscal year 1992-93.

2. 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.

135—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

1. Debt Service .................. $ — $ 7,520,000
2. Building and Campus
3. Renewal ...................... — 11,550,000
4. Facilities Planning and
   Administration ............. — 745,000
5. Total ......................... $ — $ 19,815,000

6. Any unexpended balances remaining in the prior
years' and the 1991-92 appropriations are hereby
reappropriated for expenditure during the fiscal year
1992-93.

7. 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
15 the date of passage.

136—State University System—
West Virginia University Health Sciences Center
Spending Authority
(WV Code Chapters 18 and 18B)

Acct. No. 9280

TO BE PAID FROM THE MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$10,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$5,375,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$6,615,000</td>
</tr>
<tr>
<td>Total</td>
<td>$15,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the fiscal year 1990-91 and fiscal year 1991-92 appropriations for the West Virginia university health sciences center at the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

137—Board of Barbers and Cosmetologists
(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$156,120</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$2,456</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$49,226</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$101,050</td>
</tr>
<tr>
<td>Total</td>
<td>$308,852</td>
</tr>
</tbody>
</table>

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

#### 138—Division of Health—Vital Statistics
(WV Code Chapter 16)
Acct. No. 8236

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$195,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,896</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$81,900</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$82,504</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$364,300</td>
</tr>
</tbody>
</table>

#### 139—Hospital Finance Authority
(WV Code Chapter 16)
Acct. No. 8330

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$47,619</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$14,774</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$63,870</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$126,263</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.

#### 140—Division of Health—Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)
Acct. No. 8500

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$2,740,000</td>
</tr>
<tr>
<td>Community Based Mental Health Service</td>
<td>$3,400,000</td>
</tr>
<tr>
<td>Institutional Facilities</td>
<td></td>
</tr>
<tr>
<td>Operations</td>
<td>$25,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$31,140,000</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93, except for account number 8500-18 (fiscal years 1987-88 and 1988-89) and account no. 8500-52 (fiscal year 1989-90) which shall expire on June 30, 1992.

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, and community based mental health services needed for patients at Weston State Hospital.

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).

Funds from the “Community Based Mental Health Service” line includes revenues from sales of group homes and shall be used for community based development of mental health services needed for patients at Weston State Hospital's Mountaineer Care Unit and Substance Abuse Unit with priority given to private acute care psychiatric providers of such services and the development of interstate agreements with existing providers of such services: Provided, That no such funds shall be used for capital expenditures or major renovations.

141—Division of Health—Laboratory Services

(WV Code Chapter 16)

Acct. No. 8509

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services ...............</td>
<td>$402,768</td>
</tr>
<tr>
<td>Annual Increment ...............</td>
<td>$4,788</td>
</tr>
<tr>
<td>Employee Benefits ...............</td>
<td>$123,000</td>
</tr>
</tbody>
</table>
142—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>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

143—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>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Health Care Planning</td>
</tr>
<tr>
<td>5</td>
<td>Commission—Transfer</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
</tr>
</tbody>
</table>

The appropriation for Health Care Planning Commission—Transfer shall be transferred to the health care planning commission (account no. 8429-99) upon the written request of the chairperson of said commission.

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.
### 144—Division of Human Services—

**Health Care Provider Medicaid Enhancement Tax (Special Fund)**

(WV Code Chapters 9 and 11)

**Acct. No. 9170**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physician Provider</td>
<td>$32,700,000</td>
</tr>
<tr>
<td>General Medicaid Enhancement</td>
<td>$20,100,000</td>
</tr>
<tr>
<td>Outpatient Medicaid Enhancement</td>
<td>$41,000,000</td>
</tr>
<tr>
<td>Dentist Provider Medicaid Enhancement</td>
<td>$11,800,000</td>
</tr>
<tr>
<td>Ambulance Service Provider Medicaid Enhancement</td>
<td>$2,200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$107,800,000</strong></td>
</tr>
</tbody>
</table>

From the above appropriation, an amount not to exceed three hundred fifty thousand dollars from the several medicaid enhancement funds shall be used for administrative purposes, of which an amount not to exceed one hundred fifty thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of tax and revenue and an amount not to exceed two hundred thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of health and human resources. The remainder of all moneys deposited in the several medicaid enhancement funds shall be transferred to the West Virginia medical services fund.

### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

**145—Regional Jail and Correctional Facility Authority**

(WV Code Chapter 31)

**Acct. No. 8051**
### Appropriations [Ch. 12]

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$412,113</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$3,132</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$143,329</td>
</tr>
<tr>
<td>4</td>
<td>Debt Service</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$200,423</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td><strong>$10,758,997</strong></td>
</tr>
</tbody>
</table>

**146—Division of Veterans' Affairs—Veterans' Home**

(WV Code Chapter 19A)  
Acct. No. 8261

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$544,400</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$8,964</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$207,566</td>
</tr>
<tr>
<td>4</td>
<td><strong>Total</strong></td>
<td><strong>$760,930</strong></td>
</tr>
</tbody>
</table>

**147—Division of Public Safety—Motor Vehicle Inspection Fund**

(WV Code Chapter 17C)  
Acct. No. 8350

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$532,104</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$2,052</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$146,240</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$149,138</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td><strong>$829,534</strong></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.

**148—Division of Public Safety—Barracks Construction**

(WV Code Chapter 17C)
### Acct. No. 8352

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
<td>$58,632</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>-</td>
<td>1,044</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>-</td>
<td>23,624</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>-</td>
<td>390,426</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$</td>
<td>$473,726</td>
</tr>
</tbody>
</table>

**149—Division of Public Safety—Drunk Driving Prevention Fund**

*(WV Code Chapter 15)*

**Acct. No. 8355**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$</td>
<td>$584,000</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.

**150—State Armory Board—General Armory Fund**

*(WV Code Chapter 15)*

**Acct. No. 8446**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$</td>
<td>$240,000</td>
</tr>
</tbody>
</table>

**151—Fire Commission—Fire Marshal Fees**

*(WV Code Chapter 29)*

**Acct. No. 8465**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
<td>$287,660</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>-</td>
<td>2,556</td>
</tr>
</tbody>
</table>
Any unexpended cash balance remaining in account no. 8465-99 at the close of the fiscal year 1991-92 is hereby available for expenditure as part of the fiscal year 1992-93 appropriation.

DEPARTMENT OF TAX AND REVENUE

152—Insurance Commission—
Examination Revolving Fund

(WV Code Chapter 33)

Acct. No. 8014

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>Personal Services</td>
<td>$ 251,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$ 1,008</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$ 70,565</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$ 177,427</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$ 500,000</td>
</tr>
</tbody>
</table>

153—Insurance Commission—
Consumer Advocate

(WV Code Chapter 33)

Acct. No. 8015

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>Personal Services</td>
<td>$ 72,500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$ 180</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$ 29,046</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$121,029</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$222,755</td>
</tr>
</tbody>
</table>

154—Insurance Commission

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND
### Ch. 12]

#### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,256,088</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$13,618</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$451,746</td>
</tr>
<tr>
<td>4</td>
<td>Health Care Planning</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Commission—Transfer</td>
<td>$350,000</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>$522,832</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$2,594,284</td>
</tr>
</tbody>
</table>

The appropriation for Health Care Planning Commission—Transfer shall be transferred to the health care planning commission (account no. 8429-99) upon the written request of the chairperson of said commission.

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.

---

#### 155—Racing Commission

(WV Code Chapter 19)

**Acct. No. 8080**

**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>Medical Expenses—Total</td>
<td>$57,000</td>
</tr>
</tbody>
</table>

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

No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

---

#### 156—Racing Commission

General Administration

(WV Code Chapter 19)

**Acct. No. 8081**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$962,700</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$9,252</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$250,300</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$62,798</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,285,050</td>
</tr>
</tbody>
</table>
### 157—Racing Commission—Administration and Promotion

(WV Code Chapter 19)

Acct. No. 8082

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$51,200</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$288</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$12,498</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$47,408</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$111,394</strong></td>
</tr>
</tbody>
</table>

### 158—Tax Division—Office of Chief Inspector

(WV Code Chapter 6)

Acct. No. 8091

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,303,310</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$15,012</td>
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<tr>
<td>3 Employee Benefits</td>
<td>$396,500</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$346,950</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,061,772</strong></td>
</tr>
</tbody>
</table>

### 159—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 8340

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$102,270</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$1,512</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$34,200</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$36,750</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$174,732</strong></td>
</tr>
</tbody>
</table>
160—Alcohol Beverage Control Administration—
Wine License Special Fund
(WV Code Chapter 60)
Acct. No. 8592
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$60,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$756</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$19,470</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$326,379</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$406,605</td>
</tr>
</tbody>
</table>

161—Alcohol Beverage Control Administration
(WV Code Chapter 60)
Acct. No. 9270
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,541,656</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$47,592</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$1,132,524</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$2,699,113</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$6,420,885</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 and salaries, expenses and equipment of administrative offices, warehouses and inspectors.

There is hereby appropriated from liquor revenues, in addition to the appropriation, the necessary amount for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION
162—Division of Highways
(WV Code Chapters 17 and 17C)
Acct. No. 6700
TO BE PAID FROM STATE ROAD FUND
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Maintenance, Expressway,</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Trunkline and Feeder... $</td>
<td>$ 67,980,000</td>
</tr>
<tr>
<td>3</td>
<td>Maintenance, State</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Local Services...</td>
<td>96,511,000</td>
</tr>
<tr>
<td>5</td>
<td>Maintenance, Contract</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Paving and</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Secondary Road</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Maintenance...</td>
<td>32,402,000</td>
</tr>
<tr>
<td>9</td>
<td>Bridge Repair and Replacement...</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Industrial Access Roads...</td>
<td>34,000,000</td>
</tr>
<tr>
<td>11</td>
<td>Inventory Revolving...</td>
<td>2,750,000</td>
</tr>
<tr>
<td>12</td>
<td>Equipment Revolving...</td>
<td>1,250,000</td>
</tr>
<tr>
<td>13</td>
<td>General Operations...</td>
<td>6,575,000</td>
</tr>
<tr>
<td>14</td>
<td>Debt Service...</td>
<td>29,750,000</td>
</tr>
<tr>
<td>15</td>
<td>Interstate Construction...</td>
<td>57,100,000</td>
</tr>
<tr>
<td>16</td>
<td>Other Federal Aid</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Programs...</td>
<td>155,000,000</td>
</tr>
<tr>
<td>18</td>
<td>Appalachian Programs...</td>
<td>120,000,000</td>
</tr>
<tr>
<td>19</td>
<td>Nonfederal Aid</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Construction...</td>
<td>40,000,000</td>
</tr>
<tr>
<td>21</td>
<td>Highway Litter Control...</td>
<td>1,500,000</td>
</tr>
<tr>
<td>22</td>
<td>Total...</td>
<td>$716,818,000</td>
</tr>
</tbody>
</table>

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

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

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

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible
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.

163—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></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,597,198</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$41,904</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$924,194</td>
</tr>
<tr>
<td>4</td>
<td>Optic Scan System</td>
<td>$2,010,000</td>
</tr>
<tr>
<td>5</td>
<td>Electronic Photo Operator</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>and License System</td>
<td>$350,000</td>
</tr>
<tr>
<td>7</td>
<td>Unclassified</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td><strong>Total</strong></td>
<td><strong>$16,178,197</strong></td>
</tr>
</tbody>
</table>

164—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></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$148,844</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$2,124</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$48,379</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$89,907</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td><strong>$289,254</strong></td>
</tr>
</tbody>
</table>

165—Division of Motor Vehicles—Driver Rehabilitation

(WV Code Chapter 17C)
### Appropriations

#### Acct. No. 8423

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$54,766</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>$648</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>$21,413</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>$497,810</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>$574,637</td>
<td>Total</td>
</tr>
</tbody>
</table>

#### 166—Division of Motor Vehicles—

**Insurance Certificate Fees**

(WV Code Chapter 17A)

#### Acct. No. 8424

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$464,704</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>$7,840</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>$194,879</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>$109,214</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>$776,637</td>
<td>Total</td>
</tr>
</tbody>
</table>

#### 167—Division of Motor Vehicles—

**Motorboat Licenses**

(WV Code Chapter 20)

#### Acct. No. 8425

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$62,238</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>$1,800</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>$21,882</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>$44,120</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>$130,040</td>
<td>Total</td>
</tr>
</tbody>
</table>

#### 168—Division of Motor Vehicles—

**Returned Check Fees**

(WV Code Chapter 17)

#### Acct. No. 8426

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$54,766</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>$648</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>$21,413</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>$497,810</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>$574,637</td>
<td>Total</td>
</tr>
</tbody>
</table>
13,625
144
4,756
9,485

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
<td>—</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$</td>
<td>—</td>
</tr>
</tbody>
</table>

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*169—Real Estate Commission*

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
<td>—</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$</td>
<td>—</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

*170—West Virginia Board of Examiners for Speech-Language Pathology and Audiology*

(WV Code Chapter 30)

Acct. No. 8113

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$</td>
<td>—</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid out of collections of license fees and fines as provided by law.

*171—West Virginia Cable Television—Advisory Board*

(WV Code Chapter 5)

Acct. No. 8173

TO BE PAID FROM SPECIAL REVENUE FUND
1 166
2 2
3 3
4 4
5 5

172—Public Service Commission
(WV Code Chapter 24)
Acct. No. 8280
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ............ $ — $ 4,976,338
2 Annual Increment ............ — $ 42,523
3 Employee Benefits ............ — $ 1,553,241
4 Unclassified .................. — $ 1,495,238
5 Total ........................ $ — $ 8,067,340

The total amount of this appropriation shall be paid
from a special revenue fund out of receipts collected for special
license fees from public service corporations as provided
by law.

173—Public Service Commission—
Gas Pipeline Division
(WV Code Chapter 24B)
Acct. No. 8285
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ............ $ — $ 124,323
2 Annual Increment ............ — $ 1,200
3 Employee Benefits ............ — $ 32,613
4 Unclassified .................. $ 372,817 $ 70,369
5 Total ........................ $ 372,817 $ 228,505

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.
174—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 1,120,110</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 18,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ 366,016</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$ 658,258</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 1,824,804</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for the exercise of regulatory authority over motor carriers as provided by law.

175—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 308,195</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 1,836</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ 99,152</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$ 299,349</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 708,532</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the public service commission.

Sec. 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 among account nos. 8243, 8525, 8825, 8546 and 9132 in the proportion the
8 appropriation for each account bears to the total of the
9 appropriations for the five accounts.

116—State Department of Education
(WV Code Chapters 18 and 18A)
Acct. No. 8243
TO BE PAID FROM LOTTERY NET PROFITS

<table>
<thead>
<tr>
<th></th>
<th>Elementary Computer</th>
<th></th>
<th>Education—Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In-Home Services For</td>
<td></td>
<td>Senior Citizens</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Commission on Aging</td>
<td></td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---------------------</td>
<td>---</td>
<td>-----------------</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>$3,520,000</td>
<td></td>
<td>$600,000</td>
<td></td>
</tr>
</tbody>
</table>

4 Any unexpended balance remaining in the appropriation Elementary Computer Education (account no. 8243-06) at the close of the fiscal year 1991-92 is hereby reappropriated for expenditure during the fiscal year 1992-93.

117—Commission on Aging
(WV Code Chapter 29)
Acct. No. 8525
TO BE PAID FROM LOTTERY NET PROFITS

<table>
<thead>
<tr>
<th></th>
<th>In-Home Services For</th>
<th></th>
<th>Commission on Aging</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capital Outlay—Parks</td>
<td></td>
<td>Unclassified</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---------------------</td>
<td>---</td>
<td>---------------------</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>$1,340,000</td>
<td></td>
<td>$11,020,000</td>
<td></td>
</tr>
</tbody>
</table>

4 Any unexpended balances remaining in the appropriations for Unclassified (account no. 8546-06) and Capital Outlay—Parks (account no. 8546-26) at the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.
179—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

180—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
2 Title XIX Waiver for
3 Senior Citizens—Total ..................... $ 8,000,000

Funds from this account shall be used to expand the title XIX waiver program statewide but not to increase the rates of reimbursement for services provided by title XIX providers.

Sec. 6. Awards for claims against the state.—
There are hereby appropriated, for the remainder of the fiscal year 1991-92 and to remain in effect until June 30, 1993, from the fund as designated, in the amounts as specified and for the claimants named in enrolled house bill no. 4594, regular session 1992—crime victims compensation funds of $477,500.00 for payment of claims against the state.

There are hereby appropriated for the fiscal year 1992-93 from the funds as designated, in the amounts as specified and for the claimants as named in enrolled house bill no. 4595, regular session 1992, and enrolled senate bill no. 594, regular session 1992—general revenue funds of $1,419,015.46.

The total of general revenue funds above does not
include payment for claims in the amount of $10,117.46
from the supreme court—general judicial, account no.
1110, specifically made payable from the appropriation
for the current fiscal year 1991-92.

There are hereby appropriated for the fiscal year
1992-93 from the funds as designated, in the amounts
as specified and for claimants as named in enrolled
senate bill no. 594, regular session 1992—special
revenue funds of $52,737.34, state road funds of
$2,016,984.93, workers' compensation funds of $2,001.76
and federal funds of $713.44.

Sec. 7. Supplemental and deficiency appropriation.—From the state fund, general revenue, except as
otherwise provided, there are hereby appropriated the
following amounts, as itemized, for expenditure during
the fiscal year 1991-92 to supplement the appropriations
for such fiscal year and to be available for expenditure
upon date of passage.

181—Division of Culture and History
(WV Code Chapter 29)
Acct. No. 3510

WV History Film Project—
Total ........................................ $ 150,000

Sec. 8. Appropriations and reappropriations—
revenue sharing trust fund.—Any unexpended balances remaining in the appropriations for Chief Mingo
Recreation Park—Capital Outlay (account no. 9705-30),
Building Repairs and Alterations (account no. 9740-10)
and Unclassified (account no. 9719-06) at the close of the
fiscal year 1991-92 are hereby reappropriated for
expenditure during the fiscal year 1992-93.

Sec. 9. Appropriations from surplus accrued.—
The following item is hereby appropriated from the
state fund, general revenue, and is to be available for
expenditure during the fiscal year 1992-93 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 appropriation be payable only from surplus accrued as of the thirty-first day of July, one thousand nine hundred ninety-two.

In the event that surplus revenues available on the thirty-first day of July, one thousand nine hundred ninety-two, are not sufficient to meet all of the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated.

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 1992-93.

182—Department of Transportation—
Office of the Secretary
(WV Code Chapter 5F)
Acct. No. 5376

1 Public Transportation—
2 Total .................................. $ -0-

183—Division of Public Transit
(WV Code Chapter 17)
Acct. No. 5380

1 Public Transportation—
2 Total .................................. $ 1,000,000

Sec. 10. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1992-93:

184—Office of Community and Economic Development—
Community Development
Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>8031</td>
<td>Office of Community and Economic Development—Community Service</td>
<td>$6,996,154</td>
</tr>
<tr>
<td>8242</td>
<td>State Department of Education—Education Grant</td>
<td>$69,722,000</td>
</tr>
<tr>
<td>8255</td>
<td>Bureau of Employment Programs—Job Training Partnership Act</td>
<td>$40,560,764</td>
</tr>
<tr>
<td>8502</td>
<td>Division of Health—Maternal and Child Health</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>8503</td>
<td>Division of Health—Alcohol, Drug Abuse and Mental Health</td>
<td>$6,500,000</td>
</tr>
</tbody>
</table>
190—Division of Health—
Community Youth Activity Program
Acct. No. 8504
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ................. $ 95,000

191—Division of Health—
Preventive Health
Acct. No. 8506
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ................. $ 972,117

192—Division of Health—
Mental Health Services for the Homeless
Acct. No. 8508
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ................. $ 400,000

193—Division of Human Services—
Energy Assistance
Acct. No. 9147
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ................. $ 10,500,000

194—Division of Human Services—
Child Care and Development
Acct. No. 9149
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ................. $ 6,500,000

195—Division of Human Services—
Social Services
Acct. No. 9161
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ................. $ 22,000,000
Sec. 11. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-three appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;
(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 12. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety-three, 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-three to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.
Sec. 13. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 14. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 15. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced
funds, with interest at the rate carried by the bonds for
security or payment of which the advance was made.

Sec. 16. Appropriations to pay costs of publication of
delinquent corporations.—There is hereby
appropriated out of the state fund, general revenue, out
of funds not otherwise appropriated, to be paid upon
requisition of the auditor and/or the governor, as the
case may be, a sum sufficient to pay the cost of
publication of delinquent corporations as provided by
sections eighty-four and eighty-six, article twelve,
chapter eleven of the code.

Sec. 17. Appropriations for local governments.—
There are hereby appropriated for payment to counties,
districts and municipal corporations such amounts as
will be necessary to pay taxes due counties, districts and
municipal corporations and which have been paid into
the treasury:

(a) For redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 18. Total appropriations.—Where only a total
sum is appropriated to a spending unit, the total sum
shall include personal services, annual increment,
employee benefits, current expenses, repairs and
alterations, equipment and capital outlay, where not
otherwise specifically provided and except as otherwise
provided in TITLE I—GENERAL PROVISIONS, Sec. 3.

Sec. 19. General school fund.—The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is
appropriated for expenditure in accordance with section
sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

TITLE III—ADMINISTRATION.

Section 1. Appropriations conditional.—The 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
the compliance by the spending unit with the require-
ments of article two, chapter five-a of the code.

Where spending units or parts of spending units have
been absorbed by or combined with other spending
units, it is the intent of this act that reappropriations
shall be to the succeeding or later spending unit created,
unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is
declared unconstitutional by a court of competent
jurisdiction, its decision shall not affect any portion of
this act which remains, but the remaining portion shall
be in full force and effect as if the portion declared
unconstitutional had never been a part of the act.

CHAPTER 13
(S. B. 595—Originating in the Committee on Finance)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between
items of the existing appropriations of the department
of tax and revenue, tax division, Acct. No. 1800, as
appropriated by chapter thirteen, acts of the Legisla-
ture, regular session, one thousand nine hundred ninety-
one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Acct. No. 1800,
chapter thirteen, acts of the Legislature, regular session, one
thousand nine hundred ninety-one, be supplemented, amended
and transferred to read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE
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-two shall be made available for expenditure upon the effective date of this bill.

CHAPTER 14

(S. B. 599—Originating in the Committee on Finance)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of health and human resources, division of human services, Acct. No. 4050, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.
WHEREAS, The governor has established the receipt and availability of federal funds for the extension of continuing programs, now available for expenditure in the current fiscal year of 1991-1992, 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 Acct. No. 4050, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.
2 Sec. 2. Appropriations of federal funds.
3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES
5 64—Division of Human Services
6 (WV Code Chapters 9, 48 and 49)
7 Acct. No. 4050
8 6 Medical Services ....................... $363,399,410
9 The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for fiscal year 1991-1992 by adding to this existing line item an amount to be used to match revenues from the medicaid enhancement program. Such increased amount shall be available for such use and expenditure upon passage of the bill.

CHAPTER 15
(S. B. 597—Originating in the Committee on Finance)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]
180  APPROPRIATIONS  

health and human resources, consolidated medical service fund, Acct. No. 4190, as appropriated by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Acct. No. 4190, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be supplemented, amended and transferred to read as follows:

1  TITLE II—APPROPRIATIONS.
2  Section 1.  Appropriations from general revenue.
3  Sec. 2.  Appropriations of federal funds.
4  DEPARTMENT OF HEALTH
5 AND HUMAN RESOURCES
6  66—Consolidated Medical Service Fund
7  Acct. No. 4190
8  1  Foster Grandparents
9  2  Stipends/Travel ........ $   —   $  62,000
10  3  Institutional Facilities
11  4  Operations ............... —  42,010,316
12  5  Employee Benefits ........ —  15,589,369
13  6  Poison Control Hotline ... —  250,000
14  7  Special Olympics ........ —  28,000
15  8  State Aid to Local Agencies . —  7,200,000
16  9  Women, Infants 
17 10  and Children ............ —  400,000
18 11  Maternal and Child 
19 12  Health Clinics, Clinicians 
20 13  and Medical Contracts 
21 14  and Fees ............... —  4,815,670
22 15  Preventive Re-Vaccination .. —  200,000
23 16  Primary Care Contracts to 
24 17  Community Health 
25 18  Centers ................. —  2,800,000
26 19  Epidemiology Research .. —  250,000
27 20  Grants to Counties and 
28 21  EMS Entities ............ —  1,725,000
29 22  Behavioral Health Program —  -0-
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-two shall be made available for expenditure upon the effective date of this bill.

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of commerce, labor and environmental resources, division of forestry, Acct. No. 4650, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor has established the receipt and
availability of federal funds for the extension of continuing
programs, now available for expenditure in the current fiscal
year of 1991-1992, a part of which balance is hereby approp­
riated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Acct. No. 4650, chapter thirteen, acts of the Legisla­
ture, regular session, one thousand nine hundred ninety-one,
known as the budget bill, be supplemented by adding the
following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.
2 Sec. 2. Appropriations of federal funds.
3 DEPARTMENT OF COMMERCE, LABOR
4 AND ENVIRONMENTAL RESOURCES
5 36—Division of Forestry
6 (WV Code Chapter 19)
7 Acct. No. 4650
8 5 Unclassified ......................... $ 805,271
9 The purpose of this supplementary appropriation bill
10 is to supplement this account in the budget bill for fiscal
11 year 1991-1992 by adding to this existing line item an
12 amount to be used for the southern West Virginia forest
13 fire suppression and mobilization pilot project, for basic
14 background studies under the economic stability through
15 forestry program and for the America the beautiful tree-
16 planting program. Such increased amount shall be
17 available for such use and expenditure upon passage of
18 the bill.
AN ACT supplementing, amending and transferring between items of the existing appropriations of the department of administration, ethics commission, Acct. No. 6180, as appropriated by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Acct. No. 6180, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be supplemented, amended and transferred to read as follows:

1  TITLE II—APPROPRIATIONS.
2  Section 1. Appropriations from general revenue.
3  DEPARTMENT OF ADMINISTRATION
4  32—Ethics Commission
5  (WV Code Chapter 6B)
6  Acct. No. 6180
7  
8  
9  13 1 Total Personal Services . $ — $ -0-
10  14 2 Personal Services ....... — 159,220
11  15 3 Employee Benefits ....... — 34,057
12  16 4 Unclassified ............ — 187,600
13  17 5 Total .................... $ — $ 380,877
14  18  
15  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-two shall be made available for expenditure upon the effective date of this bill.

CHAPTER 18

(Com. Sub. for S. B. 384—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed February 27, 1992; 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-two, to the West Virginia department of transportation, division of highways, Acct. No. 6700, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document dated January 8, 1992, wherein on page X are set forth the revenues and expenditures of the state road fund, including fiscal year 1991-1992; 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 1991-1992, 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, Acct. No. 6700, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, as appropriated by chapter thirteen, acts of the Legislature,
regular session, one thousand nine hundred ninety-one, known as the budget bill, be supplemented, amended and thereafter read as follows:

**TITLE II—APPROPRIATIONS.**

**Sec. 3.** Appropriations from other funds.

**Sec. 4.** Appropriations of federal funds.

**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</th>
<th>Description</th>
<th>Federal Funds</th>
<th>Other Funds</th>
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<tr>
<td>1</td>
<td>Maintenance, Expressway,</td>
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<tr>
<td>2</td>
<td>Trunkline and Feeder ... $</td>
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<td>3</td>
<td>Maintenance, State</td>
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<td>4</td>
<td>Local Services ..........</td>
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<td>5</td>
<td>Maintenance, Contract</td>
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<td>6</td>
<td>Paving and Secondary</td>
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<td>7</td>
<td>Road Maintenance .......</td>
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<td>8</td>
<td>Bridge Repair and</td>
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<td>Replacement ............</td>
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<td>Industrial Access Roads ..</td>
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<td>Inventory Revolving......</td>
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<td>General Operations ......</td>
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<td>Debt Service ............</td>
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<td>15</td>
<td>Interstate Construction ...</td>
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<td>16</td>
<td>Other Federal Aid</td>
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<td>17</td>
<td>Programs .................</td>
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<td>18</td>
<td>Appalachian Programs ...</td>
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<td>19</td>
<td>Nonfederal Aid</td>
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<tr>
<td>20</td>
<td>Construction .............</td>
<td>$33,716,000</td>
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</table>
CHAPTER 19

(H. B. 4735—By Delegates Collins and Kiss)

[Passed February 29, 1992; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire immediately on the effective date of this bill to a special account herein created, and to be expired with any interest accrued thereon on the first day of July, one thousand nine hundred ninety-two, into the state fund, general revenue, specified amounts of the balances in Acct. No. 8004-12, board of investments, loss expenses account, to be available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three.

WHEREAS, The Legislature finds the amounts collected in Acct. No. 8004-12, board of investments, loss expenses account, exceed the amounts needed to effectuate the purposes of the fund; therefore

Be it enacted by the Legislature of West Virginia:

1 That four million seven hundred thousand dollars of the balances in Acct. No. 8004-12, board of investments, loss expenses account, be supplemented, amended, reduced and caused to expire immediately on the effective date of this bill to a special account herein
created and to be expired with any interest accrued thereon into the state fund, general revenue of this state on the first day of July, one thousand nine hundred ninety-two, and be made available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three.

CHAPTER 20
(S. B. 598—Originating in the Committee on Finance)

[Passed March 5, 1992; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal block grant moneys out of the treasury from the balance of available federal block grant moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the division of human services, Acct. No. 9149, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor has established the availability of federal block grant moneys, receivable for new programs and available for expenditure in fiscal year 1991-1992, a portion of the same is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the budget bill, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be supplemented by adding to title two, section nine thereof, as follows:

TITLE II—APPROPRIATIONS.

Sec. 9. Appropriations from federal block grants.

181a—Division of Human Services—Child Care and Development
The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1991-1992 by providing for a new account to be established therein to appropriate federal block grant moneys received for expenditure in the fiscal year 1991-1992. Such amount shall be available for expenditure upon passage of the bill.

CHAPTER 21
(H. B. 4069—By Delegates Love and Wallace)
[Passed February 24, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia board of banking and financial institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

(a) There is hereby created the West Virginia board of banking and financial institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the governor by and with the advice and consent of the
Senate. Three of the members shall be executive officers of state banking institutions, of whom one shall be truly representative of such state banking institutions having assets not greater than seventy-five million dollars, one shall be truly representative of such state banking institutions having total assets greater than seventy-five million dollars but not greater than two hundred million dollars, and one shall be truly representative of such banking institutions having total assets greater than two hundred million dollars. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity, any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of such term. Any member appointed for less than a full six-year term shall be eligible for reappointment for a full term. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section 5, article IV of the constitution of the state of West Virginia. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.
(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he is, or was at any time in the preceding twelve months, a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself from participation in a proceeding for any other cause deemed by him to be sufficient. Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia board of banking and financial institutions shall continue to exist until the first day of July, one thousand nine hundred ninety-three, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 22
(S. B. 492—By Senator Minard)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the chartering of banking institutions in this state.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-1. General corporation laws applicable; charter applications to be approved by West Virginia board of banking and financial institutions.

(a) The general corporation laws of the state, including the provisions of chapter thirty-one of the code of West Virginia, shall govern banking institutions and the chartering thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter.

(b) No charter shall issue in this state for any banking institution unless the application therefor shall have been submitted to and approved by the West Virginia board of banking and financial institutions: Provided, That the board may not approve the application to charter any banking institution unless the proposed banking institution does business within this state and is subject to the supervision of the commissioner of banking.

CHAPTER 23

(Com. Sub. for H. B. 4613—By Delegates Rutledge and Williams)

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

AN ACT to amend and reenact section four, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of bank stock and organizational expenses.

Be it enacted by the Legislature of West Virginia:
That section four, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-4. Stock to be paid in full before engaging in business; exception as to unissued stock; organizational expense fund; affidavit of incorporators; penalties; stockholders' preemptive rights.

(a) All of the capital stock of every banking institution, chartered under the laws of this state, shall be paid in full in cash and issued to the ultimate subscribers, not an agent or broker acting on behalf of the organizers, before it shall be authorized to engage in business, except such business as is incidental and necessarily preliminary to its organization: Provided, That with the approval of the commissioner of banking, the charter of any state bank, now or hereafter organized, may provide that not to exceed five percent of the bank's authorized capital stock may be unissued stock. Such authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan approved by the commissioner or may be issued for such other purposes and consideration as may be approved by the board of directors of said bank.

(b) Each subscriber at the time he or she subscribes to the stock of a proposed banking institution shall pay in cash a sum at least equal to five percent of the par value of such stock into a fund to be used to defray the expenses of organization of said institution. No organizational expenses shall be paid out of any other funds of the bank. The amount of any organizational expenses which are accumulated and recorded on the newly organized bank's accounting records as an asset to be amortized over a period of time according to generally accepted accounting principles shall be added to the capital requirement for incorporation of the bank as determined by the West Virginia board of banking and financial institutions pursuant to subsection (a), section
three, article four of this chapter. Upon the grant of a charter to the institution any unexpended balance in the organizational expense fund shall be transferred to undivided profits of the institution. If the charter application is finally denied, any unexpended balance in said fund shall be distributed among the contributors in proportion to their respective payments.

(c) A majority of the incorporators shall file with the West Virginia board of banking and financial institutions at the time of filing of the charter application an affidavit: (1) Setting forth all expenses incurred or to be incurred in connection with the organization of the institution, subscriptions for its shares and sale of its shares, and (2) stating that no fee, compensation or commission prohibited by this section has been or will be paid or incurred. The board may disapprove the charter application on account of any violation of this section and order the incorporators to restore any sum expended for other than proper organizational expense. In addition, violations hereof shall constitute a misdemeanor offense punishable as prescribed in section fifteen, article eight of this chapter.

(d) Unless otherwise provided in the charter, whenever additional stock is offered for sale, stockholders of record on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within sixty days of the offer. If the right be not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe. No banking institution shall sell its shares of stock at less than par, but may sell its shares at such price above par as may be set by the board of directors. The preemptive rights of the stockholders, as provided in this paragraph, shall not apply to any stock issued by a banking institution, to another bank or financial institution or the stockholders thereof, pursuant to a merger or consolidation with such other bank or financial institution, or to authorized but unissued stock authorized by the charter of the banking institution.
AN ACT to amend and reenact section nine, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fidelity bonds and insurance for state-chartered banking institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-9. Fidelity bonds and insurance.

(a) The directors of a state bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the bank.

(b) The directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(c) The directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all
known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors.

(d) A state bank which is a subsidiary of a bank holding company as defined in section three, article eight-a of this chapter may fulfill the requirements of subsections (a) and (b) of this section if such fidelity bonds and insurance protection are obtained on its behalf by the bank holding company: Provided, That the evidence of the existence of such bonds and insurance protection for the state bank must be maintained at the main office of the state bank and the directors of the state bank shall be responsible for reviewing the adequacy of such bonds and insurance protection annually and for recording such review in the minutes of the board.

CHAPTER 25

(Com. Sub. for H. B. 4023—By Delegates Rutledge and Carper)

[Passed February 25, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three-a, relating to the establishment of bank accounts payable to one or more named beneficiaries upon the death of the account owner; outlining the rights of account owners and beneficiaries; requiring all changes to be in writing; and outlining the obligations of banking institutions.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-three-a, to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.
§31A-4-33a. Establishment of payable on death accounts; rights of account owners; change of beneficiary to be in writing; rights of beneficiaries; limitation on liability of institutions making payments from such accounts.

(a) Any person may enter into a written contract with any banking institution located in this state to establish a payable on death bank account, which may be abbreviated as a "p.o.d." account. A payable on death account contract shall provide that upon the death of the account owner the balance of any such account shall be paid to the beneficiary or beneficiaries specifically designated by the owner of the account who are surviving at the time of the owner's death. Two or more persons may own such an account as joint tenants with right of survivorship, in which case the interest of any designated beneficiary shall vest only upon the death of the last surviving joint owner. Upon the death of the owner, or last surviving owner, the balance of the account shall be paid only to the designated surviving beneficiaries. The terms of the payable on death contract take precedence over contrary provisions of any other testamentary document.

(b) The owner of a payable on death account shall maintain all right, title and interest in the banking account, including principal and interest, during his or her lifetime; may freely withdraw and use the moneys on deposit in the payable on death account, in whole or in part; and may terminate or close the account at will.

(c) The account owner may change the designated beneficiary at any time. Such change must be in writing and executed in the form and manner prescribed by the bank. Any such change of beneficiary must be delivered to the bank prior to the death of the payable on death account owner in order to be valid.

(d) Designated beneficiaries have no rights or claims to a payable on death account until the death of the last surviving owner of such account. Unless otherwise provided in the written contract, where two or more
35 beneficiaries are designated, upon the death of the
36 account owner, each surviving beneficiary shall be paid
37 a per capita share of the account balance. If no
38 designated beneficiary survives the last account owner,
39 any account balance shall become a part of the last
40 surviving account owner's estate.

(e) If a designated beneficiary is a minor at the time
41 he or she becomes vested with any part of a payable on
42 death account, that portion of the account shall be paid
43 to the minor beneficiary in accordance with the
44 provisions of section thirty-four, article four, chapter
45 thirty-one-a of this code.

(f) Upon the death of the last surviving account
47 owner, delivery of moneys in a payable on death account
48 to the designated beneficiary or beneficiaries pursuant
49 to the terms of the written contract shall fully and
50 completely discharge the banking institution of all
51 obligations under said contract.

CHAPTER 26

(Com. Sub. for S. B. 554—By Senators Chernenko and Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fourteen,
chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact section one, article twenty-seven,
chapter thirty of said code, relating to barbers and
beauticians; increasing the monthly salaries of beauty
and barber shop inspectors; renaming the board of
barbers and beauticians as the board of barbers and
cosmetologists; and increasing the salary of the director
of such board.

Be it enacted by the Legislature of West Virginia:

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

Chapter

30. Professions and Occupations.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 14. BARBERS AND COSMETOLOGISTS.

§16-14-1. Jurisdiction over barbers and cosmetologists; powers and duties of director of health.

1 (a) There is hereby vested in the state department of health jurisdiction over barbers and cosmetologists, except as otherwise specifically provided in this code.

2 (b) The director of health or a designee shall be responsible for the enforcement of all laws and rules pertaining to sanitary conditions of barbering and beauty shops.

3 (c) The director or a designee shall provide administrative support to the board of barbers and cosmetologists as may be appropriate and reasonable.

4 (d) The director of health shall appoint not more than six inspectors, who shall be licensed barbers and cosmetologists of this state, as herein provided, and it shall be their duty to make frequent inspections of all barber and beauty shops and all schools of barbering and beauty culture in this state and to report all violations to the director of health. The salary of each inspector shall range from twelve hundred eighty-three dollars per month to fifteen hundred dollars per month, depending upon the qualifications of the inspector. Allowances for expenses of such inspectors shall be that fixed and allowed by the director of health.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-1. Board of barbers and cosmetologists; salary of board director; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.
(a) The board of barbers and beauticians heretofore established is continued and shall be known henceforth as the board of barbers and cosmetologists. The annual salary of the director of such board shall be thirty-one thousand seven hundred ninety-six dollars. All members of the board, serving for a term which has not expired on the effective date of this article, shall continue to serve the terms for which they were appointed. The board shall promulgate rules pertaining to the licensure and qualifications of barbers, cosmetologists and manicurists, and curricula and standards of instruction for schools of barbering and beauty culture. The board shall aid and assist in the enforcement of all rules in accordance with the provisions of article fourteen, chapter sixteen of this code. The board shall consist of four professional members to be appointed by the governor, by and with the advice and consent of the Senate, and one lay member to be appointed in accordance with the provisions of section four-a, article one of this chapter. Of the four professional members, one shall be an employing barber, one an employee barber, one an employing cosmetologist and one an employee cosmetologist. Each professional member of the board shall have been engaged within this state in the practice of barbering or beauty culture, as the case may be, for a period of five years prior to his or her appointment and no more than two of the four professional members may belong to the same political party. No member of the board shall own or have a pecuniary interest in a barber or beauty culture school licensed by or doing business within this state or shall be employed by such an institution.

(b) On or before the thirtieth day of June of each year, the governor shall appoint one member of the board to serve for a term of four years, to begin on the first day of July. No professional member of the board may serve for more than two complete terms.

(c) The board shall designate one of its members as chairperson.
(d) Each member of the board shall receive as compensation a per diem of fifty dollars for each day of attendance at board sessions, but such compensation for each member shall not exceed the sum of three thousand dollars in any calendar year. Each member shall be reimbursed for actual and necessary expenses incurred in the performance of his or her duties, upon presentation of an itemized sworn statement thereof.

(e) The board shall examine all applicants for licensure and shall issue licenses to those entitled thereto and collect examination and licensure fees, in accordance with regulations promulgated by the board of health pursuant to article fourteen, chapter sixteen of this code or the board of barbers and cosmetologists.

(f) It is unlawful for any person to practice or offer to practice barbering, beauty culture or manicuring in this state without first obtaining a license for such purposes from the board of barbers and cosmetologists.

(g) The board shall have the power to promulgate rules generally regarding the practice and conduct of barbering and beauty culture, including, but not limited to, the procedures, criteria and curricula for examination and qualifications of applicants for licensure, and for the licensing of instructional personnel for schools of barbering and beauty culture.

The power of the board to promulgate such rules shall be concurrent with that of the board of health as authorized in article fourteen, chapter sixteen of this code: Provided, That in the case of conflicting provisions regarding requirements for health and sanitation, the rule or regulation of the board of health shall be deemed to apply. The board of health and the board of barbers and cosmetologists shall for a reasonable fee make available upon request to any licensee a copy of such rules.
CHAPTER 27
(Com. Sub. for H. B. 4135—By Delegates L. White and Mezzatesta)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and sixteen, article twenty, chapter forty-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 six-a, relating to providing for the issuance of a super bingo license and the fee therefor; limiting super bingo licenses; increasing the limits on bingo prizes; maintenance of records by licensees; and requiring the tax commissioner to perform audits in certain instances.

Be it enacted by the Legislature of West Virginia:

That sections ten and sixteen, article twenty, chapter forty-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 six-a, all to read as follows:

ARTICLE 20. CHARITABLE BINGO.

§47-20-6a. Super bingo license.

§47-20-10. Limits on prizes awarded—General provisions.

§47-20-16. Records; commissioner audit.

§47-20-6a. Super bingo license.

Any charitable or public service organization may, upon payment of a five thousand dollar license fee, apply to the tax commissioner for issuance of an annual super bingo license. The tax commissioner shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code specifying those organizations which qualify as charitable or public service organizations.

A holder of a super bingo license may conduct one super bingo occasion each calendar quarter during the period of the license at which up to thirty-five thousand dollars in prizes may be awarded, notwithstanding the seven thousand five hundred dollar limitation on prizes specified in section ten of this article.
A charitable or public service organization that has a regular or limited occasion bingo license may apply for a super bingo license.

§47-20-10. Limits on prizes awarded—General provisions.

Except as otherwise provided in section twenty-two of this article, the total value of all prizes awarded by a licensee during the period of a license, may not exceed in value seventy-five percent of the gross proceeds collected during that period or the sum of four hundred thousand dollars, whichever amount is less: Provided, That notwithstanding the foregoing limitation, the total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint bingo occasion, for any bingo occasion held pursuant to an annual or limited occasion license, may not exceed seven thousand five hundred dollars in value.

Prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are merchandise, the value assigned to them is their fair market value at the time of purchase.

§47-20-16. Records; commissioner audit.

Any licensee which holds a bingo occasion as provided by this article shall maintain a separate account and separate bookkeeping procedure for its bingo operations. A licensee shall maintain all records required by this article for at least three years and the records shall be open to the commissioner for reasonable inspection. Whenever the tax commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee's books and records: Provided, That the tax commissioner shall perform or cause to be performed an audit of the books and records of any licensee that has awarded total prizes in excess of one hundred seventy-five thousand dollars. The tax commissioner shall file a copy of the completed audit with the county commission of the county wherein the licensee holds bingo occasions.
AN ACT to amend and reenact section three, article twelve, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article five, chapter five-a of said code; to amend and reenact section five, article four-c, chapter sixteen of said code; to amend and reenact section five, article two, chapter seventeen of said code; to amend and reenact section three, article eleven-c, chapter eighteen of said code; and to amend and reenact section six, article thirteen, chapter eighteen-b of said code, all relating to membership of certain boards, institutes, councils and commissions; making necessary changes required by congressional redistricting; and adding member to governor’s mansion advisory committee.

Be it enacted by the Legislature of West Virginia:

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

Chapter

4. The Legislature.
5A. Department of Administration.
17. Roads and Highways.
18. Education.
18B. Higher Education.
CHAPTER 4. THE LEGISLATURE.

ARTICLE 12. ESTABLISHMENT OF A WEST VIRGINIA LAW INSTITUTE.

§4-12-3. Governing council and members.

(a) The institute shall have such members and committees as the governing body of the West Virginia law institute may direct. The governing body shall also elect a president, secretary and any other officers as it determines necessary.

(b) The governing body of the institute shall be a council composed of ex officio members and elected members as follows:

1. One justice of the West Virginia supreme court of appeals to be selected by the justices thereof;

2. One circuit court judge, selected by the West Virginia judicial association;

3. One federal judge residing in West Virginia, selected by the federal judges residing in West Virginia;

4. The attorney general of the state of West Virginia;

5. One legal counsel to the governor of the state of West Virginia;

6. The chairperson of the judiciary committees of the Senate and the House of Delegates of the West Virginia Legislature or an attorney member of the respective committees appointed by the chairperson of the committee;

7. One member each from the majority and minority parties of the Senate and the House of Delegates of the West Virginia Legislature to be selected by the president of the Senate and the speaker of the House of Delegates, respectively;

8. The director of West Virginia legislative services;

9. The chairperson of the West Virginia commission on uniform state laws;

10. The president and first vice president of the West Virginia state bar;
33 (11) The chairperson of the young lawyers section of
34 the West Virginia state bar;
35 (12) The dean of the West Virginia university college
36 of law;
37 (13) Two attorneys appointed by the governor of the
38 state of West Virginia for terms to run concurrently
39 with the term of the governor;
40 (14) The director of the continuing legal education
41 program sponsored by the West Virginia state bar and
42 the West Virginia university college of law; and
43 (15) The editor-in-chief of the West Virginia law
44 review.
45 (c) The elected membership shall consist of two
46 faculty members who shall be elected from the members
47 of the faculty of the West Virginia university college of
48 law and four practicing attorneys from each of the
49 congressional districts in the state who shall be selected
50 by the board of governors of the West Virginia state bar.
51 (d) All ex officio members of the council shall hold
52 their positions during their respective terms of office.
53 The term of office of the elected members of the council
54 shall be four years. The terms of office of the first
55 elected practicing attorney members shall be appointed
56 by the board of governors of the West Virginia state bar
57 such that four shall be appointed for two years, four for
58 three years and four for four years. Thereafter, appoint-
59 ments shall be for four years. Elected members of the
60 council shall be eligible for reelection.
61 (e) Vacancies in the elected membership created by
62 death, resignation or otherwise than by the expiration
63 of the terms of office shall be filled by the council under
64 such rules as it may adopt.

CHAPTER 5A.
DEPARTMENT OF ADMINISTRATION.
ARTICLE 5. GOVERNOR'S MANSION ADVISORY COMMITTEE.
§5A-5-1. Committee continued; appointment, terms, etc.,
of members; meetings and responsibilities; annual report.
There is hereby continued the governor's mansion advisory committee within the department of administration. The secretary of administration or his designated representative, the commissioner of culture and history or his designated representative, and the spouse of any governor during the term of office of that governor, or the designated representative of such governor, shall be ex officio members of the committee. In addition, the governor shall appoint four additional members of the committee, one to be a curator in the field of fine arts, one to be an interior decorator who is a member of the American institute of decorators, one to be a building contractor, and one member to represent the interest of the general public. The appointive members of the committee shall serve for a term of four years. The members of the committee shall serve without compensation but shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties; except that in the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state. The governor shall designate from the committee a chairman to serve for a term of one year. The secretary of administration shall serve as secretary. The committee shall meet upon the call of the chairman annually and may meet at such other times as may be necessary for the performance of its functions.

The committee shall be charged with the following responsibilities:

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

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

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

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.

The emergency medical service advisory council, heretofore created and established by former section seven of this article, shall be continued for the purpose of developing, with the director, standards for emergency medical service personnel and for the purpose of providing advice to the office of emergency medical services and the director thereof, as established by section four of this article with respect to reviewing and making recommendations for and providing assistance to the establishment and maintenance of adequate emergency medical services for all portions of this state.

The council shall have the duty to advise the director in all matters pertaining to his duties and functions in relation to carrying out the purposes of this article.

The council shall be composed of thirteen members appointed by the governor by and with the advice and consent of the Senate. The mountain state emergency medical services association shall submit to the governor a list of six names of representatives from their
association and a list of three names shall be submitted
to the governor of representatives of their respective
organizations by the West Virginia association of county
officials, West Virginia state firemen's association, West
Virginia hospital association, West Virginia state
medical association, West Virginia chapter of the
American college of emergency physicians, West
Virginia emergency medical services administrators
association and the state department of education. The
governor shall appoint from the respective lists submit-
ted two persons who represent the mountain state
emergency medical services association, one of whom
shall be a paramedic and one of whom shall be an
emergency medical technician, and one person from the
West Virginia association of county officials, West
Virginia state firemen's association, West Virginia
hospital association, West Virginia state medical
association, West Virginia chapter of the American
college of emergency physicians, West Virginia emer-
gency medical services administrators association and
the state department of education. The governor shall
in addition appoint one person to represent emergency
medical service providers operating within the state, one
person to represent small emergency medical service
providers operating within this state and two persons to
represent the general public. Not more than five of the
members shall be appointed from any one congressional
district. No member shall serve more than four consec-

The council shall choose its own chairman and meet
at the call of the director at least twice a year.

The members of such council may be reimbursed for
any and all reasonable and necessary expenses actually
incurred in the performance of their 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 emergency medical services advisory
council should be continued and reestablished. Accord-
ingly, notwithstanding the provisions of section four,
article ten, chapter four of this code, the emergency medical services advisory council shall continue to exist until the first day of July, one thousand nine hundred ninety-five.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2. STATE ROAD COMMISSION.

§17-2-5. When first members appointed; qualifications; removal for cause.

1 On or before the first day of July next after the effective date of this article, the governor shall appoint the members of the commission. Not more than four of the members shall be of the same political party. Two members shall be appointed from each of the congressional districts and one member shall be appointed from the state at large. Each member shall be a citizen and resident of the state. Each member appointed from a congressional district shall be a citizen and resident of such congressional district. Removal of a member from the state or from the particular congressional district from which he was appointed shall immediately vacate his office. In making appointments to the commission, the governor shall consider each appointee’s age, ability, experience and general qualifications. Members of the commission shall be eligible for reappointment to fill an unexpired term or a new term of seven years.

Any members of the commission, who have been duly appointed and qualified and approved by the Senate and are in office when this article becomes effective, shall continue in office until their respective terms expire or until their death, resignation or removal from office. In making his initial appointments to the commission pursuant to the provisions hereof, the governor shall ascertain the names, residence addresses and political party affiliation of any such members of the commission then in office and shall select his first appointees with reference thereto and due consideration thereof so as to comply with the residence and political party affiliation qualifications as herein prescribed.

As terms expire or positions on the commission otherwise become vacant, the governor shall appoint
persons to fill all such vacancies on the commission as provided in this article.

No member of the commission may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal by the governor of state elective officers.

CHAPTER 18. EDUCATION.

ARTICLE 11C. LEASE AND AGREEMENT OF THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES RELATING TO WEST VIRGINIA UNIVERSITY HOSPITAL.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

The board is hereby authorized to enter into the agreement and any other contractual relationships authorized by this article with the corporation, but only if the corporation meets the following description:

(a) The directors of the corporation, all of whom shall be voting, shall consist of the president of the university, who shall serve ex officio as chairman of the directors, the president of the board or his designee, the vice chancellor for health affairs of the board, the vice president for health sciences of the university, the vice president for administration and finance of the university, the chief of the medical staff of the hospital, the dean of the school of medicine of the university, the dean of the school of nursing of the university and the chief executive officer of the corporation, as ex officio members of the directors, a representative elected at large by the corporation employees and seven directors to be appointed by the governor, subject to confirmation by the Senate of the state Legislature, which seven appointed directors shall be selected in conformance with the provisions of section six-a, article five-b, chapter sixteen of this code: Provided, That said seven directors shall be appointed to six-year terms, but no more than three such members shall be from the same congressional district: Provided, however, That of the seven directors so appointed by the governor for terms
beginning the year one thousand nine hundred eighty-four, three such appointments shall be for a term of two years, two shall be for a term of four years and two shall be for a term of six years.

(b) The audited records of the corporation shall be reported publicly and to the joint committee on government and finance at least annually.

(c) Upon liquidation of the corporation, the assets of the corporation shall be transferred to the board for the benefit of the university.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 13. HIGHER EDUCATION-INDUSTRY PARTNER­SHIPS.

§18B-13-6. High-tech 2000 board; grants; authority.

There is hereby created a high-tech 2000 board consisting of the governor or a designee, the president of West Virginia university or a designee, the president of Marshall university or a designee, the president of West Virginia institute of technology or a designee, the president of Shepherd college or a designee, the director of the governor's office of economic and community development or a designee, and four persons from the private sector who are representative of different geographic areas of the state, and which such private sector members shall be appointed to staggered four-year terms by the governor with the advice and consent of the Senate.

The high-tech 2000 board shall have the authority to review and approve all applications for grants or funds from the special high-tech 2000 fund established pursuant to section five of this article and to establish rules for the administration of the fund.

Board members representing the private sector shall be reimbursed for all necessary expenses incurred in connection with the performance of their duties as members.
CHAPTER 29
(H. B. 4691—By Delegates P. White and Stemple)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by deleting the provision requiring the governing body of a political subdivision to offer its bonds to the secretary of state for purchase by any of the governmental agencies of the state.

Be it enacted by the Legislature of West Virginia:

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


1 The governing body of the political division issuing such bonds shall sell the same and collect the proceeds, which proceeds shall be deposited with its treasurer.
2 The governing body of the political division shall advertise such bonds for sale, on sealed bids, which advertisement 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 political division. The first publication shall be made at least fourteen days before the date fixed for the reception of bids. Such advertisement shall also be published in a financial paper published either in the city of New York or the city of Chicago, or in a newspaper published in a city of this state having a population of not less than twenty thousand inhabitants, according to the last federal census. The governing body may reject any and all bids. If the bonds be not sold pursuant to such advertisement, they may within one hundred twenty days after the date advertised for the reception of bids, be sold by the governing body at private sale, but no private sale shall be made at a price
23 less than the highest bid which shall have been received.  
24 If not sold, such bonds shall be readvertised in the  
25 manner herein provided. In no event shall bonds be sold  
26 for less than their par value.

CHAPTER 30

(Com. Sub. for H. B. 4447—By Mr. Speaker, Mr. Chambers, and  
Delegate Burk, By Request of the Executive)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirteen of the code of West  
Virginia, one thousand nine hundred thirty-one, as  
amended, by adding thereto a new article, designated  
article two-g, relating to providing for the issuance of  
refunding bonds; subjecting determinations to issue  
refunding bonds to the provisions of the debt manage­  
ment act; providing security for refunding bonds;  
determining the principal amount of refunding bonds to  
be issued; prescribing the use of sinking and reserve  
funds; providing for the terms of refunding bonds;  
providing for the sale of refunding bonds at, above or  
below par value; providing for authority of state  
agencies to enter into swap agreements; providing for  
the terms of such swap agreements; providing for the  
application of certain provisions of the code of West  
Virginia and acts of the Legislature to refunding bonds;  
providing for the repayment of bonds to be refunded;  
providing for bonds previously issued by the university  
of West Virginia board of trustees and the board of  
directors of the state college system; providing authority  
for the issuance of refunding bonds; providing for the  
issuance of refunding bonds without the election or  
creation of a new debt; and providing for the exemption  
from taxation of refunding bonds.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen 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, to read  
as follows:
ARTICLE  2G.  STATE REFUNDING BOND ACT.

§13-2G-5.  Principal amount, use of sinking and reserve funds.
§13-2G-6.  Terms of refunding bonds; time, place and amount of payments.
§13-2G-7.  Sale of refunding bonds at above or below par value.
§13-2G-9.  Certain provisions of the code or act of Legislature to apply to refunding bonds.
§13-2G-10.  Provision for payment of the bonds to be refunded.
§13-2G-13.  Issuance without election or creation of a new debt.

1 This article shall be known and may be cited as the
2 “State Refunding Bond Act.”

1 As used in this article, unless the context otherwise
2 requires:
3 (a) “Bonds” means general obligation bonds, review
4 bonds, notes or other debt instruments issued by the
5 state, a state agency or a state authority.
6 (b) “Code” means the code of West Virginia, one
7 thousand nine hundred thirty-one, as amended.
8 (c) “Legislature” means the Legislature of this state.
9 (d) “Refunding bonds” means bonds, notes or other
10 debt instruments issued to refund all or any part of
11 general obligation bonds, revenue bonds, notes or other
12 debt instruments heretofore or hereafter issued or
13 lawfully assumed by the state, a state agency or a state
14 authority pursuant to the provisions of this code.
15 (e) “State” means the state of West Virginia, a state
16 agency or a state authority.
17 (f) “State agency” means any office, department,
18 cabinet, board, commission, entity, bureau, division,
19 public corporation, agency, or instrumentality of the
20 state authorized to issue bonds.
(g) "State authority" means any authority authorized to issue bonds, including, but without limitations, the university of West Virginia board of trustees and the board of directors of the state college system.

(h) "Swap agreement" means an agreement which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate opinion, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any similar agreement or any combination of the foregoing.


The state may, in the manner and subject to the limitations and conditions contained in this article, issue its refunding bonds, at a public or private sale, for the purpose of refunding the bonds of the state then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. A determination by the state that any refunding is advantageous or necessary, or that any of the outstanding obligations should be called for redemption on the first or any subsequent available redemption date or permitted to remain outstanding until their respective dates of maturity, shall be conclusive: Provided, That a determination by the state to issue its refunding bonds as provided in this article is subject to the provisions of the debt management act set forth in article six-a, chapter twelve of this code.


Refunding bonds may be secured by a pledge of: (a) The same source of security as the bonds to be refunded; or (b) such other security as the state may lawfully pledge, or both.

§13-2G-5. Principal amount, use of sinking and reserve funds.

(a) The total amount of refunding bonds to be issued under this chapter shall be an amount sufficient to effect
the refunding and may include an amount sufficient to pay (1) the principal amount outstanding of the bonds to be refunded, (2) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded (which need not necessarily be on the first available redemption date), (3) any redemption premiums to be paid thereon, (4) any reasonable expenses incurred in connection with such refunding and (5) any other reasonable costs deemed appropriate by the state, including without limitation, the expenses of preparing and delivering the refunding bonds, legal fees, financial advisor fees, consultant fees, and other expenses incurred in connection with the issuance, sale and delivery of the refunding bonds.

(b) Any money in a sinking fund or reserve fund or other fund for the bonds to be refunded may be used to pay the principal of, premium, if any, or interest on the outstanding bonds to be refunded or may be deposited in a sinking fund or reserve fund or other fund for the refunding bonds.

§13-2G-6. Terms of refunding bonds; time, place and amount of payments.

Upon determining the issue of such refunding bonds, the state shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the amount permitted by this article, fix the date thereof, the rate or rates of interest which such bonds shall bear and when and where they are payable.

§13-2G-7. Sale of refunding bonds at above or below par value.

All refunding bonds issued by the state may be sold at a price equal to, above or below par value and accrued interest as the state may direct. Refunding bonds may also be sold at a zero (0) rate of interest or at an original issue discount.


The state may from time to time enter into one or more swap agreements that it determines to be necessary or desirable in connection with, or incidental to, or
in lieu of the issuance of its refunding bonds. Swap
agreements entered into by the state shall contain such
provisions, including payment, term, security, default
and remedy provisions, and shall be with such parties,
as the state shall determine to be necessary or desirable
after due consideration to the creditworthiness of such
parties.

§13-2G-9. Certain provisions of the code or act of Legis-
lature to apply to refunding bonds.

All the provisions of this code or any act of the
Legislature, relating to bonds issued for original
indebtedness and insofar as such provisions may be
applicable, shall apply to the same extent and with
equal force and effect to refunding bonds issued under
the provisions of this article.

§13-2G-10. Provision for payment of the bonds to be
refunded.

(a) It is the intention of this article to authorize the
state to issue bonds for the purpose of refunding
outstanding bonds without thereby contracting any
additional indebtedness, and it shall be conditional upon
the delivery of any refunding bonds that sufficient funds
are held in trust to provide for the payment of the
principal of, premium, if any, and interest on the bonds
to be refunded. It is the further intention of this article
that any amounts received by the issuance of any
refunding bonds pursuant to this article be used solely
for the purposes set forth in subsection (a), section five
of this article and not be used for incurrance of
additional debt.

(b) For all purposes of this section, bonds 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 in trust for the benefit of holders
of the bonds to be refunded:

(1) Moneys sufficient to pay when and as due all
amounts of principal and interest payable on such
bonds; or

(2) Direct obligations of the United States of America
or the state, or obligations fully and irrevocably secured
as to the payment of both principal and interest by such
direct obligations the payment on which when due will
provide moneys, sufficient to pay when and as due all
amounts of principal and interest payable on such
bonds.

(c) All such amounts shall be set aside and held in
trust and irrevocably dedicated solely to the payment of
such bonds, except that amounts in excess of the
amounts required for the payment of the bonds so
refunded may be applied to the payment of costs related
to the issuance, carrying, insuring or servicing the
refunding bonds, including costs of credit or market
enhancement services, such as letters of credit, remark-
eting arrangements and similar services. Any amount
deposited pursuant to this section may include amounts
already held on deposit in trust for the payment of the
bonds to be refunded.


In connection with or incident to the refunding of any
bonds previously issued by the board of regents pursu-
ant to any prior enactment of chapter eighteen of the
code, or the board of regents predecessor in interest, the
university of West Virginia board of trustees and the
board of directors of the state college system, as the
transferees of all powers, duties and authorities of the
board of regents pursuant to chapter eighteen-b of the
code, are authorized to make one or more written
agreements with regard to which entity is obligated to
provide for the payment of such bonds previously issued
by the board of regents and with regard to the allocation
of revenues to be dedicated to the payment of refunding
bonds.

§13-2G-12. Article sufficient authority for issuing re-
funding bonds.

This article shall without reference to any other act
of the Legislature, be full authority for the issuance, sale
and exchange of bonds in this article authorized. No
order, ordinance, resolution or proceeding in respect to
the issuance of any bonds hereunder shall be necessary except such as are required by this article. No publication of any notice, order, ordinance or proceeding relating to the issuance of such bonds shall be necessary.

§13-2G-13. Issuance without election or creation of a new debt.

The issuance, sale or exchange of bonds authorized in this article may be had without an election and shall not be deemed to create a new debt as long as provision has been made to pay the principal of, premium, if any, and interest on the bonds to be refunded as provided in section seven of this article.


All bonds of the state, a state agency or state authority issued hereunder shall be exempt from all state, county, and municipal taxes, and the exception shall include income, inheritance and property taxes.

CHAPTER 31
(Com. Sub. for H. B. 4176—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article six-a of said chapter; to amend and reenact section five-a, article nine of said chapter; and to further amend said article nine by adding thereto a new section, designated section nine-a, all relating to providing a program of continuing instruction for personnel of the bureau of employment programs; permitting the governor to elect to pay certain unemployment benefits pursuant to the provisions of a certain federal act rather than through certain provisions of the state code; increasing the amount of a certain fund of money which may be expended by the commissioner of said bureau; and extending the period
of time during which money appropriated out of funds made available to the state by a certain federal act may be obligated by said bureau.

Be it enacted by the Legislature of West Virginia:

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

Article.
2. The Commissioner of the Bureau of Employment Programs.
6A. Extended Benefits Program.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.


1. The commissioner shall be the executive and administrative head of the bureau and shall have the power and duty to:

2. Exercise general supervision of and make regulations for the government of the bureau;

3. Prescribe uniform rules pertaining to investigations, departmental hearings, and promulgate rules and regulations;

4. Supervise fiscal affairs and responsibilities of the bureau;

5. 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;

6. 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 correctness 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;

(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; and

(16) Provide at bureau expense a program of continuing professional, technical and specialized instruction for the personnel of the bureau.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


(1) Whenever an extended benefit period is to become effective in this state, or in all states, as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator or state and national "off" indicators, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision (6), section one of this article shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor.

(3) Whenever, during a period when emergency unemployment compensation benefits are being paid under the provisions of the Emergency Unemployment Compensation Act of 1991, as amended, or under any subsequent extension or reenactment thereof, the state "on" indicator as defined in subsection (3) of section one of this article triggers on a period of extended benefits, the governor of this state may elect to not implement the state statutory provision and continue the payment of benefits under the Emergency Unemployment Compensation Act of 1991, as amended, to those individuals who have exhausted their entitlement to regular unemployment compensation under state law.

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

§21A-9-9a. Reed Act appropriations—Extension of period within which to obligate money.

§21A-9-5a. Special administration fund.
There is hereby created in the state treasury a fund to be known as the employment security special administration fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen, article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the commissioner for the purpose of (a) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security administration fund, (c) refunds pursuant to section nineteen of article five, of interest erroneously collected, and (d) cover expenditures for which federal funds have been authorized but not yet received, subject to repayment to the fund. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury. Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously available to the commissioner for expenditures consistent with this chapter: Provided, That (1) not more than seven hundred fifty thousand dollars shall be expended from said fund in any fiscal year; (2) that at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.

§21A-9-9a. Reed Act appropriations—Extension of period within which to obligate money.

Notwithstanding the provision of subsection (2), section nine of this article to the contrary, the period during which money referred to therein may be obligated for the purposes specified in said section shall be extended hereby to three years from the effective date of said section.
CHAPTER 32
(Com. Sub. for S. B. 569—Senator Chafin)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, fifteen, twenty and twenty-five, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter sixty-one of said code by adding thereto a new article, designated article three-d, all relating to cable television system regulation; concerning the ability of counties to become the cable franchising authorities; waiving certain fees and costs; designating the location of cable company business offices; providing civil penalties for violations of the cable act; requiring prior notice of price increases or retiering of services; defining terms; defining the crime of theft of cable services and providing criminal penalties therefor; defining the crime of selling or transferring products used to acquire unauthorized cable service; and stating the evidentiary requirements of the theft of cable service.

Be it enacted by the Legislature of West Virginia:

That sections four, fifteen, twenty and twenty-five, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter sixty-one of said code be amended by adding thereto a new article, designated article three-d, 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.

61. Crimes and Their Punishment.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.
ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.

§5-18-4. Cable franchise required; franchising authority.
§5-18-20. Office operating requirements; office hours.
§5-18-25. Complaints; violations; penalties.

§5-18-4. Cable franchise required; franchising authority.

1. (a) No person may construct, operate or acquire a cable system, or extend an existing cable system outside its designated service area, without first obtaining a cable franchise from a franchising authority as provided in this article.

2. (b) Any person operating a cable system on the effective date of this article without a franchise shall, within sixty days of the effective date of this article, notify the board in writing setting forth: (1) The name, business address and telephone number of the cable operator; (2) the principals and ultimate beneficial owners of the cable system or systems; (3) the geographic location and service area of any cable system operated by such person; and (4) the number of subscribers within the cable system or systems. If the board shall not have been appointed and organized within sixty days of the effective date of this article, then such filing shall be made with the public service commission where such documents shall be retained for delivery to the board following the appointment and organization of its members.

3. (c) The board shall, upon receipt of such information, determine the appropriate franchising authority or authorities for the purposes of the consideration of the issuance of a franchise to such cable operator or operators and shall notify the appropriate franchising authority or authorities and any such cable system operator of the franchise application procedures to be followed by the respective parties. Any such cable operator shall, within sixty days of receipt of such notice from the board, make formal application to the appropriate franchise authority or authorities for a franchise in accordance with the provisions of this article.

4. (d) The franchising authority shall be the municipality in which a cable system is to be
constructed, operated, acquired or extended, or if there
be no such municipality or if the municipality so elects
not to act as a franchising authority, then the
franchising authority shall be the county commission of
the county in which such cable system is to be
constructed, operated, acquired or extended: Provided,
That nothing herein shall prohibit any county
commission of a county in which a municipality acting
as a franchising authority is located from also acting as
a franchising authority for any cable system to be
constructed, operated, acquired or extended within the
jurisdiction of such county commission, nor prohibit any
county commission of a county acquiring the franchise
authority from a municipality from electing to transfer
such authority to the board.

(e) Any municipality or county commission may elect
not to act as a franchising authority, in which event the
franchising authority for any cable system to be
constructed, operated, acquired or extended within the
jurisdiction of such municipality or within the
jurisdiction of such county commission shall be the
board. A county commission acting as a franchise
authority for unincorporated areas of the county may
elect separately to transfer to the board any franchise
authority acquired from a municipality. If any
municipality or county commission so elects, the mayor
or president of the county commission shall certify such
delegation in writing to the presiding officer of the
board. Such election shall be promptly made upon
written request of the board or the cable operator.


(a) No cable system and no cable franchise, including
any system without a franchise and any franchise in
existence on the effective date of this article, and
including the rights, privileges and obligations thereof,
may be assigned, sold, leased or otherwise transferred,
voluntarily or involuntarily, directly or indirectly,
including a transfer of control of any cable system,
whether by change in ownership or otherwise, except
upon written application to and approval of the
appropriate franchising authority or authorities. The
form of the application for transfer shall be prescribed
by the board.
(b) Notice provisions may be prescribed by the board for encumbrances creating potential transfers.

(c) The procedure for consideration of any transfer under the provisions of this section shall conform, as nearly as possible, to the procedures prescribed in sections nine and ten of this article for the consideration of issuing cable franchises, including the application fee therefor.

§5-18-20. Office operating requirements; office hours.

Each cable operator shall operate a business office in or near its area of operation as approved by the franchise authority or the board that shall be open during normal business hours, and each cable operator shall operate sufficient telephone lines, including a toll-free number or any other free calling option, as approved by the board, staffed by a company customer service representative during normal business hours.

§5-18-25. Complaints; violations; penalties.

(a) Subscriber complaints regarding the operation of a cable system must be made in writing and filed with the board. The board shall take up such complaints with the cable operator complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(b) The board shall resolve all complaints, if possible, informally. No form of informal complaint is prescribed, but the writing must contain the essential elements of a complaint, including the name and address of the complainant, the correct name of the cable operator against which the complaint is made, a clear and concise statement of the facts involved and a request for affirmative relief.

(c) In the event that the board cannot resolve the complaint to the satisfaction of all parties, the complainant may file a formal request to the board and he or she is entitled to a hearing before the board, which hearing shall be conducted in accordance with chapter twenty-nine-a of the code, and the complainant and cable operator shall be afforded all rights including the
right of appeal as set forth in said chapter.

(d) A cable operator may be subject to a fine or civil penalty in accordance with subsection (e) hereof, upon a determination by the board or court that the cable operator has violated any of the following:

(1) The material terms of its cable franchise; or

(2) Substantial compliance with this article or rules or orders prescribed by the board.

(e) The board may fine or obtain civil penalties against a cable operator for each violation of subsection (d) of this section in an amount not less than fifty dollars nor more than five hundred dollars for each violation.

Any penalty assessed under this section is in addition to any other costs, expenses or payments for which the cable operator is responsible under other provisions of this section.

(f) The board may permit, in lieu of a full hearing before the board, one of its hearing examiners to conduct hearings and report its findings to the board.

(g) No cable operator shall charge for more than one outlet per household.

(h) No cable operator may raise rates or retier and charge subscribers without providing to his or her subscribers sufficient advance written notice and opportunity to discontinue service.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3D. THEFT OF CABLE TELEVISION SERVICES.

§61-3D-1. Definitions.

§61-3D-2. Acquisition of cable television services.

§61-3D-3. Sale or transfer of the device or plan intended for acquisition or diversion.


§61-3D-1. Definitions.

1 As used in this article:

2 (1) "Cable system" means any facility within this state consisting of a set of closed transmission paths and associated signal generation, reception and control
equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within a community, and does not include: (A) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless that facility or facilities uses any public right-of-way; or (C) a facility of a public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code, except to the extent that those facilities provide video programming directly to subscribers.

(2) “Cable operator” means any person or group of persons: (A) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

(3) “Cable service” means: (A) The one-way transmission to subscribers of video programming or other programming service; and (B) subscriber interaction, if any, which is required for the selection of video programming or other programming service.

(4) “Subscriber” means any person who receives cable television services.

(5) “Unauthorized” means that payment of full compensation for cable television services has been avoided, or has been sought to be avoided, without the consent of the supplier of the service.

§61-3D-2. Acquisition of cable television services.

(a) A person who acquires cable television services for himself or another, whether through his own efforts or with the assistance of another, or both, by:

(1) Making or maintaining any unauthorized connection, whether physically, electrically or inductively, to a distribution or transmission line;
(2) Attaching or maintaining the attachment of any unauthorized device to any cable, wire or other component of a cable system or to a television receiving set connected to a cable system;

(3) Making or maintaining any unauthorized modification or alteration to any device installed by a cable system operator; or

(4) Knowingly permits another person to enter upon his or her property for the purpose of securing cable service in an unauthorized manner as described in subdivision (1), (2) or (3) of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with subsection (c) of this section.

(b) A person who subscribes to and receives cable television services through an authorized connection of a television receiving set at his dwelling and, within his dwelling, makes an authorized or an unauthorized connection of an additional television receiving set or sets or audio system which receives cable television service through such authorized connection, shall not be guilty of a misdemeanor under subsection (a) of this section.

(c) Any person convicted of a misdemeanor under subsection (a) of this section shall be subject to the following penalties:

(1) Upon a first conviction under this section, the defendant shall be fined not less than one hundred dollars, nor more than two hundred fifty dollars.

(2) Upon a second conviction under this section, the defendant shall be fined not less than two hundred fifty dollars, nor more than five hundred dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned.

(3) Upon any subsequent conviction in excess of a second conviction under this section, the defendant shall be fined not less than five hundred dollars, nor more than one thousand dollars, or imprisoned in the county jail not less than thirty days nor more than sixty days, or both fined and imprisoned.
Notwithstanding the provisions of section four, article eleven-a of this chapter or section two-a, article three, chapter fifty of this code, the magistrate or court may order restitution not to exceed the value of unauthorized cable services received.

§61-3D-3. Sale or transfer of the device or plan intended for acquisition or diversion.

(a) A person who sells, gives or otherwise transfers to another or offers, advertises or exposes for sale to another any device, mechanism, tool or printed circuit, or any kit, plan or instructional procedure for the making of such device, mechanism, tool or printed circuit, with the knowledge that another will acquire cable television services in violation of this article, shall be guilty of a misdemeanor and shall be punishable in accordance with subsection (b) of this section.

(b) A person convicted of a misdemeanor under this section shall be punished as follows:

(1) Upon a first conviction under this section, the defendant shall be fined not less than two hundred fifty dollars, nor more than five hundred dollars.

(2) Upon a second conviction under this section, the defendant shall be fined not less than five hundred dollars, nor more than one thousand dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned.

(3) Upon a third conviction under this section, the defendant shall be fined not less than five hundred dollars, nor more than one thousand dollars, or imprisoned in the county jail not less than sixty days, nor more than one year.


Evidence that (1) the defendant had possession of or access to the location of distribution or transmission lines or other facilities of a cable system which have been tapped, altered or tampered with or to which any unauthorized connection has been made or to which any unauthorized device has been attached or (2) the
defendant had possession of or access to any device installed by a cable system operator to which an unauthorized modification or alteration has been made, may be used, but shall not be required, to establish that a person violated this article.

CHAPTER 33

(Com. Sub. for S. B. 94—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed March 7, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twelve of said code by adding thereto a new article, designated article seven; to amend and reenact sections six and twenty-a, article eighteen, chapter thirty-one of said code; and to further amend said article by adding thereto a new section, designated section twenty-c, all relating generally to economic development and the creation of new jobs; reducing the amount of credits authorized under the West Virginia capital company act for three fiscal years; providing for the creation and establishment of the jobs investment trust; purposes and objectives; legislative findings; definitions; jobs investment trust board; composition of board appointments; terms of private members; election of chairman; quorum; management and control of jobs investment trust vested in board; officers; liability; payment of reasonable expenses of West Virginia housing development fund; board powers; limitation on investments; funding; applications for investment priority; providing of information to West Virginia housing development fund; acceptance or rejection of investment package; documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality; reports of board; report of housing development fund; earnings; exemptions and audits; severability; conflicts of interest; credit of state not pledged;
eliminating the restriction on the housing development fund's authority to finance nonresidential projects; allowing the housing development fund to form non-profit corporations with the same board of directors; land development fund; and creation of jobs development fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter
5E. Venture Capital Company.

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to rule of the authority.

(b) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning the first day of July, one thousand nine hundred ninety-two, the fiscal year beginning on the first day of July one thousand nine hundred ninety-three, and the fiscal year beginning on the first day of

July one thousand nine hundred ninety-four, the total credits authorized by the authority for all companies under this section or this article may not exceed a total of eight 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, except as otherwise provided in this section or in this article. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), 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;
(4) More than $250,000, but not more than $500,000;
(5) More than $500,000, but not more than $1,000,000;
(6) More than $1,000,000.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-1. Purposes and objectives; how article cited.
§12-7-2. Legislative findings.
§12-7-3. Definitions.
§12-7-4. Jobs investment trust board; composition; appointment, term of
private members; chairman; quorum.
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officers; liability; relationship to higher education institutions.
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§12-7-15. Conflicts of interest.
§12-7-16. Credit of state not pledged.

§12-7-1. Purposes and objectives; how article cited.

This article, which may be cited as the "Jobs Invest-
ment Trust Act", is enacted to create a jobs investment
trust to be used for the development, promotion and
expansion of West Virginia's economy and to provide
opportunities to businesses and college and university
students to develop and implement plans for innovative
projects and investment opportunity.
§12-7-2. Legislative findings.

(a) The Legislature finds that the creation of a public body corporate to make investment funds available to eligible businesses would stimulate economic growth and provide or retain jobs within the state. Accordingly, it is declared to be the public policy of the state to create an availability of funds through an investment program to inject needed capital into the business community, sustain or improve business profitability, and provide jobs to the citizens of the state.

(b) The Legislature further finds: (1) That the availability of financial assistance through the creation of the jobs investment trust will promote economic development in the state and will serve the public purposes of the state; (2) that a variety of means and measures for the financing of projects, including the insuring of loans or other forms of financing or credit to be made available for working capital, innovative investment plans and options, equity financing or the refinancing of existing debt of an enterprise, will, as a matter of public policy, serve the public purposes of the state; and (3) that it is in the public interest, in order to address the needs of the business community and the citizens of the state, that a public body corporate be created with full power to accept grants, gifts and appropriations, to generate revenues to the end that funds obtained thereby may be used to furnish money and credit to approved businesses or enterprises or to promote the establishment of new and innovative projects or to upgrade, expand and retain existing projects.

(c) The Legislature further finds: (1) That due to the creation of the jobs investment trust, moneys will be available for venture capital in this state; (2) that the implementation of this innovative program may supplant the need for the state to otherwise assist private venture capital concerns through tax credits; (3) that due to the availability of venture capital funds through this program the granting of venture capital company credits under the capital company act should be reduced for three fiscal years pending the full implementation
of the jobs investment trust program; (4) that due to this
reduction in the certification of tax credits, additional
general revenue may become available for new economic
development programs; (5) these economic development
programs may be funded from general revenue in an
amount appropriate to effectuate the purposes of these
programs; and (6) due to the foregoing findings there
shall be an annual line item appropriation, in an amount
determined by the Legislature, to the West Virginia
development office for a matching grant program for
regional economic development corporations or author-
ities.

§12-7-3. Definitions.
As used in this article, the following words have the
meanings herein ascribed to them, unless the context in
which they are used clearly implies a different meaning:

(a) “Board” means the jobs investment trust board
established pursuant to section four of this article.

(b) “Eligible business” means any business which is
qualified to do business in West Virginia and is in good
standing with all applicable laws affecting the conduct
of such business.

(c) “Securities” means all bonds, notes, stocks,
debentures or other forms of negotiable and nonnegot-
iable evidences of indebtedness or ownership.

§12-7-4. Jobs investment trust board; composition; ap-
pointment, term of private members; chair-
man; quorum.

(a) There is hereby created the jobs investment trust
board. The board is created as a public body corporate
and established to improve and otherwise promote
economic development in this state.

(b) The board shall consist of thirteen members, five
of whom shall serve by virtue of their respective
positions. These five are the president of West Virginia
university or his or her designee; the president of
Marshall university or his or her designee; the chancel-
or of the board of directors of the state college system
or his or her designee; the executive director of the West Virginia housing development fund and the secretary of commerce, labor and environmental resources. Two members shall be appointed by the governor from a list of four names submitted by the board of directors of the housing development fund. The other six members shall be appointed from the general public by the governor. Of the members of the general public appointed by the governor, one shall be an attorney with experience in finance and investment matters, one shall be a certified public accountant, one shall be a representative of labor, one shall be experienced or involved in innovative business development, two shall be present or past executive officers of companies listed on a major stock exchange or large privately held companies.

(c) In case of any vacancy on the board, such vacancy shall be filled by appointment by the governor for the unexpired term in the same manner as the original appointment. Any person appointed to fill a vacancy shall serve only for the unexpired term.

(d) The governor may remove any appointed member in case of incompetency, neglect of duty, moral turpitude or malfeasance in office, and the governor may declare the office vacant and fill the vacancy as provided in other cases of vacancy.

(e) The chairman of the board shall be elected by the board from among the members of the board.

(f) Seven members of the board shall constitute a quorum. No action may be taken by the board except upon the affirmative vote of at least a majority of those members present, but in no event fewer than six of the members serving on the board.

(g) The members of the board, including the chairman, shall receive no compensation for their services as members of the board but shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.

(h) The board shall meet on a quarterly basis beginning the first day of July, one thousand nine
(i) The terms of the board members appointed by the governor first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, two at the end of the first year, two at the end of the second year, two at the end of the third year and two at the end of the fourth year, after the first day of July, one thousand nine hundred ninety-two. As these original appointments expire, each subsequent appointment shall be for a full four-year term. Any member whose term has expired shall serve until his successor has been duly appointed and qualified. Any member shall be eligible for reappointment.

§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; relationship to higher education institutions.

(a) It shall be the duty of the board to manage and control the jobs investment trust. In order to carry out the day-to-day management and control of the trust and effectuate the purposes of this article, the board shall appoint an executive director who is or has been a senior executive of a major financial institution, brokerage firm, investment firm, or similar institution, with extensive experience in capital market development. The board shall fix the executive director's duties. The board shall fix the compensation of the executive director and the compensation shall, at least in part, be incentive based. The executive director shall serve at the will and pleasure of the board.

(b) The board shall elect a secretary annually, who need not be a member of the board, to keep a record of the proceedings of the board.

(c) The members and officers of the board shall not be liable personally, either jointly or severally, for any debt or obligation created by the board.

(d) The acts of the board shall be solely the acts of its corporation and shall not be deemed to be those of an agent of the state, nor shall any debt or obligation
of the board be deemed to be a debt or obligation of the
state.

(e) The West Virginia housing development fund shall
provide office space and staff support services for the
director and the board, shall act as fiscal agent for the
board and, as such, shall provide accounting services for
the board, invest all funds as directed by the board,
service all investment activities of the board, and shall
make the disbursements of all funds as directed by the
board, for which the West Virginia housing develop-
ment fund shall be reasonably compensated, as deter-
mined by the board.

(f) The board and the executive director shall involve
students and faculty members of state institutions of
higher education in the board's activities, in order to
enhance the opportunities at such institutions for
learning, and for participation in the board's investment
activities and in the economic development of the state,
whether in research, financial analysis, management
participation, or in such other ways as the board and
the executive director may, in their discretion, find
appropriate.

§12-7-6. Corporate powers.

The board shall have the power:

(1) To make loans, with or without interest, but with
such security for repayment as the jobs investment trust
board determines reasonably necessary and practicable,
from the board's fund, for investment in eligible
businesses that stimulate economic growth and provide
or retain jobs in this state; such loans shall be made only
upon determination by the board that the loans are
prudent and meet the criteria established by the board;

(2) To accept appropriations, gifts, grants, bequests
and devises and to utilize or dispose of the same to carry
out its corporate purposes;

(3) To make and execute contracts, releases, com-
promises, agreements and other instruments necessary
or convenient for the exercise of its powers or to carry
out its corporate purposes;
(4) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;

(5) To sue and be sued;

(6) To have a seal and alter the same at will;

(7) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(8) To hire its own employees and appoint such officers and consultants as it deems advisable, and to fix their compensation and prescribe their duties;

(9) To acquire, hold and dispose of real and personal property for its corporate purposes;

(10) To enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association or organization;

(11) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where acquisition is necessary or appropriate to protect any loan in which the board has an interest and to sell, transfer and convey any property to a buyer and, in the event a sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease property to a tenant;

(12) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a loan;

(13) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(14) To consent, whenever it considers it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other
terms, of investment, loan, contract or agreement of any
kind to which the board is a party;

(15) To establish training and educational programs
to further the purposes of this article;

(16) To file its own travel rules and regulations;

(17) To borrow money to carry out its corporate
purpose in such principal amounts and upon such terms
as shall be necessary to provide sufficient funds for
achieving its corporate purpose;

(18) To acquire, by purchase or otherwise, and to hold,
transfer, sell, assign, pool or syndicate or participate in
the syndication of, any loans, notes, mortgages, securities
or debt instruments or other instruments evidencing
loans or equity interests in or for the fostering of
economic growth, jobs preservation and creation in the
state of West Virginia, and all other acts which carry
out the board’s purpose;

(19) To contract with either Marshall university or
West Virginia university, or both, for the purpose of
retaining the services of, and paying the reasonable cost
of services performed by the institution for the board in
order to effectuate the purposes of this article;

(20) To enter into collaborative arrangements or
contracts with private venture capital companies when
deemed advisable by the board;

(21) To provide equity financing for any eligible
business that will stimulate economic growth and
provide or retain jobs in this state, and to hold, transfer,
sell, assign, pool or syndicate, or participate in the
syndication of, any loans, notes, mortgages, securities or
debt instruments or other instruments evidencing loans
or equity interest if in furtherance of the board’s
corporate purposes;

(22) To form partnerships, create subsidiaries or take
all other actions necessary to qualify as a small business
investment company under the United States Public
Law (85-699) Small Business Investment Act, as
amended; and
(23) To provide for staff payroll and make purchases in the same manner as the housing development fund.

§12-7-7. Limitation on investments.

Subject to the provisions of section nine of this article, the board may invest in any eligible business: Provided, That at the time of the placement of the investment not more than twenty percent of the board's total investment portfolio is so invested in one eligible business within any two-year period.

§12-7-8. Funding.

Effective the first day of July, one thousand nine hundred ninety-two, the West Virginia housing development fund shall make available for the use of the board ten million dollars as and when requested in accordance with the provisions of section twenty-c, article eighteen, chapter thirty-one of this code. The funds shall be transferred to and held in a separate account at the housing development fund for the trust until a disbursement of such funds is directed by the board. No more than eight million dollars may be invested in qualified investments in the fiscal year one thousand nine hundred ninety-three.

§12-7-9. Applications for investment priority; investment package.

(a) The board shall accept and review applications from eligible businesses and shall determine the investment worthiness and jobs creation potential of each proposal, and the economic circumstances of the region or regions of the state which would benefit from each proposal. The board shall attempt to balance its investments, as nearly as is practicable, among the geographic regions of the state.

(b) Any public or private institution of higher education in the state, or faculty or students of the institution, may present for the board's consideration proposals relating to innovative projects or investment opportunities.

(c) There shall also be an annual audit conducted by
an independent firm of certified public accountants which shall be made available to the Legislature annually.

(d) The board shall forward to the West Virginia housing development fund for its review and information approved investment packages containing such information as is necessary to permit the West Virginia housing development fund to carry out its duties under this article. The board shall determine whether each applicant is an eligible business.

§12-7-10. Acceptance or rejection of investment package.

(a) The board may approve or disapprove an investment package or any portion thereof: Provided, That notwithstanding any provision of this article to the contrary, the board may not accept any investment package or any portion thereof unless the same has been reviewed and approved by the board’s executive director in his or her sole discretion.

(b) The board shall disapprove any investment package if the business requesting such investment is not in good standing with all applicable laws affecting the conduct of such business. Upon request of the board, each affected state agency shall provide the board with such information as to the standing of each applicant, notwithstanding any provision of this code to the contrary.

§12-7-11. Documentary materials concerning trade secrets; commercial, financial, or personal information; confidentiality.

Any documentary material or data made or received by the board for the purpose of furnishing assistance, to the extent that such material or data consists of trade secrets, commercial, financial or personal information regarding the financial position or activities of such business or person, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets, commercial, financial or personal information may be
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11 held by the board in executive session closed to the
12 public, notwithstanding the provisions of article nine-a,
13 chapter six of this code: Provided, That the board shall
14 make public the following information regarding
15 executed investments: (1) The names and addresses of
16 the principals of the business and its board of directors;
17 (2) the location or locations of the projects; (3) the
18 amount of the investment or financial assistance
19 provided by the board; (4) the purpose of the investment
20 or financial assistance; (5) the maturity, interest rate
21 and other pertinent terms of the investment; (6) the
22 fixed assets which serve as security for the investment;
23 and (7) names and addresses of all persons holding
24 twenty-five percent or more of the equity of the entity
25 receiving investment assistance.

§12-7-12. Reports of board; report of housing development fund.

1 (a) The board shall prepare annually, or more
2 frequently if deemed necessary by the board, a report
3 of its operations and the performance of the various
4 investments administered by it. A copy thereof shall be
5 furnished to the governor, the president of the Senate,
6 the speaker of the House of Delegates, the legislative
7 auditor and, upon request, to any legislative committee.
8 Such report shall be kept available for inspection by any
9 citizen of this state.

10 (b) The West Virginia housing development fund shall
11 prepare annually and submit to the president of the
12 Senate, the speaker of the House of Delegates, the
13 legislative auditor and, upon request, any legislative
14 committee, a report on the performance of the board and
15 the quality of its investments for the preceding year.

§12-7-13. Earnings.

1 All earnings, interest and fees collected by the board
2 on or in respect of funds provided by the West Virginia
3 housing development fund shall go back into the jobs
4 development fund created pursuant to section twenty-c,
5 article eighteen, chapter thirty-one of this code, for
6 reinvestment and no such earnings, interest or fees shall
7 be considered part of the general revenue of the state.
§12-7-14. Exemption from certain requirements; audit.

1 In order to provide excellent investment opportunities, the investment activity provided by this article shall be exempt from the bidding and public sale requirements, from the approval of contractual agreements by the department of finance and administration or the attorney general and from the requirements of chapter five-a of this code. The transactions provided by this article shall be subject to an annual audit by an independent firm of certified public accountants.

§12-7-15. Conflicts of interest.

(a) No member of the board or officer, agent or employee thereof shall, in his or her own name or in the name of a nominee, hold an ownership interest of more than seven and one-half percent in any association, trust, corporation, partnership or other entity which is, in its own name or in the name of a nominee, a party to a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote.

(b) With respect to any direct or any indirect interest, other than an interest prohibited in subsection (a) of this section, in a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote, the member of the board or officer, agent or employee thereof holding such interest shall disclose the same to the board secretary prior to the taking of final action by the board concerning such contract or agreement and shall disclose the nature and extent of such interest and the date of his or her acquisition thereof, which disclosure shall be publicly acknowledged by the board and entered upon the minutes of the board. If a member of the board or officer, agent or employee thereof holds such an interest, he or she shall refrain from any further involvement on behalf of the board in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members of the board or its officers, agents and employees concerning said contract or agreement.
Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided in this subsection be guilty of an offense, be removed from office or be subject to any other penalty or legal disability on account of such interest.

(c) Any contract or agreement made in violation of subsection (a) or (b) of this section shall be null and void and shall give rise to no civil or criminal action against the board or any member thereof.

§12-7-16. Credit of state not pledged.

No provisions of this article shall be construed to authorize the jobs investment trust board at any time or in any manner to pledge the credit or taxing power of the state, nor shall any of the obligations or debts created by the jobs investment trust board under the authority herein granted be deemed to be obligations of the state.

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and
(2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized and operated in accordance with the provisions of section nineteen of this article, to defray development costs to sponsors of land development, residential housing or nonresidential projects which are eligible or potentially eligible for federally insured construction loans, federally insured mortgages, federal mortgages or uninsured construction loans or uninsured mortgage loans;

(3) To make or participate in the making of long-term federally insured mortgage loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(4) To establish residential housing and nonresidential and land development projects for counties declared to be in a disaster area by the Federal Emergency Management Agency or other agency or instrumentality of the United States or this state;

(5) To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose of the same to carry out its corporate purpose;

(6) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(7) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;

(8) To invest any funds not required for immediate
disbursement in any of the following securities:

(i) Direct obligations of or obligations guaranteed by the United States of America or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; export-import bank of the United States; federal land banks; Tennessee valley authority; United States postal service; inter-American development bank; international bank for reconstruction and development; small business administration; Washington metropolitan area transit authority; general services administration; federal financing bank; federal home loan mortgage corporation; student loan marketing association; farmer's home administration; the federal national mortgage association or the government national mortgage association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the government national mortgage association or federal national mortgage association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements or similar banking arrangements with a member bank or banks of the federal reserve system or a bank the deposits of which are insured by the federal deposit insurance corporation,
or its successor, or a savings and loan association or savings bank the deposits of which are insured by the federal savings and loan insurance corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a federal reserve bank: Provided, That such investments shall only be made to the extent insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the housing development fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by the state of West Virginia;

(vi) Direct and general obligations of any other state, municipality or other political subdivision within the territorial United States: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;

(vii) Any bond, note, debenture or annuity issued by any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That: (1) Such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements; and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years; and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dunn & Bradstreet, Best's or Moody's;

(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity or other market risks in relation to obligations issued or to be issued or owned or to be owned by the housing development fund,
options, futures contracts (including index futures but exclusive of commodities futures, options or other contracts), standby purchase agreements or similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in paragraph (vii) above;

(ix) Certificates, shares or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States Investment Company Act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia state board of investments or any other obligation authorized as an investment for the West Virginia state board of investments under article six, chapter twelve of this code or for a public housing authority under article fifteen, chapter sixteen of this code;

(9) To sue and be sued;

(10) To have a seal and alter the same at will;

(11) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(12) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(13) To acquire, hold and dispose of real and personal property for its corporate purposes;

(14) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization;

(15) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any
loan in which the housing development fund has an interest and to sell, transfer and convey any such property to a buyer and, in the event of such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

(16) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a construction, rehabilitation, improvement, land development, mortgage or temporary loan;

(17) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(18) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of mortgage loan, mortgage loan commitment, construction loan, rehabilitation loan, improvement loan, temporary loan, contract or agreement of any kind to which the housing development fund is a party;

(19) To make and publish rules and regulations respecting its federally insured mortgage lending, uninsured mortgage lending, construction lending, rehabilitation lending, improvement lending and lending to defray development costs and any such other rules and regulations as are necessary to effectuate its corporate purpose;

(20) To borrow money to carry out and effectuate its corporate purpose and to issue its bonds or notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that no notes shall be issued to mature more than ten years from date of issuance and no bonds shall be issued to mature more than fifty years from date of issuance;

(21) To issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the
bonds to be refunded have or have not matured except
that no such renewal notes shall be issued to mature
more than ten years from date of issuance of the notes
renewed and no such refunding bonds shall be issued to
mature more than fifty years from the date of issuance;

(22) To apply the proceeds from the sale of renewal
notes or refunding bonds to the purchase, redemption or
payment of the notes or bonds to be refunded;

(23) To make grants and provide technical services to
assist in the purchase or other acquisition, planning,
processing, design, construction, or rehabilitation,
improvement or operation of residential housing,
nonresidential projects or land development: Provided,
That no such grant or other financial assistance shall be
provided except upon a finding by the housing develop-
ment fund that such assistance and the manner in which
it will be provided will preserve and promote residential
housing in this state or the interests of this state in
maintaining or increasing employment or the tax base;

(24) To provide project assistance services for residen-
tial housing, nonresidential projects and land develop-
ment, including, but not limited to, management,
training and social and other services;

(25) To promote research and development in scient-
ific methods of constructing low cost land development,
residential housing or nonresidential projects of high
durability including grants, loans or equity contribu-
tions for research and development purposes: Provided,
That no such grant or other financial assistance shall be
provided except upon a finding by the housing develop-
ment fund that such assistance and the manner in which
it will be provided will preserve and promote residential
housing in this state or the interests of this state in
maintaining and increasing employment and the tax
base;

(26) With the proceeds from the issuance of notes or
bonds of the housing development fund, including, but
not limited to, mortgage finance bonds, or with other
funds available to the housing development fund for
such purpose, to participate in the making of or to make
loans to mortgagees approved by the housing development fund and take such collateral security therefor as is approved by the housing development fund and to invest in, purchase, acquire, sell or participate in the sale of, or take assignments of, notes and mortgages, evidencing loans for the construction, rehabilitation, improvement, purchase or refinancing of land development, residential housing or nonresidential projects in this state: Provided, That the housing development fund shall obtain such written assurances as shall be satisfactory to it that the proceeds of such loans, investments or purchases will be used, as nearly as practicable, for the making of or investment in long-term federally insured mortgage loans or federally insured construction loans, uninsured mortgage loans or uninsured construction loans, for land development, residential housing or nonresidential projects or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose;

(27) To make or participate in the making of uninsured construction loans for land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(28) To make or participate in the making of long-term uninsured mortgage loans for land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(29) To obtain options to acquire real property, or any interest therein, in its own name, by purchase, or lease or otherwise, which is found by the housing development fund to be suitable, or potentially suitable, as a site, or as part of a site, for land development or the construction of residential housing or nonresidential projects; to
hold such real property or to acquire by purchase or
otherwise and to transfer by sale or otherwise any
ownership or equity interests in any other legal entity
which holds such real property; to finance the perfor-
mane of land development, residential housing or
nonresidential projects on or in connection with any such
real property or to perform land development, residen-
tial housing or nonresidential projects on or in connec-
tion with any such real property; to own, operate and
sponsor or participate in the sponsorship of land
development, residential housing or nonresidential
projects; or to sell, transfer and convey, lease or
otherwise dispose of such real property, or lots, tracts
or parcels of such real property, for such prices, upon
such terms, conditions and limitations, and at such time
or times as the housing development fund shall
determine;

(30) To make loans, with or without interest, but with
such security for repayment as the housing development
fund determines reasonably necessary and practicable
from the land development fund, if created, established,
organized and operated in accordance with the provi-
sions of section twenty-a of this article, to sponsors of
land development, to defray development costs and other
costs of land development;

(31) To exercise all of the rights, powers and author-
ities of a public housing authority as set forth and
provided in article fifteen, chapter sixteen of this code,
in any area or areas of the state which the housing
development fund shall determine by resolution to be
necessary or appropriate;

(32) To provide assistance to urban renewal projects
in accordance with the provisions of section twenty-
eight, article eighteen, chapter sixteen of this code and
in so doing to exercise all of the rights, powers and
authorities granted in this article or in said article, in
and for any communities of the state which the housing
development fund shall determine by resolution to be
necessary or appropriate;

(33) To make or participate in the making of loans for
the purpose of rehabilitating or improving existing residential and temporary housing or nonresidential projects, or to owners of existing residential or temporary housing for occupancy by eligible persons and families for the purpose of rehabilitating or improving such residential or temporary housing or nonresidential projects and, in connection therewith, to refinance existing loans involving the same property. Such loans shall be made only upon determination by the housing development fund that rehabilitation or improvement loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(34) Whenever the housing development fund deems it necessary in order to exercise any of its powers set forth in subdivision (29) of this section, and upon being unable to agree with the owner or owners of real property or interest therein sought to be acquired by the fund upon a price for acquisition of private property not being used or operated by the owner in the production of agricultural products, to exercise the powers of eminent domain in the acquisition of such real property or interest therein in the manner provided under chapter fifty-four of this code, and the purposes set forth in said subdivision are hereby declared to be public purposes for which private property may be taken. For the purposes of this section, the determination of "use or operation by the owner in the production of agricultural products" means that the principal use of such real estate is for the production of food and fiber by agricultural production other than forestry, and the fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion in writing from both the governor and the commissioner of agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural products;

(35) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool or syndicate, or participate in
the syndication of, any loans, notes, mortgages, securities or debt instruments collateralized by mortgages or interests in mortgages or other instruments evidencing loans or equity interests in or for the construction, rehabilitation, improvement, renovation, purchase or refinancing of land development, residential housing and nonresidential projects in this state; and

(36) To form one or more nonprofit corporations, whose board of directors shall be the same as the board of directors of the housing development fund, which shall be authorized and empowered to carry out any or all of the corporate powers or purposes of the housing development fund, including, without limitation, acquiring limited or general partnership interests and other forms of equity ownership.

§31-18-20a. Land development fund.

(a) The board of directors of the housing development fund may create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan, to be known as the land development fund and to be governed, administered and accounted for by the directors, officers and managerial staff of the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned and managed by the housing development fund.

(b) The purpose of the land development fund shall be to provide a source from which the housing development fund may finance development costs and land development in this state by making loans or grants therefrom, such loans to be with or without interest and with such security for repayment as the housing development fund deems reasonably necessary and practicable, or by expending moneys therefrom, for development costs and land development in this state.

(c) The housing development fund may invest and reinvest all moneys in the land development fund in any investments authorized under section six of this article, pending the disbursement thereof in connection with the financing of development costs and land development in
(d) No loans shall be made by the housing development fund from the land development fund except in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

(1) The proceeds of all such loans shall be used only for development costs and land development;

(2) All such loans shall be repaid in full, with or without interest, as provided in the agreement;

(3) All repayments shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage, as the case may be, or at such other times as the housing development fund deems reasonably necessary or practicable; and

(4) Specification of such security for repayments upon such terms and conditions as the housing development fund deems reasonably necessary or practicable.

(e) No grants shall be made by the housing development fund from the land development fund except in accordance with a written grant agreement which shall require that the proceeds of all such grants shall be used only for development costs or land development and containing such other terms and provisions as the housing development fund may require to ensure that the public purposes of this article are furthered by such grant.

(f) The housing development fund may expend any income from the financing of development costs and land development with moneys in the land development fund, and from investment of such moneys, in payment, or reimbursement, of all expenses of the housing development fund which, as determined in accordance with procedures approved by the board of directors of the housing development fund, are fairly allocable to such financing or its land-development activities: Provided, That no funds from the land development fund shall be used to carry on propaganda, or otherwise attempt to influence legislation.
(g) The housing development fund shall create and establish a special account within the land development fund to be designated as the “special project account” into which the housing development fund shall, effective the first day of July, one thousand nine hundred ninety-two, deposit the sum of ten million dollars. Such funds shall be governed, administered and accounted for by the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned or managed by the housing development fund. The sole and exclusive purpose of such account shall be to provide a source of funds for the financing of infrastructure projects including distribution from time to time to the West Virginia water pollution control revolving fund created pursuant to section three, article five-i, chapter twenty of this code: Provided, That such distribution shall not exceed five million four hundred fifty thousand dollars; and distribution from time to time to fund soil conservation projects: Provided, however, That such distribution shall not exceed four million five hundred fifty thousand dollars. Until so disbursed, the moneys initially deposited or thereafter from time to time deposited in such special project account, may be invested and reinvested by the housing development fund as permitted under subdivision (8), section six of this article. Any funds remaining in the special project account on the first day of July, one thousand nine hundred ninety-five, shall automatically revert to the general fund of the housing development fund free of any limitations provided in this section. The provisions of subsections (c), (d), (e) and (f) of this section shall not apply to the special project account created in this section.


There is hereby created and established a special fund to be designated as the “jobs development fund” into which the housing development fund shall, effective the first day of July, one thousand nine hundred ninety-two, deposit the sum of ten million dollars. Thereafter, the housing development fund shall have no further duty or obligation to, but may in its sole discretion, deposit
additional funds. Such funds shall be governed, administered and accounted for by the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned or managed by the housing development fund. The sole and exclusive purpose of such fund shall be to provide a source for distribution from time to time to the jobs investment trust as provided for in article seven, chapter twelve of this code. Upon receipt by the housing development fund from time to time of a written requisition from the trust together with a certificate that the funds so requisitioned will be used in accordance with the provisions of article seven, chapter twelve of this code and are expected to be expended within thirty days after such disbursement to fund a loan or other investment or to pay the operating expenses of the trust, the housing development fund shall disburse the amount so requisitioned. Until so disbursed, the moneys initially deposited or thereafter from time to time deposited in such fund may be invested and reinvested by the housing development fund as permitted under subdivision (8), section six of this article. Upon the dissolution or the termination of the jobs investment trust board, any funds remaining in the jobs development fund shall automatically revert to the general fund of the housing development fund free of any limitations provided in this section.

CHAPTER 34
(S. B. 17—By Senator Holliday)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]
code by adding thereto a new article, designated article six-d, all relating to the solicitation by profit business entities and nonprofit charitable organizations generally; revising provisions governing the solicitation of charitable funds; redefining the term charitable organization; changing the membership requirements of the commission; requiring charitable organizations to file final reports to reflect activities not shown in their last report before withdrawing from the state; removing the requirement that the percentage of funds remaining in the state be included in the registration application; changing the financial disclosure requirements in applications; requiring the filing of support documentation provided to the charitable organization by its fund-raising contractor; redefining the exemption for churches; limiting the exemption for youth athletic organizations; revising disclosure requirements; removing and restating the notice on printed solicitations requirement; requiring the filing of final settlement reports on contracts between charitable organizations and fund-raising contractors; removing the percentage of solicitations requirement at the point of solicitation; clarifying the definition of reasonable donor expectation; defining independent governing boards and conflicts of interest for those boards; deleting the reciprocal law provision; defining prohibited solicitations; removing the requirement that solicitors carry authorizations; providing for private and class actions for violations of this article; providing for civil penalties for intentional violations of the article; creating a special revenue fund for the deposit of proceeds of penalties and other funds; creating the "Prizes and Gifts Act"; requiring that prizes, gifts or items of value be delivered to a consumer within ten days of the representation, without obligation; requiring disclosure of the sponsor and eligibility conditions; mandating the disclosure of costs and expenses; prohibiting certain methods of notification; and establishing a penalty for fraudulent acts or practices.

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

That sections two, three, five, six, seven, eight, eleven,
twelve and thirteen, article nineteen, chapter twenty-nine 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 fifteen-a and fifteen-b; and that chapter forty-six-a of said code be amended by adding thereto a new article, designated article six-a, all to read as follows:

Chapter 29. Miscellaneous Boards and Officers.
46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-3. Commission on charitable organizations; powers and duties.
§29-19-5. Registration of charitable organizations; fee.
§29-19-6. Certain persons and organizations exempt from registration.
§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.


1 As used in this article:

2 (1) "Charitable organization" means a person who is

3 or holds itself out to be a benevolent, educational, 

4 philanthropic, humane, patriotic, religious or eleemosynary organization, or any person who solicits or obtains

5 contributions solicited from the public for charitable

6 purposes, or any person who in any manner employs any

7 appeal for contributions which may be reasonably

8 interpreted to suggest that any part of such contribu-

9 tions will be used for charitable purposes. A chapter,

10 branch, area, office or similar affiliate or any person

11 soliciting contributions within the state for a charitable

12 organization which has its principal place of business

13 outside the state is a charitable organization for the

14 purposes of this article.
(2) "Contribution" means the promise or grant of any money or property of any kind or value.

(3) "Solicit" and "solicitation" means the request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting such contribution:

(a) Any oral or written request;

(b) Any announcement to the press, over the radio or television, or by telephone or telegraph, concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

(c) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or

(d) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable or civic organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

"Solicitation", as defined herein, shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the same actually receives any contribution.

(4) "Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a united fund or community chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual
agencies upon the federated group organization.

(5) "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising and expenditures, or assists, receives funds from or advises one or more chapters, branches or affiliates in the state.

(6) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

(7) "Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fund-raising counsel.

(8) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether such solicitation is performed personally or through said person's agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this article. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, shall be considered, as the result of
such advice, a professional fund-raising counsel or a professional solicitor.

(9) "Commission" means the commission on charitable organizations herein created.

§29-19-3. Commission on charitable organizations; powers and duties.

(a) The commission on charitable organizations, herein referred to as the "commission", consists of seven members, including the secretary of state or his or her designate, who shall be the chairman, the attorney general or his or her designate, two members from the staff of the department of health and human resources to be designated by the secretary of health and human resources and three members to be appointed by the governor who shall serve at his will and pleasure.

(b) The commission shall serve as body advisory to the secretary of state and, as such, shall have the following powers and duties:

(1) To hold investigations as provided in section fifteen of this article;

(2) To advise and make recommendations to the secretary of state on policies and practices to effect the purposes of this article;

(3) To request that the attorney general, and, when appropriate, the prosecuting attorney of any county, take action to enforce this article or protect the public from any fraudulent scheme or criminal act;

(4) To meet at the request of the secretary of state or pursuant to regulations promulgated by him. Minutes of each meeting shall be public records and filed with the secretary of state.

(c) The secretary of state shall administer this article, prescribe forms for registration or other purposes, and promulgate rules in furtherance of this article in accordance with the provisions of chapter twenty-nine-a of this code.

§29-19-5. Registration of charitable organizations; fee.
(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions within this state or to have funds solicited on its behalf shall, prior to any solicitation, file a registration statement with the secretary of state upon forms prescribed by him or her, which shall be good for one full year and which shall be refiled in the next and each following year in which such charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it must file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It shall be the duty of the president, chairman or principal officer of such charitable organization to file the statements required under this article. Such statements shall be sworn to and shall contain the following information:

1. The name of the organization and the purpose for which it was organized;

2. The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

3. The names and addresses of any chapters, branches or affiliates in this state;

4. The place where and the date when the organization was legally established, the form of its organization;

5. The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

6. A copy of a balance sheet and a statement or report of income and expenses for the organization's immediately preceding fiscal year, or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental thereto and showing how the funds were disbursed or allocated for the same fiscal year: Provided, That for organizations raising more than
fifty thousand dollars per year in contributions, the
balance sheet and income and expense statement, or
financial statement provided, shall be audited by an
independent public accountant. Organizations are
required to report the amount of money raised in the
state and the amount spent in the state for charitable
purposes;

(7) A copy of any determination of the organization’s
tax exempt status under the provisions of 26 U.S.C.
§501(c)(3) and a copy of the last filed Internal Revenue
Service form 990 and Schedule A for every charitable
organization and any parent organization;

(8) Whether the organization intends to solicit
contributions from the public directly or have such done
on its behalf by others;

(9) Whether the organization is authorized by any
other governmental authority to solicit contributions
and whether it is or has ever been enjoined by any court
from soliciting contributions;

(10) The general purpose or purposes for which the
contributions to be solicited shall be used;

(11) The name or names under which it intends to
solicit contributions;

(12) The names of the individuals or officers of the
organization who will have final responsibility for the
custody of the contributions;

(13) The names of the individuals or officers of the
organization responsible for the final distribution of the
contributions; and

(14) Copies of all contract documentation from
professional fund-raising counsels and professional
solicitors as provided for in subsection (d), section seven
of this article.

(b) Each chapter, branch or affiliate, except an
independent member agency of a federated fund-raising
organization, may separately report the information
required by this subsection, or report the information to
its parent organization which shall then furnish such
information as to its West Virginia affiliates, chapters
and branches in a consolidated form to the secretary of
state. An independent member agency of a federated
fund-raising organization, as hereinbefore defined, shall
comply with the provisions of this article independently.
Each organization shall file a separate registration form
for each name under which funds will be solicited.

(c) The registration forms and any other documents
prescribed by the secretary of state shall be signed by
an authorized officer or by an independent public
accountant and by the chief fiscal officer of the
charitable organization and shall be verified under oath.

(d) Every charitable organization collecting less than
one million dollars during any year which submits an
independent registration to the secretary of state shall
pay an annual registration fee of fifteen dollars; every
charitable organization collecting more than one million
dollars during one year which submits an independent
registration to the secretary of state shall pay an annual
registration fee of fifty dollars; a parent organization
filing on behalf of one or more chapters, branches or
affiliates or a single organization filing under different
names shall pay a single annual registration fee of fifty
dollars for itself and such chapters, branches or
affiliates included in the registration statement.

§29-19-6. Certain persons and organizations exempt
from registration.

(a) The following charitable organizations shall not be
required to file an annual registration statement with
the secretary of state:

(1) Educational institutions, the curriculums of which
in whole or in part are registered or approved by the
state board of education, either directly or by acceptance
of accreditation by an accrediting body recognized by
the state board of education; and any auxiliary associ-
ations, foundations and support groups which are
directly responsible to any such educational institutions;

(2) Persons requesting contributions for the relief of
any individual specified by name at the time of the
solicitation when all of the contributions collected
without any deductions whatsoever are turned over to
the named beneficiary for his or her use;

(3) Hospitals which are nonprofit and charitable;

(4) Organizations which solicit only within the
membership of the organization by the members
thereof: Provided, That the term “membership” shall not
include those persons who are granted a membership
upon making a contribution as the result of solicitation.
For the purpose of this section, “member” means a
person having membership in a nonprofit corporation,
or other organization, in accordance with the provisions
of its articles of incorporation, bylaws or other instru-
ments creating its form and organization; and having
bona fide rights and privileges in the organization, such
as the right to vote, to elect officers, directors and issues,
to hold office or otherwise as ordinarily conferred on
members of such organizations;

(5) Churches, synagogues, associations or conventions
of churches, religious orders or religious organizations
that are an integral part of a church which qualifies as
tax exempt under the provisions of 26 U.S.C. §501(c)(3)
as the same is in effect on the effective date of this
section;

(6) Any person, firm, corporation or organization that
sponsors a single fund-raising event for the benefit of
a named charitable organization where all or part of the
funds collected are donated to the named charitable
organization: Provided, That the named charitable
organization receiving the funds is registered pursuant
to this article, reports each of these donations individ-
ually, and certifies that no funds were withheld by the
organization that solicited the funds.

(b) The following charitable organizations are exempt
from filing an annual registration statement with the
secretary of state if they do not employ a professional
solicitor or fundraiser or do not intend to solicit and
receive and do not actually raise or receive contributions
from the public in excess of ten thousand dollars during
a calendar year:
(1) Local youth athletic organizations;
(2) Community civic clubs;
(3) Community service clubs;
(4) Fraternal organizations;
(5) Labor unions;
(6) Local posts, camps, chapters or similarly designated elements or county units of such elements of bona fide veterans organizations or auxiliaries which issue charters to such local elements throughout the state;
(7) Bona fide organizations of volunteer firemen or auxiliaries;
(8) Bona fide ambulance associations or auxiliaries;
(9) Bona fide rescue squad associations or auxiliaries.

Charitable organizations which do not intend to solicit and receive in excess of ten thousand dollars, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are in excess of ten thousand dollars.


(a) Every written contract or agreement between professional fund-raising counsel and a charitable organization shall be filed by the professional fund-raising counsel with the secretary of state within ten days after said parties have entered into such contract or agreement.

(b) Every written contract or agreement between a professional solicitor and a charitable organization shall be filed by the professional solicitor with the secretary of state within ten days after said parties have entered into such agreement or contract. In the absence of a written contract or agreement between a professional solicitor and a charitable organization, a written statement of the nature of the arrangement to prevail in lieu thereof shall be filed.

(c) Each statement must clearly provide the amount, percentage or other method of compensation to be
received by the professional solicitor or professional
fund-raising counsel as a result of the contract or
arrangement.

(d) Each charitable organization, as part of its
registration as required in section five of this article,
shall file with the secretary of state copies of all
documents reflecting the final settlement amounts for a
solicitation contract or, in the case of multiple year
contracts, documents reflecting the total amount of
money, funds or other property raised and expenses
incurred by the professional fund-raising counsel or
professional solicitor in a fiscal year.

(e) For purposes of this section, the total moneys,
funds, pledges or other property raised or received shall
not include the actual cost to the charitable organization
or professional solicitor of goods sold or service provided
to the public in connection with the soliciting of
contributions.

§29-19-8. Limitations on activities of charitable
organizations.

No charitable organizations subject to this article may
solicit funds from the public except for charitable
purposes or expend funds raised for charitable purposes
not stated in its solicitation materials.

All registered charitable organizations and their
professional fund raisers and solicitors are required to
disclose in writing: (1) The name of a representative of
the charitable organization to whom inquiries can be
made; (2) the name of the charitable organization; (3) the
purpose of the solicitation; (4) upon request of the person
solicited, the estimated percentage of the money
collected which will be applied to the cost of solicitation
and administration or how much of the money collected
will be applied directly for the charitable purpose; and
(5) the number of the raffle, bingo or other such state
permit used for fund raising.

Every printed solicitation shall include the following
statement: "West Virginia residents may obtain a
summary of the registration and financial documents
from the Secretary of State, State Capitol, Charleston, West Virginia 25305. Registration does not imply endorsement."

The disclosure statement shall be conspicuously displayed on any written or printed solicitation. Where the solicitation consists of more than one piece, the disclosure statement shall be displayed on a prominent part of the solicitation materials.

Organizations applying for registration shall be reviewed according to the following standards:

(a) Charitable organizations shall include in each solicitation a clear description of programs for which funds are requested and source from which written information is available pursuant to section thirteen of this article. Expenditures shall be related in a primary degree to stated purpose (programs and activities) described in solicitations and in accordance with reasonable donor expectations. For purposes of this section, reasonable donor expectation requires that a charitable organization shall not expend funds in ways that are not apparent to a donor from the text of the presentation as being obvious or potential uses for his contribution. The reasonable donor expectation standard shall apply to all expenditures made by the charitable organization when compared to the solicitation materials used.

(b) Charitable organizations shall establish and exercise controls over fund-raising activities conducted for the organizations' benefit, including written contracts and agreements and assurance of fund-raising activities without excessive pressure.

(c) Each charitable organization shall establish an independent governing board which shall oversee the expenditures, policies, programs and purposes of the charity's activities. The independent governing board shall not delegate its oversight control or authority to any other person(s) or organization.

(d) Members of the independent governing board and
officers of the organization shall avoid transactions involving conflict of interest on their part. A charitable organization may enter into transactions involving parties related by blood, marriage or business association only if: (1) Where a majority of the independent governing board has survived disqualification over conflicts of interest to approve the action; and (2) where the related parties or potential conflict is fully disclosed in the application for registration; and (3) where the transaction is fair and reasonable for the organization.

(e) No charitable organization, professional fund raiser or other person soliciting contributions for or on behalf of a charitable organization may use a name, symbol or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.

Every charitable organization, professional fund-raising counsel and professional solicitor subject to the provisions of this article shall, in accordance with the rules prescribed by the secretary of state, keep true fiscal records as to its activities in this state as may be covered by this article in such form as will enable it accurately to provide the information required by this article. Upon demand, such records shall be made available to the secretary of state, the commission or the attorney general for inspection. Such records shall be retained for a period of at least three years after the end of the period of registration to which they relate.


The secretary of state may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements the secretary of state may accept information filed by a charitable organization, profes-

(a) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article may use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state.

(b) No person may, in connection with the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(c) No person may, in connection with the solicitation of contributions for charitable purposes, misrepresent, mislead, or omit information concerning how the proceeds will be used. Proceeds gathered from any given solicitation must be used for the charitable purposes represented in the materials sent or the presentation given by the solicitor. Violations of this section will be considered to be both a violation of the reasonable donor expectation standard of section eight and may be subject to prosecution for fraud pursuant to section fifteen of this article.

(d) No person may in connection with the solicitation of contributions or the sale of goods or services for charitable purposes represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable
purposes of a charitable organization connected there­
with when such other person has not given consent to
the use of his or her name for these purposes: Provided,
That any member of the board of directors or trustees
of a charitable organization or any other person who has
agreed either to serve or to participate in any voluntary
capacity in the campaign shall be deemed thereby to
have given his or her consent to the use of his or her
name in said campaign.

(e) No person may make any representation that he
or she is soliciting contributions for or on behalf of a
charitable organization or shall use or display any
emblem, device or printed matter belonging to or
associated with a charitable organization for the
purpose of soliciting or inducing contributions from the
public without first being authorized to do so by the
charitable organization.

(f) No professional solicitor may solicit in the name
of or on behalf of any charitable organization unless
such solicitor:

Has obtained the written authorization of two officers
of such organization, a copy of which shall be filed with
the secretary of state. Such written authorization shall
bear the signature of the solicitor and shall expressly
state on its face the period for which it is valid, which
shall not exceed one year from the date issued.


(a) Any person who suffers injury or damages as a
result of acts or practices in violation of the provisions
of this article may bring a civil action against the
charitable organization, professional fund raiser, or
professional solicitor engaged in such acts or practices.
The person may recover such damages sustained as a
result of such acts and practices, costs incurred, and
reasonable attorneys’ fees. Punitive damages may be
awarded in cases of intentional violations of this article.

(b) The attorney general, or secretary of state, in a
representative capacity on behalf of any person entitled
to bring an action under this article, or any person
entitled to bring an action under this article, may institute a class action, pursuant to the applicable rules of civil procedure governing class actions, for the recovery of damages.


1 In any action brought pursuant to the provisions of this article, if the court finds that intentional violations have occurred, the state, upon petition to the court and in addition to any damages awarded any party or parties, may recover attorney fees and a civil penalty not exceeding three times the amount collected in such civil action. Any funds recovered as provided for in this section and any other funds recovered by the state as the result of an award for damages, penalties or settlements in enforcing this article, shall be paid into the state treasury to the credit of a special revenue fund to be known as the “charitable organization fund” which is hereby created. The moneys so credited to such fund may be used solely for the purposes of administering and enforcing the provisions of this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6D. PRIZES AND GIFTS.

§46A-6D-1. Short title.


§46A-6D-3. Representation of having won a prize, gift or any item of value.

§46A-6D-4. Representation of eligibility to win or to receive a prize, gift or item of value.

§46A-6D-5. Representation of being specially selected.

§46A-6D-6. Simulation of checks and invoices.

§46A-6D-7. Conditions for handling charges and shipping charges.

§46A-6D-8. Action to enforce the provisions of article.


§46A-6D-10. Exemptions.

§46A-6D-1. Short title.

This article may be cited as the “Prizes and Gifts Act”.


1 As used in this article:

2 (a) “Anything of value”, “item of value” or “item”
§46A-6D-3. Representation of having won a prize, gift or any item of value.

(a) Unless otherwise provided by article six of this chapter, a person may not, in connection with the sale or lease or solicitation for the sale or lease of goods, property or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

(1) The recipient of the prize, gift or item of value is given the prize, gift or item of value without obligation; and

(2) The prize, gift or item of value is delivered to the recipient at no expense to him or her, within ten days of the representation.

(b) The use of language that may lead a reasonable person to believe he or she has won a contest or anything of value, including, but not limited to, "Congratulations", or "You have won", or "You are the winner of", is a representation of the type governed by this section.

§46A-6D-4. Representation of eligibility to win or to receive a prize, gift or item of value.

(a) A person may not represent that another person is eligible or has a chance to win or to receive a prize, gift or item of value without clearly and conspicuously disclosing on whose behalf the contest or promotion is conducted, as well as all material conditions which a participant must satisfy. In an oral solicitation all material conditions shall be disclosed prior to requesting the consumer to enter into the sale or lease.
ally, in any written material covered by this section, each of the following shall be clearly and prominently disclosed:

(1) Immediately adjacent to the first identification of the prize, gift or item of value to which it relates; or

(2) In a separate section entitled “Consumer Disclosure” which title shall be printed in no less than ten-point bold-face type and which section shall contain only a description of the prize, gift or item of value and the disclosures outlined in paragraphs (i), (ii) and (iii) of this subdivision:

(i) The true retail value of each item or prize;

(ii) The actual number of each item, gift or prize to be awarded; and

(iii) The odds of receiving each item, gift or prize.

(b) All disclosures required by this article to be in writing shall comply with the following:

(1) All dollar values shall be stated in arabic numerals and be preceded by a dollar sign ($); and

(2) The number of each item, gift or prize to be awarded and the odds of receiving each item, gift or prize shall be stated in arabic numerals and shall be written in a manner which is clear and understandable.

(c) It is unlawful to notify a person that upon acceptance or response he or she will receive a gift, prize or item of value in connection with a promotion or otherwise that has as a condition of receiving the gift, prize or item of value the requirement that he or she pay any money, or purchase, lease or rent any goods or services, unless there has been clearly and conspicuously disclosed the nature of the charges to be incurred, including, but not limited to, any shipping charge and handling charges. Such disclosure shall be given:

(1) On the face of any written materials; or

(2) Prior to requesting or inviting the person to enter into the sale or lease in any oral notification.
(d) The provisions of this section do not apply where to be eligible:

(1) Participants are asked only to complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or to call in their entry toll free by telephone or other free or local calling option; or

(2) Participants are never required to listen to a sales presentation and never requested or required to pay any sum of money for any merchandise, service or item of value.

(e) Nothing in this section creates any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, telecommunications company, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.

§46A-6D-5. **Representation of being specially selected.**

(a) A person may not represent that another person has been specially selected in connection with the sale or lease or solicitation for sale or lease of goods, property or service, unless the selection process is designed to reach a particular type or types of persons.

(b) The use of any language that may lead a reasonable person to believe he has been specially selected, including, but not limited to, “Carefully Selected”, or “You have been selected to receive”, or “You have been chosen”, is a representation of the type governed by this section.

§46A-6D-6. **Simulation of checks and invoices.**

In connection with a consumer transaction, no person may issue any writing which simulates or resembles:

(a) A check unless the writing clearly and conspicuously disclosed its true value and purpose, and the writing would not mislead a reasonable person; or
280 Charitable Organizations

(b) An invoice unless the intended recipient of the invoice has actually contracted for goods, property or services for which the issuer seeks proper payment.

§46A-6D-7. Conditions for handling charges and shipping charges.

(a) It is unlawful to notify a person that he or she may or will receive a gift, prize or item of value and that as a condition of receiving the gift, prize or item of value he or she will be required to pay any money, or purchase or lease, including rent, any goods or services, if any one or more of the following conditions exist:

(1) The shipping charges exceeds:
   (i) The cost of postage or the charge of a shipping service in the business of delivering goods of like size, weight and kind for shipping the gift, prize or item of value from the geographic area in which the gift, prize or item of value is being distributed; or
   (ii) The exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift, prize or item of value.

(2) The handling charge exceeds the lesser of five dollars or the actual cost of handling.

(b) This section applies to all offers of prizes, gifts or items of value covered by this article where such charges are permitted.

§46A-6D-8. Action to enforce the provisions of article.

Any consumer who suffers loss by reason of a violation of any provision of this article may bring a civil action to enforce such provisions. Any consumer who is successful in an action shall recover reasonable attorney's fees and court costs incurred by bringing the action.


Any violation of this article constitutes an unlawful act or practice under the provisions of article six of this
3 chapter, regarding fraudulent acts or practices commit-
4 ted by a supplier in connection with a consumer
5 transaction and shall be subject to the enforcement
6 provisions of article seven of this chapter.

§46A-6D-10. Exemptions.
1 The provisions of sections four through seven of this
2 article do not apply to the sale or purchase, or solicita-
3 tion or representation in connection therewith, of goods
4 from a catalog or of books, recordings, videocassettes,
5 periodicals and similar goods through a membership
6 group or club which is regulated by the federal trade
7 commission trade regulation rule concerning use of
8 negative option plans by sellers in commerce or through
9 a contractual plan or arrangement such as a continuity
10 plan, subscription arrangement or a single sale or
11 purchase series arrangement under which the seller
12 ships goods to a consumer who has consented in advance
13 to receive such goods and the recipient of such goods is
14 given the opportunity, after examination of the goods,
15 to receive a full refund of charges for the goods, or
16 unused portion thereof, upon return of the goods, or
17 unused portion thereof, undamaged.

CHAPTER 35
(H. B. 4593—By Delegates Douglas and Brown)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-c,
chapter forty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to clarifying membership of and adding new members
to the legislative commission on juvenile law.

Be it enacted by the Legislature of West Virginia:

That section three, article five-c, 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 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

2 (1) Three members of the Senate to be appointed by
3 the president of the Senate and three members of the
4 House of Delegates to be appointed by the speaker of the
5 House of Delegates: Provided, That at least one person
6 appointed from each house shall be an attorney licensed
7 to practice law in this state. No more than two of the
8 three members appointed by the president of the Senate
9 and the speaker of the House of Delegates, respectively,
10 shall be members of the same political party.

11 (2) A representative of the department of education
12 designated by the state superintendent of schools.

13 (3) The commissioner of corrections and two admin-
14 istrators of the department of health and human
15 resources designated by the secretary of that depart-
16 ment who shall serve as ex officio members.

17 (4) Two persons trained and employed as school
18 guidance counselors, one to be appointed by the presi-
19 dent of the Senate and one to be appointed by the
20 speaker of the House of Delegates.

21 (5) One citizen member to represent the interests of
22 the general public, to be appointed jointly by the
23 president of the Senate and by the speaker of the House
24 of Delegates.

25 The first appointed members of the commission shall
26 serve for a term expiring on the thirtieth day of June
27 in the year of the next succeeding regular session of the
28 Legislature. At the commencement of such next suc-
29 ceeding regular session and at the commencement of
30 regular sessions every two years thereafter, members of
31 the commission shall be appointed for two-year terms
32 beginning the first day of July in the year of each such
33 regular session. Vacancies on the commission shall be
34 filled for unexpired terms in the same manner as
35 appointments to the commission.
CHAPTER 36  
(H. B. 4595—By Delegates Farris and Stemple)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of education; department of health and human resources; and division of corrections, to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state and agencies thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code.
of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) **Claims against the Department of Education:**

| (TO BE PAID FROM GENERAL REVENUE FUND) |
|------------------|---------------------------------|
| (1) Donna Brunetti | $248.00 |
| (2) Gary F. Dent  | $203.00 |
| (3) Marlene R. Mehall | $265.00 |
| (4) Patrick Fenimore | $203.00 |

(b) **Claims against the Department of Health and Human Resources:**

| (TO BE PAID FROM GENERAL REVENUE FUND) |
|------------------|---------------------------------|
| (1) Bartlett Funeral Home | $400.00 |
| (2) Beard Mortuary, Inc. | $400.00 |
| (3) Cooke Funeral Home | $650.00 |
| (4) Domico Funeral Home, Inc. | $400.00 |
| (5) Fred L. Jenkins Funeral Home, Inc. | $400.00 |
| (6) Morris Funeral Home, Inc. | $400.00 |
| (7) Richard M. Roach Funeral Home | $300.00 |
| (8) Robert Tomblyn & Sons Funeral Chapel, Inc. | $400.00 |
| (9) Stephen M. Brady Funeral Home | $325.00 |
| (10) Tomblyn Bros. Funeral Home, Inc. | $800.00 |
| (11) Wm. McCulla Funeral Home | $800.00 |
| (12) Wrisley Funeral Home | $400.00 |

(c) **Claims against the Division of Corrections:**

| (TO BE PAID FROM GENERAL REVENUE FUND) |
|------------------|---------------------------------|
| (1) Associated Radiologists, Inc. | $28.00 |
| (2) American Telephone and Telegraph Company | $318.92 |
| (3) Paul A. Blair, M.D. | $380.00 |
| (4) Camden-Clark Memorial Hospital | $9,091.95 |
| (5) City of Grafton | $1,073.60 |
| (6) North Central WV MRI Services, Inc. | $694.25 |
| (7) Odilon S. Olivas, M.D. | $55.00 |
| (8) Princeton Community Hospital | $11,012.56 |
| (9) Radiology, Inc. | $1,309.00 |
| (10) Reynolds Memorial Hospital | $39,913.50 |
AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and entitled to compensation; and in respect to each of such named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

Claims for Crime Victims Compensation Awards:

(1) Adams, Elizabeth M. and Robert C., as guardians of Timothy Dean Adams $ 5,000.00
<table>
<thead>
<tr>
<th>Number</th>
<th>Claimant Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>(2) Adams, Elizabeth M. and Robert C., as guardians of Lorie Ann Miller</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>17</td>
<td>(3) Allen, Fred L.</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>18</td>
<td>(4) Baldwin, Arminta T.</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>19</td>
<td>(5) Barker, Linda L.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>20</td>
<td>(6) Barker, Paul E.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>21</td>
<td>(7) Cornwell, Edward P., Sr.</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>22</td>
<td>(8) Cyfers, Melvin, Jr., as guardian of</td>
<td>$5,000.00</td>
</tr>
<tr>
<td></td>
<td>Cassandra Faith Vance</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>(9) Cyfers, Melvin, Jr., as guardian of</td>
<td>$5,000.00</td>
</tr>
<tr>
<td></td>
<td>Gideon Lee Vance, II</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>(10) Cyfers, Melvin, Jr., as guardian of</td>
<td>$5,000.00</td>
</tr>
<tr>
<td></td>
<td>Joseph Louis Vance</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>(11) Cyfers, Melvin, Jr., and Myrtle Cyfers, as guardians of</td>
<td>$15,000.00</td>
</tr>
<tr>
<td></td>
<td>Joseph L. Vance</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>(12) Darby, Billie J.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>27</td>
<td>(13) Edens, Mildred K.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>28</td>
<td>(14) Fleming, Vernon &amp; Jeannette, as guardians of Shayna K. Rinker</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>29</td>
<td>(15) Fleming, Vernon &amp; Jeannette, as guardians of Timber J. Rinker</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>30</td>
<td>(16) Fraker, Michael A.</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>31</td>
<td>(17) Haddix, Helen, as guardian of Ryan Zirkle</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>32</td>
<td>(18) Hager, Dottie</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>33</td>
<td>(19) Hager, Dottie, as guardian of Lanny Hager</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>34</td>
<td>(20) Hager, Dottie, as guardian of Orla Ray Hager</td>
<td>$5,000.00</td>
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<tr>
<td>35</td>
<td>(21) Hager, Dottie, as guardian of Walter Lee Hager</td>
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</tr>
<tr>
<td>36</td>
<td>(22) Helms, Darren L.</td>
<td>$15,000.00</td>
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<tr>
<td>37</td>
<td>(23) Hornsby, Tex A.</td>
<td>$5,000.00</td>
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<tr>
<td>38</td>
<td>(24) Hornsby, Tex A., as guardian of Aaron James Hornsby</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>39</td>
<td>(25) Hornsby, Tex A., as guardian of Amanda Dawn Hornsby</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>40</td>
<td>(26) Hornsby, Tex A., as guardian of Christopher Allen Hornsby</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>41</td>
<td>(27) Kimble, Tessie A., as guardian of Christine April Day</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Page</td>
<td>Claimant and Relationship</td>
<td>Claimants</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>57</td>
<td>Kimble, Tessie A., as guardian of Paul Michael Day</td>
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<tr>
<td>59</td>
<td>King, John B.</td>
<td>$ 15,000.00</td>
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<tr>
<td>60</td>
<td>Lewis, Thomas G.</td>
<td>$ 15,000.00</td>
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<tr>
<td>61</td>
<td>Lucas, John L.</td>
<td>$ 10,000.00</td>
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<tr>
<td>62</td>
<td>McCoy, Yvonne</td>
<td>$ 15,000.00</td>
</tr>
<tr>
<td>63</td>
<td>McGuire, Ronald C.</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>64</td>
<td>Messenger, Wilson N.</td>
<td>$ 15,000.00</td>
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<tr>
<td>65</td>
<td>Mooney, Ann M.</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>66</td>
<td>Mooney, Ann M., as guardian of Jeremy Richard Mooney</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>68</td>
<td>Mooney, Ann M., as guardian of Erin Denise Mooney</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>69</td>
<td>Neace, Melvin</td>
<td>$ 15,000.00</td>
</tr>
<tr>
<td>70</td>
<td>Pauley, Cynthia White Sanson, as guardian of Billy Lee Sanson, III</td>
<td>$ 2,500.00</td>
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<tr>
<td>75</td>
<td>Pauley, Kevin, guardian of Victoria K. Pauley</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>77</td>
<td>Perry, Judith A.</td>
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<td>Powell, Harry C.</td>
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<td>Prunty, Kevin W.</td>
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<td>Roberts, Dennis R.</td>
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<td>Rose, Jesse J.</td>
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<td>82</td>
<td>Sovine, Connie J.</td>
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<tr>
<td>83</td>
<td>Sovine, Connie J., as guardian of Robert S. Sovine</td>
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<td>85</td>
<td>Steele, Boyd, Jr.</td>
<td>$ 5,000.00</td>
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<td>86</td>
<td>Steele, Boyd, Jr., as parent for and on behalf of Angela Pearl Meadows</td>
<td>$ 5,000.00</td>
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<td>87</td>
<td>Stout, Timothy E.</td>
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<td>89</td>
<td>Swanson, Debra J., as guardian of Theodore Honaker, Jr.</td>
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<td>Thompson, Betty A.</td>
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<td>95</td>
<td>White, Brenda</td>
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<td>96</td>
<td>White, Brenda, as guardian of Frances Renee White</td>
<td>$ 2,500.00</td>
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288 CLAIMS [Ch. 38

<table>
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<tr>
<td>98 (59)</td>
<td>White, Brenda, as guardian of Louis White</td>
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<td>100 (60)</td>
<td>Wilson, Kimberly R. Beavers</td>
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<td>Wilson, William C.</td>
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<td>Wiseman, Linda C.</td>
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<td>103 (63)</td>
<td>Wolford, Mark L.</td>
<td>$10,000.00</td>
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104 TOTAL .................................. $ 477,500.00

105 The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants herein.

CHAPTER 38

(S. B. 594—Originating in the Committee on Finance)

[Passed March 6, 1992; in effect July 1, 1992. 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 alcohol beverage control administration; attorney general; board of education; board of directors of the state college system; board of trustees of the university of West Virginia; department of administration; department of education; department of health and human resources; department of public safety; department of tax and revenue; division of banking; division of corrections; division of culture and history; division of environmental protection; division of highways; division of motor vehicles; division of personnel; educational broadcasting authority; governor's office of community and industrial development; regional jail and correctional facility authority; secretary of state; state
auditor's office; state fire marshal; state treasurer; supreme court of appeals; West Virginia education employees grievance board; workers' compensation fund; and railroad maintenance authority, 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 Alcohol Beverage Control Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

16 (1) Q.D. Wood ...................... $ 96.80
17 (2) American Telephone and Telegraph Company ........ $ 116.80
19 (3) Mark Sellaro ...................... $ 112.98
20 (4) Ferrellgas, Inc ................. $ 162.52

(b) Claims against the Attorney General:

(TO BE PAID FROM GENERAL REVENUE FUND)

23 (1) American Telephone and Telegraph Company ........ $ 16.48
25 (2) The Michie Company ........... $ 27.15
26 (3) West Publishing Company ...... $ 446.00
27 (4) Xerox Corporation ............. $ 1,616.06
28 (5) National Business Institute.... $ 196.00

(c) Claim against the Board of Directors of the State College System:

(TO BE PAID FROM SPECIAL REVENUE FUND)
(d) Claim 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-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: 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.

(e) Claims against the Board of Trustees of the University of West Virginia:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Ann Marie Altizer $ 1,144.00
(2) Xerox Corporation $ 2,489.29
(3) Gayle Maurantonio $ 52.75
(4) Miranda Reed $ 50.00
(5) Emily Ann Shelton $ 65.00
(6) Sylvia Torning $ 35.00

(f) Claims against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Carolyn Sue McCoy $ 108.00
(2) The Michie Company $ 148.15
(3) Hamilton Business Systems $ 44.33
(4) Unijax $ 151.80

(g) Claim against the Department of Education:
67 (TO BE PAID FROM GENERAL REVENUE FUND)
68 (1) Terry Ashworth .................. $ 165.00

69 (h) Claims against the Department of Health and
70 Human Resources:
71 (TO BE PAID FROM GENERAL REVENUE FUND)
72 (1) Allen Funeral Home ............... $ 400.00
73 (2) Altmeyer Funeral
74 Homes, Inc. ....................... $ 400.00
75 (3) Braley & Thompson, Inc. ....... $ 12,475.20
76 (4) Community Council of Kanawha
77 Valley, Inc. .................... $ 1,282.66
78 (5) Davis-Weaver Funeral
79 Home, Inc. ....................... $ 400.00
80 (6) Hastings Funeral Home, Inc. .... $ 325.00
81 (7) Kepner Funeral Homes, Inc. ...... $ 325.00
82 (8) Franklin W. Quillin, Jr.,
83 DDS PC .......................... $ 2,004.00
84 (9) Raleigh Speech &
85 Hearing Center, Inc. ............. $ 723.00
86 (10) Schaeffer Funeral Home ....... $ 400.00
87 (11) Cheryl S. Vineyard ............. $ 418.66
88 (12) We Care Ambulance
89 Service, Inc. .................... $ 21,609.50
90 (13) Xerox Corporation ............... $ 851.73
91 (14) Viking Way Limited
92 Partnership ....................... $ 99.50

93 (i) Claims against the Department of Health and
94 Human Resources - Office of the Chief
95 Medical Examiner:
96 (TO BE PAID FROM GENERAL REVENUE FUND)
97 (1) Nicolet Instrument Corporation $ 1,239.00
98 (2) Lifeteam EMS Ambulance, Inc. $ 27.00

99 (j) Claims against the Department of Public Safety:
100 (TO BE PAID FROM GENERAL REVENUE FUND)
101 (1) American Telephone and
102 Telegraph Company ............. $ 5,046.34
<table>
<thead>
<tr>
<th>Claim Description</th>
<th>Amount</th>
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<tr>
<td>(2) Frank R. Lavender, Jr.</td>
<td>$1,876.00</td>
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<td>(k) Claims against the Department of Tax and Revenue:</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<tr>
<td>(1) The Chesapeake and Potomac Telephone Company of West Virginia</td>
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<td>(2) Division of Corrections/Prison Industries</td>
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<td>(l) Claims against the Division of Banking:</td>
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<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
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<td>(from Account No. 8395)</td>
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<td>(1) Federal Deposit Insurance Corporation</td>
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<td>(2) Department of Administration</td>
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<td>(m) Claims against the Division of Corrections:</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>(1) American Telephone and Telegraph Company</td>
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<td>(2) Cabell County Commission</td>
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<td>(3) Calhoun County Commission</td>
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<td>(4) Allen J. Cody</td>
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<td>(5) Harrison County Commission</td>
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<td>(6) Highlawn Pharmacy, Inc.</td>
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<td>(7) Jackson County Commission</td>
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<td>(8) John Marshall Medical Services, d/b/a University Surgeons</td>
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<td>(9) Lewis County Commission</td>
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<td>(13) The Michie Company</td>
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<td>139</td>
<td>Mingo County Commission</td>
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<td>Monongalia County Commission</td>
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<td>Putnam County Commission</td>
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<td>Radiology, Inc.</td>
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<td>Valley Comprehensive Community Mental Health</td>
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<td>Wayne County Commission</td>
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<td>148</td>
<td>West Virginia Regional Jail and Correctional Facility</td>
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<td>Wood County Commission</td>
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<td>Claims against the Division of Culture and History:</td>
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<td>150</td>
<td>Scott Lumber Company</td>
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<td>151</td>
<td>Xerox Corporation</td>
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<td>152</td>
<td>E &amp; M Products, Inc.</td>
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<td>Claims against the Division of Environmental Protection:</td>
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<td>153</td>
<td>American Office Systems, Inc.</td>
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<td>154</td>
<td>R.L. Wharton, LTD</td>
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<td>Gene Stalnaker, Inc.</td>
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<td>Claims against the Division of Highways:</td>
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<td>(TO BE PAID FROM STATE ROAD FUND)</td>
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<td>(1) Lora Barker</td>
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<td>175</td>
<td>(2) Norman Bonner</td>
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<td>176</td>
<td>(3) Calven F. Comer, Sr., and Josephine Comer</td>
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<td>(4) Wade Davis</td>
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<td>(5) Wallace D. Dempsey</td>
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<td>(6) Avanell R. Hinkle</td>
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<td>180</td>
<td>(7) Holloway Construction Company</td>
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<td>181</td>
<td>(8) Nicholas Ramirez</td>
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<td>(9) Ruby Redman</td>
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<td>(10) Paul R. Wilson</td>
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<td>(11) Carol Lewis Bosley</td>
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<td>(12) Elden Gene Davidson</td>
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<td>(13) Domonick Delgrande</td>
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<td>(14) Robert W. Fisher</td>
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<td>188</td>
<td>(15) Jack Gregory and Shirley Gregory</td>
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<td>189</td>
<td>(16) Lora G. Porter</td>
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<td>(17) Shirley A. Rinker</td>
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<td>(q) Claim against the Division of Motor Vehicles:</td>
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<td>196</td>
<td>(1) American Decal &amp; Mfg. Co.</td>
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<td>(r) Claim against the Division of Personnel:</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>199</td>
<td>(1) Xerox Corporation</td>
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<td>(s) Claims against the Educational Broadcasting Authority:</td>
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<td>(1) Walter C. Blower</td>
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<td>(2) Karl F. Hill</td>
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<td>204</td>
<td>(t) Claim against the Governor's Office of Community and Industrial Development:</td>
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<td>205</td>
<td>(TO BE PAID FROM FEDERAL FUNDS)</td>
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CLAIMS
(from Account No. 9290-15)

(1) The Michie Company ............ $ 713.44

(u) Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) McKinley Engineering Company ....................... $ 1,675.60
(2) John G. Ward ....................... $ 140.95

(v) Claim against the Secretary of State:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Xerox Corporation ............... $ 645.00

(w) Claim against the State Auditor's Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) American Telephone and Telegraph Company ............. $ 29.03

(x) Claim against the State Fire Marshal:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) American Telephone and Telegraph Company ............. $ 40.19

(y) Claims against the State Treasurer:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Moore Business Forms, Inc. .......... $ 379.00
(2) Exxon Company, U.S.A. ............ $ 132.70

(z) Claim against the Supreme Court of Appeals:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) University of West Virginia College of Graduate Studies .. $ 10,117.46

(aa) Claim against the West Virginia Employees Grievance Board:
(TO BE PAID FROM GENERAL REVENUE FUND)

1 The Chesapeake and Potomac
2 Telephone Company of
3 West Virginia .................. $ 246.29

(b) Claims against the Workers' Compensation
Fund:

(TO BE PAID FROM WORKERS' COMPENSATION FUND)

1 American Telephone and
2 Telegraph Company ........ $ 97.91
3 Phyllis Haynes Edens,
4 CCR, Inc. .................... $ 399.57
5 Richard Thompson ............ $ 877.57
6 Xerox Corporation............ $ 626.71

(cc) Claim against the Railroad Maintenance
Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(from Account No. 8344-06)

1 Charles Herriott.............. $ 113.37

The Legislature finds that the above moral obligations
and the appropriations made in satisfaction thereof shall
be the full compensation for all claimants, and that prior
to the payments to any claimant provided for in this bill,
the court of claims shall receive a release from said
claimant releasing any and all claims for moral
obligations arising from the matters considered by the
Legislature in the finding of the moral obligations and
the making of the appropriations for said claimant. The
court of claims shall deliver all releases obtained from
claimants to the department against which the claim
was allowed.
AN ACT to amend and reenact section four, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers and duties of conservation officers; authorizing conservation officers to arrest persons illegally cutting or damaging timber or plants; penalties.

Be it enacted by the Legislature of West Virginia:

That section four, article seven, 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 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of conservation officers.

Conservation officers and all other persons authorized to enforce the provisions of this chapter shall be under the supervision and direction of the director in the performance of their duties as herein provided. The authority, powers and duties of the conservation officers shall be statewide and they shall have authority to:

(1) Arrest on sight, without warrant or other court process, any person or persons committing a criminal offense in violation of any of the laws of this state, in the presence of such officer, but no such arrest shall be made where any form of administrative procedure is prescribed by this chapter for the enforcement of any of the particular provisions contained herein;

(2) Carry such arms and weapons as may be prescribed by the director in the course and performance of their duties, upon giving the bond required by the provisions of section five, article seven, chapter sixty-one of this code, but no license or other authorization shall...
be required of such officers for this privilege;

(3) Search and examine, in the manner provided by law, any boat, vehicle, automobile, conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat, or any other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of any provisions of this chapter;

(4) Execute and serve any search warrant, notice or any process of law issued under the authority of this chapter or any law relating to wildlife, forests, and all other natural resources, by a magistrate or any court having jurisdiction thereof, or copies of orders made and entered by the chief of the division of water resources, or, without fee, any subpoena or subpoena duces tecum issued in accordance with the provisions of article five-a of this chapter, in the same manner, with the same authority, and with the same legal effect, as any constable or sheriff can serve or execute such warrant, notice or process;

(5) Require the operator of any motor vehicle or other conveyance on or about the public highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of allowing such officers to conduct game-kill surveys;

(6) Summon aid in making arrests or seizures or in executing any warrants, notices or processes, and they shall have the same rights and powers as sheriffs have in their respective counties in so doing;

(7) Enter private lands or waters within the state while engaged in the performance of their official duties hereunder: Provided, That in connection with all surveys, examinations, inspections, inquiries, investigations and studies needed in the gathering of facts concerning water resources and their use or the
pollution thereof under article five or article five-a of this chapter, such conservation officers and all other persons authorized to enforce the provisions of this chapter, shall act pursuant to and under the direction of the chief of the division of water resources or the state water resources board, and such officers and other persons shall be subject to the provisions of subsection (c), section five, article five, and subsection (d), section three, article five-a of this chapter;

(8) Arrest on sight, without warrant or other court process, subject to the limitations set forth in subdivision (1) of this section, any person or persons committing a criminal offense in violation of any law of this state in the presence of any such officer on any state-owned lands and waters and lands and waters under lease by the division of natural resources and all national forest lands, waters and parks, and U.S. Corps of Army Engineers' properties within the boundaries of the state of West Virginia, and, in addition to any authority conferred in the other subdivisions of this section, execute all warrants of arrest on such state and national lands, waters and parks, and U.S. Corps of Army Engineers' properties, consistent with the provisions of article one, chapter sixty-two of this code;

(9) Arrest any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage, or carry away, or cause to be cut, damaged, or carried away any timber, trees, logs, posts, fruit, nuts, growing plants, or products of any growing plant. Any person convicted of the foregoing shall be liable to the owner in the amount of three times the value of the timber, trees, logs, posts, fruit, nuts, growing plants, or products of any growing plant, which shall be in addition to and notwithstanding any other penalties by law provided by section thirteen, article three, chapter sixty-one of this code; and

(10) Do all things necessary to carry into effect the provisions of this chapter.
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 additional charges permitted for consumer credit sales or loans; credit life or health insurance; terms, conditions and premiums for the same; refunds of unearned premiums; notice of cancellation; obligations of insurer; civil penalties; and insurance regulations.

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; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

(a) 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:

(1) Official fees and taxes;

(2) Charges for insurance as described in subsection (b): 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
(3) 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;

(4) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him or 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;

(5) Reasonable closing costs with respect to a debt secured by an interest in land; and

(6) 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.

(b) 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 or her spouse:

(1) 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 or her
option, greater coverages for longer periods of time if
he or she so desires;

(2) 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 indebted-
ness: 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;

(3) 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 insurance 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;

(4) 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;

(5) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor shall require a consumer to purchase such insurance or to purchase such insurance from such creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer;

(6) 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 the cancellation of any consumer credit insurance providing life, accident, health or loss of income coverage; advise
the debtor of the application of any unearned premiums
to the loan balance if such insurance was provided by
the creditor; notify the debtor that he or she may have
the right to receive a refund of unearned premiums
from any other seller or provider of such insurance; and
advise the debtor of his or her obligation to notify any
other insurer of the payment of the loan balance and the
cancellation of the consumer credit insurance, and
request a refund or credit of unearned premiums, if
applicable. Such notice shall be sent on a form as
prescribed by the insurance commissioner as provided
in chapter twenty-nine-a of this code and shall contain
the name and address of the seller and the insurer. If
the creditor was the seller of the consumer credit
insurance, the creditor shall notify or shall cause the
insurer to be notified of the cancellation of such
insurance;

(7) Upon receipt by the insurer of notification of the
cancellation of consumer credit insurance, the insurer
shall cancel such insurance effective no later than thirty
days from the date of receipt of such notice. Within
forty-five days following the date of notification of
cancellation 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; and

(8) 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.

(c) 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 commis-
sioner to promulgate the same shall be exclusive
notwithstanding any other provisions of this code to the
contrary.
CHAPTER 41
(Com. Sub. for S. B. 10—By Senator Wooton)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to limited liability companies; authorizing and specifying method of formation of limited liability companies; specifying fines for failure to record certificate of organization; regulating internal management of limited liability companies; specifying and limiting member and manager liabilities; providing methods for dissolution and merger of limited liability companies and conversion of partnerships to limited liability companies; providing for registration of foreign limited liability companies; and providing liability of foreign limited liability companies to state for fees, taxes and penalties for failure to obtain certificate of authority.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. LIMITED LIABILITY COMPANIES.

§31-1A-1. Short title.
§31-1A-2. Definitions.
§31-1A-3. Purpose.
§31-1A-4. Powers.
§31-1A-5. Name.
§31-1A-6. Reservation of name.
§31-1A-7. Formation.
§31-1A-8. Articles of organization.
§31-1A-9. Filing of articles of organization.
§31-1A-10. Effect of issuance of certificate of organization.
§31-1A-11. Amendments to articles of organization.
§31-1A-12. Filing of articles of amendment; recordation; admission in evidence.
§31-1A-13. Filing requirements.
§31-1A-14. Registered office and registered agent to be maintained.
§31-1A-15. Change of registered office or registered agent.
§31-1A-16. Secretary of state constituted attorney in fact for all limited liability companies; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section; venue.
§31-1A-17. Fees and charges to be collected by secretary of state.
§31-1A-18. Management.
§31-1A-19. Operating agreement.
§31-1A-20. Management of a limited liability company by a manager or managers.
§31-1A-21. Contracting debts.
§31-1A-22. Business transactions of members or managers with the limited liability company.
§31-1A-23. Contributions.
§31-1A-25. Sharing of distributions.
§31-1A-26. Interim distributions.
§31-1A-27. Withdrawal or resignation of member.
§31-1A-29. Restrictions on making distribution.
§31-1A-30. Liability upon wrongful distribution.
§31-1A-31. Right to distribution.
§31-1A-32. Liability of member to company.
§31-1A-33. Liability of members and managers.
§31-1A-34. Interest in company; transferability of interest.
§31-1A-35. Dissolution.
§31-1A-36. Judicial dissolution.
§31-1A-37. Winding up.
§31-1A-38. Distribution of assets upon dissolution.
§31-1A-40. Filing of certificate of cancellation; recordation; issuance of certificate of dissolution.
§31-1A-41. Procedure for merger.
§31-1A-42. Merger; approval by members.
§31-1A-43. Articles of merger; filing; issuance of certificate; recordation; admission in evidence.
§31-1A-44. Effect of merger; conveyance of title to real estate in state to surviving limited liability company.
§31-1A-45. Merger of domestic and foreign limited liability companies; effect; abandonment; confirmation of title to real estate required.
§31-1A-46. Right of members to dissent.
§31-1A-47. Conversion of partnerships to limited liability companies; effect of conversion.
§31-1A-48. Law governing foreign limited liability companies.
§31-1A-49. Admission of foreign limited liability company; acts permitted to be done without certificate of authority.
§31-1A-50. Powers of foreign limited liability company.
§31-1A-51. Name of foreign limited liability company; when certificate of authority shall not be issued; change of name by foreign limited liability company.
§31-IA-52. Application for certificate of authority by foreign limited liability company; contents.

§31-IA-53. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

§31-IA-54. Effect of certificate of authority.

§31-IA-55. Appointment of person to whom notice of process may be sent by the secretary of state; change of principal office or name and address of person to receive notice or process.

§31-IA-56. Amendment to articles of organization of foreign limited liability company; filing; recordation; penalty for failure to record.

§31-IA-57. Merger of foreign limited liability company authorized to conduct affairs or do or transact business in this state; filing of articles of merger; recordation; penalty for failure to record.

§31-IA-58. Amended certificate of authority; requirements; recordation; penalty for failure to record.

§31-IA-59. Procedure for withdrawal of foreign limited liability company; publication required; application for certificate of withdrawal; contents; filing; issuance of certificate; recordation.

§31-IA-60. Conditions for revocation of certificate of authority.

§31-IA-61. Application to limited liability company heretofore authorized to conduct its affairs or do or transact business in this state.

§31-IA-62. Conducting affairs or doing or transacting business without certificate of authority.

§31-IA-63. Requirement for registered agent and certain reports.

§31-IA-64. Parties to actions.

§31-IA-65. Title to limited liability company property.

§31-IA-66. Waiver of notice.

§31-IA-67. Applicability of provisions to foreign and interstate commerce.

§31-IA-68. Definition of “person” to indicate limited liability company.

§31-IA-69. Conflicting laws; existing rights and liabilities.

§31-IA-1. Short title.

1 This article shall be known and may be cited as the “West Virginia Limited Liability Company Act”.

§31-IA-2. Definitions.

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

3 (1) “Article” means this article of the West Virginia code;

5 (2) “Articles of organization” means the articles of organization filed with the secretary of state for the purpose of forming a limited liability company as specified in sections eight and nine of this article and all amendments thereto;

1
(3) "Bankruptcy" means a case under the federal Bankruptcy Code of 1978, Title 11 of the United States Code, as amended;

(4) "Contribution" means any cash, property or services rendered, or a promissory note or other binding obligations to contribute cash or property or to perform services that a member contributes to a limited liability company in his capacity as a member;

(5) "Court" includes every court and judge having jurisdiction in any case;

(6) "Distribution" means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests in such company;

(7) "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state;

(8) "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association having two or more members that is organized and existing under this article;

(9) "Manager" means a person or persons designated by the members of a limited liability company to manage the company pursuant to this article or a limited liability company's articles of organization or operating agreement;

(10) "Member" means a person with an ownership interest in a limited liability company with the rights and obligations specified under this article;

(11) "Membership interest" means a member's share of the capital and profits and losses of a limited liability company, the right to receive distributions of such company's assets and any rights of management under this article;

(12) "Operating agreement" means any agreement of the members as to the affairs and management of a limited liability company and the conduct of its
48 business;
49  (13) “Person” includes individuals, general partnerships, limited partnerships, limited liability companies, corporations, trusts, business trusts, real estate investment trusts, estates and other associations;
50  (14) “Principal office” means the office, in or out of this state, where the principal executive offices of a limited liability company are located; and
51  (15) “Real property” or “real estate” includes land, any interest, leasehold or estate in land and other improvements on it.

§31-1A-3. Purpose.

1 Limited liability companies may be organized under this article for any lawful purpose.

§31-1A-4. Powers.

1 (a) Each limited liability company organized and existing under this article shall have the power to:
2  (1) Sue and be sued, complain and defend, in its name;
3  (2) Purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property or any legal or equitable interest therein, wherever situated;
4  (3) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer or otherwise dispose of all or any part of its property and assets;
5  (4) Lend money to or otherwise assist its members;
6  (5) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other limited liability companies, domestic or foreign corporations, associations, general partnerships, limited partnerships, joint ventures or persons, or direct or indirect obligations of the United States or of any government, state, territory, governmental
district or municipality or any instrumentality thereof;

(6) Make contracts and guarantees, incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage, deed of trust or pledge of all or any part of its property, franchises and income;

(7) Lend money for its proper purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested;

(8) Conduct its business and affairs, carry on its operations and have and exercise the powers granted by this article in any state, territory, district or possession of the United States or in any foreign country;

(9) Elect or appoint managers, employees and agents of the limited liability company and define their duties and fix their compensation;

(10) Pay compensation, or pay additional compensation, to any or all managers, members, employees and agents on account of services previously rendered, or to be rendered, to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered;

(11) Make and alter operating agreements for the administration and regulation of the business and affairs of the limited liability company;

(12) Indemnify a member, manager, employee or agent, or former member, manager, employee or agent, of the limited liability company to the same extent as a corporation organized under the laws of this state may indemnify any of the directors, officers, employees or agents of the corporation against expenses actually and reasonably incurred by him or it in connection with the defense of any action, suit or proceeding, whether civil or criminal, in which he or it is made a party and to make any other indemnification that is authorized by the articles of organization or by the operating agreement or resolution adopted by the members after notice;
(13) Cease its activities and surrender its certificate of organization;

(14) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized;

(15) Become a member of a corporation, general partnership, limited partnership, limited liability company, joint venture or similar association; and

(16) Transact any lawful business that a corporation, general partnership, limited partnership or other business entity may conduct under the laws of this state.

(b) In addition to the provisions of subsection (a) of this section, a limited liability company shall have and exercise all powers granted to corporations under the laws of this state.

§31-1A-5. Name.

(a) The words "limited liability company" shall be included in the name of every limited liability company formed under the provisions of this article.

(b) Such name shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than those permitted by this article and as may be limited by its articles of organization.

(c) Such name shall not contain the words "Corporation", "Incorporated", "Limited Partnership" or the abbreviations "Corp." or "Inc."

(d) Such name shall not be the same as, or deceptively similar to, any of the following:

(1) The name of any domestic corporation, limited partnership or limited liability company;

(2) The name of any foreign corporation, limited partnership, or limited liability company authorized to transact business in this state that has in effect a registration of its name as provided under the laws of this state;

(3) Any name for which an exclusive right has been
(4) Any trade or assumed name registered with the secretary of state or for which application for registration is pending; or

(5) Any name registered in the office of the secretary of state.

(e) The provisions of subsection (d) of this section shall not apply if the organizer files with the secretary of state either:

(1) The written consent of such other limited liability company, corporation or limited partnership or holder of a reserved or registered name to use the same or a deceptively similar name if one or more words are added, altered or deleted to make the name distinguishable from the reserved or registered name; or

(2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(f) A limited liability company that acquires, upon a sale, lease or other disposition to or exchange with a domestic limited liability company, all or substantially all the assets of another domestic or foreign limited liability company, including its name, may have a deceptively similar name if one or more words are added, altered or deleted to make such name distinguishable from such other name as that used in this state by any of such limited liability companies if such other limited liability company was organized under the laws of, or is authorized to transact business in, this state.

§31-1A-6. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under this article and to adopt that name;

(2) Any domestic or foreign limited liability company registered in this state that, in either case, intends to
adopt that name;
(3) Any domestic or foreign limited liability company registered in this state intending to change its name; or
(4) Any foreign limited liability company or any person intending to organize a foreign limited liability company and intending to register in this state and adopt that name.

(b) To reserve a specified name, a person shall submit an application to the secretary of state in the form and manner the secretary of state shall designate. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed for additional periods not to exceed one hundred twenty days from the date of such renewal. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the office of the secretary of state a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§31-1A-7. Formation.
Any two or more persons may form a limited liability company by causing to be signed and filed with the secretary of state articles of organization for such limited liability company. Such persons need not be members of the limited liability company after formation has occurred.

§31-1A-8. Articles of organization.
(a) The articles of organization of a limited liability company shall set forth:
(1) The name of the limited liability company;
(2) The period of its duration, which shall not be perpetual;
(3) The purpose for which the limited liability company is organized; and
The address of its principal place of business in the state and the name and address of its initial registered agent in the state, which may be the same as its initial registered office but need not be located in this state.

(b) The articles of organization may set forth any other matter that is permitted under this article to be set forth in its operating agreement.

(c) It is not necessary to set out in the articles of organization any of the powers enumerated in this article.

(d) Whenever a provision of the articles of organization is inconsistent with the operating agreement for the limited liability company, the provisions of the articles of organization shall be controlling.

(e) The articles of organization shall contain a statement of the name and address of the person who, or the firm that, prepared such articles of organization.

(f) The articles of organization shall be acknowledged by one or more of the persons forming the limited liability company before a notary public and transmitted with the proper fees to, and shall be filed with, the secretary of state.

§31-1A-9. Filing of articles of organization.

(a) Duplicate originals, which as used in this article shall mean two copies, however reproduced, both of which are executed in the original, of the articles of organization shall be delivered to the secretary of state. If the secretary of state finds that the articles of organization conform to law, he shall, when all fees have been paid as prescribed by law:

(1) Endorse on each of the duplicate originals the word "Filed" and the month, day and year of the filing thereof;

(2) File one of the duplicate originals in his office; and

(3) Issue a certificate of organization to which he shall affix the other duplicate original.
(b) The certificate of organization, together with a
duplicate original of the articles of organization affixed
thereto by the secretary of state, shall be returned to the
limited liability company or to its representative.

(c) If the limited liability company has its principal
office in this state, it shall cause such certificate, or a
duly certified copy thereof, to be recorded in the office
of the clerk of the county commission of the county in
which such principal office is located; if its principal
office is not within this state but it conducts affairs or
does or transacts business therein, then in the county or
one of the counties in which it conducts its affairs or
does or transacts its principal business. If its principal
office is without the state and it does not conduct affairs
or do or transact business within the state, such
certificate need not be recorded in the county clerk's
office. A failure to comply with the foregoing recorda-
tion provision within six months from the date of such
certificate shall subject the limited liability company to
a fine of not more than one thousand dollars.

§31-1A-10. Effect of issuance of certificate of
organization.

(a) Upon the issuance of the certificate of organiza-
tion, or upon any future date stated in the certificate of
organization, the limited liability company shall be
considered organized and in existence and such certif-
icate of organization shall be conclusive evidence that all
conditions precedent required to be performed by the
members have been complied with and that the limited
liability company has been legally organized under this
article, except as against this state in a proceeding to
cancel or revoke the certificate of organization or for
involuntary dissolution of the limited liability company.

(b) A limited liability company shall not transact
business or incur indebtedness, except that which is
incidental to its organization or to obtaining subscrip-
tions for or payment of contributions, until the secretary
of state has issued a certificate of organization.

§31-1A-11. Amendments to articles of organization.
(a) The articles of organization shall be amended within thirty days from the occurrence of any of the following:

(1) There is a change in the name of the limited liability company;

(2) There is a false or erroneous statement in the articles of organization;

(3) There is a change in the duration of the limited liability company as stated in the articles of organization: Provided, That such duration shall not be perpetual;

(4) A time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organization; or

(5) The members desire to make a change in any other statement in the articles of organization in order for it to accurately represent the agreement between them.

(b) The articles of organization as amended shall contain only such provisions as might be lawfully contained in original articles of organization at the time of making such amendment.

(c) The articles of amendment shall be adopted upon approval by a majority vote of the members entitled to vote thereon, unless the articles of organization or the operating agreement of the limited liability company require a greater or lesser vote.

(d) The articles of amendment shall be executed in duplicate and verified by a member or manager so authorized and shall set forth:

(1) The name of the limited liability company;

(2) The amendment as adopted;

(3) The date of the adoption of the amendment by the members;

(4) A statement that the amendment was adopted by a vote of the members in accordance with this article; and
The name and address of the person or firm that prepared such amendment.

§31-1A-12. Filing of articles of amendment; recordation; admission in evidence.

(a) Upon adoption of the articles of amendment, duplicate originals of such articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as prescribed by law:

(1) Endorse on each of the duplicate originals the word "Filed" and the month, day and year of the filing thereof;

(2) File one of the duplicate originals in his office; and

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

(b) The certificate of amendment, together with a duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the persons forming the limited liability company, the principal office of the limited liability company or to its representative.

(c) The certificate of amendment issued by the secretary of state pursuant to this section, or a certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as original certificates of organization are required to be recorded in accordance with subsection (c), section nine of this article and received in evidence to the same extent as an original certificate of organization or a certified copy of such original.

§31-1A-13. Filing requirements.

(a) A document which satisfies the requirements of this section and of any other section that adds to or varies these requirements shall be entitled to be filed with the secretary of state.

(b) The document to be filed shall be one that this
article requires or permits to be filed with the secretary of state.

(c) The document to be filed shall contain the information required by this article and may contain other information as well.

(d) The document to be filed shall be typewritten or printed and shall be executed in the name of the limited liability company:

(1) By any member or manager of the limited liability company;

(2) If the limited liability company has not been formed, by one or more of the persons forming the limited liability company; or

(3) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(e) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs.

(f) If, pursuant to any provision of this article, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

(g) The document to be filed shall be delivered to the secretary of state for filing and shall be accompanied by the required filing fee and any registration fee required.

§31-1A-14. Registered office and registered agent to be maintained.

Each domestic limited liability company and each foreign limited liability company which has been issued a certificate of authority pursuant to this article shall have and continuously maintain in this state:

(1) A registered office which may, but need not, be the same as its place of business; and

(2) A registered agent, which agent may be either an individual resident in this state whose business office is
§31-1A-15. Change of registered office or registered agent.

(a) Within thirty days of any change in registered office or agent, or both, a limited liability company shall file in the office of the secretary of state a statement setting forth:

1. The name of the limited liability company;
2. The address of its then registered office;
3. If the address of its registered office is to be changed, the address to which the registered office is to be changed;
4. The name of its then registered agent; and
5. If its registered agent is to be changed, the name of its successor registered agent.

(b) If the secretary of state finds that the statement conforms to the provisions of this article, he shall file the statement in his office, and upon filing the statement, the change of address of the registered office or the appointment of a new registered agent, or both as the case may be, will be in effect.

(c) Any registered agent of a limited liability company may resign as agent upon filing a written notice thereof, executed in duplicate, with the limited liability company and the secretary of state. The appointment of the agent terminates upon the expiration of thirty days after receipt of notice by the secretary of state.

§31-1A-16. Secretary of state constituted attorney-in-fact for all limited liability companies; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section; venue.
(a) The secretary of state is hereby constituted the attorney-in-fact for and on behalf of every limited liability company created by virtue of the laws of this state and every foreign limited liability company authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited liability company and upon whom service of notice and process may be made in this state for and upon every such limited liability company. No act of such limited liability company appointing the secretary of state attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of five dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited liability company at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the return day thereof. Such limited liability company shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the secretary of state as its attorney-in-fact.

Any foreign limited liability company which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the secretary of state as its attorney-
in-fact with authority to accept service of notice and process on behalf of such limited liability company and upon whom service of notice and process may be made in this state for and upon every such limited liability company in any action or proceeding described in the next following paragraph of this section. No act of such limited liability company appointing the secretary of state as such attorney-in-fact shall be necessary.

Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of five dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to such limited liability company at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such limited liability company, or the registered or certified mail so sent by the secretary of state is refused by the addressee and the registered or certified mail is returned to the secretary of state or to his office showing thereon the stamp of the United States postal service that delivery thereof has been refused, and such return receipt of registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

For the purpose of this section, a foreign limited liability company not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business
herein: (1) If such limited liability company makes a contract to be performed, in whole or in part, by any party thereto, in this state; (2) if such limited liability company commits a tort in whole or in part in this state; or (3) if such limited liability company manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such limited liability company had no agents, servants or employees or contracts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as hereinabove described shall be deemed to be the agreement of such limited liability company that any notice or process served upon, or accepted by, the secretary of state pursuant to the next preceding paragraph of this section in any action or proceeding against such limited liability company arising from, or growing out of, such contract, tort or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such limited liability company in this state.

(b) In all cases arising under this article wherein the limited liability companies seeking to exercise the rights conferred by this article, or against which any proceeding is instituted thereunder, do not have or maintain any office, own any property or conduct affairs or do or transact business in this state, the circuit court of the county in which the seat of government is located shall have original jurisdiction, except in cases in which jurisdiction is expressly conferred upon some other court by this article.

§31-1A-17. Fees and charges to be collected by secretary of state.

Except as otherwise expressly provided in this article, all fees required to be charged and collected by the secretary of state by the provisions of this article shall be charged and collected in accordance with the provisions of section two, article one, chapter fifty-nine
of this code as applicable to corporations.

§31-1A-18. Management.

(a) Except to the extent that the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

(b) Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company shall vote in proportion to their contributions to the limited liability company, as adjusted from time to time to reflect any additional contributions or withdrawals, and a majority vote of the members of a limited liability company shall consist of the vote or other approval of members having a majority share of the voting power of all members.

(c) Unless otherwise provided in this article or in the articles of organization or an operating agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of the members.

§31-1A-19. Operating agreement.

(a) The members of a limited liability company may enter into any operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of this state or the articles of organization.

(b) (1) An operating agreement must initially be agreed to by all of the members. Unless the articles of organization specifically require otherwise, an operating agreement need not be in writing.

(2) If an operating agreement does not provide for the method by which it may be amended, then all of the members must agree to any amendment of an operating agreement.
(c) (1) A court of equity may enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(2) As an alternative to injunctive or other equitable relief, when the provisions of section thirty-six of this article are applicable, the court may order dissolution of the limited liability company.

§31-1A-20. Management of a limited liability company by a manager or managers.

(a) The articles of organization or an operating agreement of a limited liability company may delegate full or partial responsibility for managing a limited liability company to or among one or more managers.

(b) Managers need not be residents of this state or members of the limited liability company unless the articles of organization or an operating agreement so require. The articles of organization or an operating agreement may prescribe other qualifications for managers.

(c) The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

(d) Managers shall be elected by the members pursuant to the articles of organization or an operating agreement, or, if none, pursuant to section eighteen of this article.

(e) Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the position of manager shall be filled by a majority vote in interests of the members.

(f) All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement. Unless the
articles of organization or an operating agreement
provide otherwise for the removal of managers, then all
managers or any lesser number may be removed with
or without cause by a majority vote in interests of the
members.

(g) Unless otherwise provided in the articles of
organization or an operating agreement, any action
required or permitted to be taken by the managers of
a limited liability company may be taken upon a
majority vote of the managers.

(h) (1) A manager shall discharge his duties as a
manager in accordance with his good faith business
judgment of the best interests of the limited liability
company.

(2) Unless he has knowledge or information concern-
ing the matter in question that makes reliance unwar-
ranted, a manager is entitled to rely on information,
opinions, reports or statements, including financial
statements and other financial data, if prepared or
presented by:

(A) One or more managers or employees of the limited
liability company whom the manager believes, in good
faith, to be reliable and competent in the matters
presented;

(B) Legal counsel, public accountants or other persons
as to matters the manager believes in good faith are
within the person's professional or expert competence;

(C) A committee of the managers of which he is not
a member if the manager believes in good faith that the
committee merits confidence.

(3) A person alleging a violation of this subsection has
the burden of proving the violation.

§31-1A-21. Contracting debts.

Except as otherwise provided in this article, no debt
shall be contracted or liability incurred by or on behalf
of a limited liability company, except by one or more
of its managers if management of the limited liability
§31-1A-22. Business transactions of members or managers with the limited liability company.

Except as provided in the articles of organization or an operating agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

§31-1A-23. Contributions.

(a) The contributions of a member to a limited liability company may be in cash, property, services rendered or a promissory note or other binding obligation which has been accepted by the limited liability company to contribute cash or property or to perform services.

(b) Except as provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability company records, of such contribution that has not been made.

(c) No promise by a member to contribute to a limited liability company is enforceable unless set out in a writing signed by the member.


The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agree-
5ment. If the articles of organization or an operating
6agreement do not otherwise provide, profits and losses
7shall be allocated on the basis of the value, as stated in
8the limited liability company records of the contribu-
9tions made by each member as adjusted from time to
time to reflect any additional contributions or
withdrawals.

§31-1A-25. Sharing of distributions.
1Distributions of cash or other assets of a limited
2liability company shall be allocated among the
3members, and among classes of members, in the manner
4provided in writing in the articles of organization or an
5operating agreement. If the articles of organization or
6an operating agreement do not so provide in writing,
7distributions shall be made on the basis of the value, as
8stated in the limited liability company records, of the
9contributions made by each member as adjusted from
time to time to reflect any additional contributions or
withdrawals.

§31-1A-26. Interim distributions.
1Except as provided in this article, a member is
2entitled to receive distributions from a limited liability
3company before his or its resignation from the limited
4liability company and before the dissolution and
5winding up thereof to the extent and at the times or
6upon the happening of the events specified in the articles
7of organization or an operating agreement.

§31-1A-27. Withdrawal or resignation of member.
1Unless otherwise provided in the articles of organiza-
tion or in any operating agreement, a member may
withdraw or resign from a limited liability company at
the time or upon the happening of events specified in
writing in the articles of organization or an operating
agreement. If the articles of organization or an operat-
ing agreement do not specify the time or the events upon
the happening of which a member may withdraw or
resign, a member may withdraw or resign upon not less
than six months prior written notice to each member at
his or its address on the books of the limited liability

Except as provided in writing in the articles of organization or an operating agreement, a member, regardless of the nature of such member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in writing in the articles of organization or an operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to such member exceeds a percentage of that asset which such member's membership interest constitutes of all membership interests in the limited liability company.

§31-1A-29. Restrictions on making distribution.

(a) No distribution may be made by a limited liability company, if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they became due to the usual course of business; or

2. The reasonable value of the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permit otherwise, the amount that would be needed if the limited liability company were to be dissoluted at the time of the distribution to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under this section either on:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

2. A fair valuation or other method that is reasonable
23 in the circumstances.

24 (c) The effect of a distribution under subsection (a) of
25 this section is measured as of: (i) The date the distribu-
26 tion is authorized if the payment occurs within one
27 hundred twenty days after the date of authorization; or
28 (ii) the date the payment is made if it occurs more than
29 one hundred twenty days after the date of authorization.

30 (d) A limited liability company's indebtedness to a
31 member incurred by reason of the declaration of a
32 distribution made in accordance with this section is at
33 parity with the limited liability company's indebtedness
34 to its general unsecured creditors, except to the extent
35 subordinated by agreement.

§31-1A-30. Liability upon wrongful distribution.

1 If a member has received a distribution in violation
2 of the articles of organization or an operating agreement
3 or in violation of section twenty-nine of this article, then
4 such member is liable to the limited liability company
5 for a period of four years thereafter for the amount of
6 the distribution wrongfully made.

§31-1A-31. Right to distribution.

1 At the time a member becomes entitled to receive a
2 distribution, such member has the status of, and is
3 entitled to all remedies available to, a creditor of the
4 limited liability company with respect to the
distribution.

§31-1A-32. Liability of member to company.

1 (a) A member is liable to the limited liability company
2 for any unpaid contribution to capital which such
3 member agreed in the articles of organization or an
4 operating agreement to make at the time and on the
5 conditions stated in the articles of organization or an
6 operating agreement.

7 (b) A member holds as trustee for the limited liability
8 company:

9 (1) Specific property which is stated in the articles of
10 organization as having been contributed by such
member, but which was not contributed or which has been wrongfully or erroneously returned; and

(2) Money or other property wrongfully paid or conveyed to such member on account of his or its contribution.

(c) The liabilities of a member as set out in this section can be waived or compromised only by the consent of all members, but a waiver or compromise shall not affect the right of a creditor of the limited liability company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the articles of organization to enforce the liabilities.

(d) When a contributor has rightfully received the return, in whole or in part, of his or its capital contribution, such contributor is nevertheless liable to the limited liability company for any sum, not in excess of the returned capital, necessary to discharge its liability to all creditors of the limited liability company who expended credit or whose claims arose before the return.

§31-1A-33. Liability of members and managers.

The members of a limited liability company shall have the same rights and liabilities as shareholders of corporations organized or registered under article one of this chapter, and such managers shall have the same rights and liabilities as directors of corporations so organized or registered.

§31-1A-34. Interest in company; transferability of interest.

(a) The interest of a member in a limited liability company constitutes personal property.

(b) Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable, in whole or in part. An assignment of an interest in a limited liability company does not of itself dissolve the limited liability company. An assignment does not entitle the assignee to participate in the management
and affairs of the limited liability company or to become
or to exercise any rights of a member. Such an
assignment entitles the assignee to receive, to the extent
assigned, only any share of profits and losses and
distributions to which the assignor would be entitled.
Except as provided in the articles of organization or an
operating agreement, a member ceases to be a member
upon assignment of his or its entire membership
interest.

(c) (1) An assignee of an interest in a limited liability
company may become a member only if the other
members unanimously consent.

(2) An assignee who has become a member has, to the
extent assigned, the rights and powers, and is subject
to the restrictions and liabilities, of a member under the
articles of organization or any operating agreement and
this article. An assignee who becomes a member also is
liable for any obligations of his or its assignor to make
and return contributions as provided in this article.
However, an assignee who becomes a member is not
obligated for liabilities of the assignor unknown to him
at the time he or it became a member.

(3) If an assignee of an interest in a limited liability
company becomes a member, the assignor is not
released from any liability to the limited liability
company under sections twenty-three and thirty of this
article.

§31-1A-35. Dissolution.

A limited liability company organized under this
article shall be dissolved upon the occurrence of any of
the following events:

(1) When the period fixed for the duration of the
limited liability company shall expire;

(2) By the unanimous written agreement of all
members;

(3) Upon the death, retirement, resignation, expulsion,
bankruptcy or dissolution of a member or occurrence of
any other event which terminates the continued mem-
bership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of all the remaining members under a right to do so stated in the articles of organization of the limited liability company; or

(4) The entry of a decree of judicial dissolution pursuant to section thirty-six of this article.

§31-1A-36. Judicial dissolution.

On application by or for a member, the circuit court of the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

§31-1A-37. Winding up.

Unless otherwise provided in the articles of organization or an operating agreement, the members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs: Provided, That the circuit court of the county in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, his legal representative or assignee.

§31-1A-38. Distribution of assets upon dissolution.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed as follows:

(1) To secured creditors to the extent of their security, including members who are secured creditors for reasons other than unpaid distributions;

(2) To general unsecured creditors, including members who are creditors for reasons other than unpaid distributions, to the extent permitted by law, in satisfaction of liabilities of the limited liability company;

(3) To members who are creditors as a result of an unpaid distribution: Provided, That if such distribution
was made within one year of the dissolution then the
member will be at parity with other general unsecured
creditors; and

(4) Unless otherwise provided in the articles of
organization or an operating agreement, to members
first for the return of their contributions and second
with respect to their interests in the limited liability
company, in the proportions in which the members
share in distributions.


(a) Upon the completion of winding up of the limited
liability company, a certificate of cancellation shall be
filed with the secretary of state. The winding up of a
limited liability company shall be completed when all
debts, liabilities, and obligations of the limited liability
company have been paid and discharged or reasonably
adequate provision therefor has been made and all of the
remaining property and assets of the limited liability
company have been distributed to the members. A
certificate of cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of filing of the articles of organization
and each amendment thereto;

(3) The reason for filing the certificate of cancellation;

(4) The effective date (which shall be a date certain)
of cancellation, provided that any effective date other
than the date of filing the certificate of cancellation
must be a date subsequent to the filing; and

(5) Any other information the members determine to
include therein.

(b) Unless otherwise provided in this article or in the
certificate, a certificate of cancellation (or judicial
dissolution) is effective when accepted for filing by the
secretary of state.

§31-1A-40. Filing of certificate of cancellation; recorda-
tion; issuance of certificate of dissolution.

(a) Duplicate originals of such certificate of cancella-
tion shall be delivered to the secretary of state. If the
secretary of state finds that such certificate of cancel-
lation conforms to law, he shall, when all fees and
license taxes have been paid as prescribed by law:

(1) Endorse on each of such duplicate originals the
word "Filed" and the month, day and year of the filing
thereof;

(2) File one of the duplicate originals in his office; and

(3) Issue a certificate of dissolution to which he shall
affix the other duplicate original.

(b) The certificate of dissolution, together with the
duplicate original of the certificate of cancellation
affixed thereto by the secretary of state, shall be
returned to the representative of the dissolved limited
liability company. Upon the issuance of such certificate
of dissolution the existence of the company shall cease,
except for the purpose of suits, other proceedings and
appropriate action as provided in this article. The
manager or managers in office at the time of dissolution,
or the survivors of them or, if none, the members, shall
thereafter be trustees for the members and creditors of
the dissolved limited liability company and as such shall
have authority to distribute any company property
discovered after dissolution, convey real estate and take
such other action as may be necessary on behalf of and
in the name of such dissolved limited liability company.

(c) If the certificate of organization for the dissolved
limited liability company shall have been recorded in
the office of the clerk of the county commission of any
county in this state, the representative of the dissolved
limited liability company shall record the certificate of
dissolution in the office of the clerk of the county
commission in which the certificate of organization is
recorded, and upon such recordation the existence of the
corporation shall cease, except for the purpose of
actions, other proceedings and appropriate action as
provided in this article.

(d) The certificate of organization shall be cancelled
by the secretary of state upon issuance of the certificate
§31-1A-41. Procedure for merger.

Any two or more domestic limited liability companies may merge into one limited liability company pursuant to a plan of merger approved in the manner provided in this article. The plan of merger shall set forth:

(a) The names of the limited liability companies proposing to merge and the name of the limited liability company into which they propose to merge;

(b) The terms and conditions of the proposed merger;

(c) The manner and basis of converting the membership interests of each limited liability company or of any membership interests, obligations or other securities of the surviving limited liability company or of any other limited liability company or, in whole or in part, into cash or other property;

(d) A statement of any changes in the articles of organization of the surviving limited liability company to be effected by such merger; and

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

§31-1A-42. Merger; approval by members.

Except to the extent otherwise provided in the articles of organization or an operating agreement, the plan of merger shall be approved upon receiving the affirmative vote of the holders of a majority of the membership interests entitled to vote thereon of each such limited liability company, unless any class of membership interests of any such limited liability company is entitled to vote thereon as a class, in which event, as to such limited liability company, the plan of merger shall be approved upon receiving the affirmative vote of the holders of a majority of the membership interests of each class of membership interests entitled to vote thereon as a class and the total membership interests entitled to vote thereon. Any class of membership interests of any such limited liability company shall be entitled to vote as a class if the plan of merger contains
any provisions which, if contained in a proposed amendment to articles of organization, would entitle such a class of membership interests to vote as a class. After such approval by a vote of the members of each limited liability company, and at any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

§31-1A-43. Articles of merger; filing; issuance of certificate; recordation; admission in evidence.

(a) Upon approval by the members in accordance with the provisions of section forty-two of this article, articles of merger shall be executed in duplicate by each limited liability company by a member or manager, and verified by such person signing such articles.

(b) Articles of merger shall, in addition to any other matters deemed appropriate, set forth:

(1) The plan of merger;

(2) As to each limited liability company, the number of membership interests outstanding and, if the membership interests of any class are entitled to vote as a class, the designation and number of outstanding membership interests of each such class; and

(3) As to each limited liability company, the number of membership interests voted for and against such plan, respectively, and, if the membership interests of any class are entitled to vote as a class, the number of membership interests of each class voted for and against such plan, respectively.

(c) Duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as prescribed by law: (i) Endorse on each of such duplicate originals the word “Filed” and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a certificate of merger to which he shall affix the other duplicate original.
The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving limited liability company, as the case may be, or its representative.

(d) The certificate of merger or certified copy thereof shall be recorded in the office of the appropriate county clerk in the same manner as original certificates of organization are required to be recorded.

§31-1A-44. Effect of merger; conveyance of title to real estate in state to surviving limited liability company.

(a) Upon the issuance of the certificate of merger by the secretary of state, the merger shall be effected. When such a merger has been effected:

(1) The limited liability companies that are parties to the plan of merger shall be a single limited liability company, which shall be that limited liability company designated in the plan of merger as the surviving limited liability company;

(2) The separate existence of all limited liability companies that are parties to the plan of merger, except the surviving limited liability company, shall cease;

(3) Such surviving limited liability company shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a limited liability company under this article;

(4) Such surviving limited liability company shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of a public as well as a private nature of each of the merging limited liability companies; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions for membership interests, if any, and all other choses in action, and all and every other interest of or belonging to or due to each of the limited liability companies so merged, shall be taken and deemed to be transferred to and vested in such single limited liability company without further act or deed; and the title to any
real estate, or any interest therein, vested in any of such limited liability company by operation of law shall not revert or be in any way impaired by reason of such merger;

(5) The surviving limited liability company shall henceforth be responsible and liable for all the liabilities and obligations of each of the limited liability companies so merged; and any claim existing or action or proceeding pending by or against any such limited liability companies may be prosecuted as if such merger had not taken place, or such surviving limited liability company may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited liability company shall be impaired by such merger; and

(6) The articles of organization of the surviving limited liability company shall be deemed to be amended to the extent, if any, that changes in its articles of organization are stated in the plan of merger.

(b) In any merger of limited liability companies, any constituent limited liability company thereof owning or holding real estate in this state shall further evidence title thereto in the surviving limited liability company by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerk of the county commission of the respective counties in which such real estate is situate; and such deed or deeds shall recite as the consideration therefor the said merger and shall be deemed confirmatory of the title of such real estate in the surviving limited liability company.

§31-1A-45. Merger of domestic and foreign limited liability companies; effect; abandonment; confirmation of title to real estate required.

(a) One or more domestic limited liability companies and one or more foreign limited liability companies may merge into one limited liability company if such merger is permitted by the laws of the state under which each
such foreign limited liability company is organized. Any such merger shall be completed in the following manner:

(1) Each domestic limited liability company shall comply with the provisions of this article with respect to the merger of domestic limited liability companies and each foreign limited liability company shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) If the surviving limited liability company is to be governed by the laws of any state other than this state, it shall comply with the provisions of this article with respect to foreign limited liability companies if it is to conduct its affairs or do or transact business in this state, and in every case it shall file with the secretary of state of this state: (i) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic limited liability company which is a party to such merger and in any proceeding for the enforcement of the rights of a dissenting member of any such domestic limited liability company against the surviving limited liability company; (ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and (iii) an agreement that it will promptly pay to the dissenting members of any such domestic limited liability company the amount, if any, to which they shall be entitled under the provisions of this article with respect to the rights of dissenting members.

(b) The effect of such merger shall be the same as in the case of the merger of domestic limited liability companies if the surviving limited liability company is to be governed by the laws of this state. If the surviving limited liability company is to be governed by the laws of any state other than this state, the effect of such merger on any domestic limited liability company shall be the same as in the case of the merger of domestic limited liability companies, except insofar as the laws of such other state provide otherwise.
(c) At any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to the provisions therefor, if any, set forth in the plan of merger.

(d) Irrespective of whether such surviving limited liability company is to be governed by the laws of this state or by the laws of any other state, any constituent limited liability company thereof owning or holding real estate in West Virginia shall further evidence title thereto in the surviving limited liability company by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerk of the county commission of the respective counties in which such real estate is situate; and such deed or deeds shall recite as the consideration therefor the said merger and shall be deemed confirmatory of the title of such real estate in the surviving limited liability company.

§31-1A-46. Right of members to dissent.

Any member of a limited liability company shall have the right to dissent from any of the following actions:

(1) Any plan of merger to which the limited liability company is a party; or

(2) Any sale or exchange of all or substantially all of the property and assets of the limited liability company not made in the usual and regular course of its business, including a sale in dissolution. The rights of members of limited liability companies shall be similar to, and shall be governed by, the procedures set forth in sections one hundred twenty-two and one hundred twenty-three, article one of this chapter, except to the extent otherwise inconsistent with this article.

§31-1A-47. Conversion of partnerships to limited liability companies; effect of conversion.

(a) Any domestic or foreign general partnership or limited partnership may convert to a limited liability company by filing articles of organization as provided in this article, which include, in addition to any other
5 information required by this article, the name of the
6 former general partnership or limited partnership.

7 (b) The conversion of a general partnership or limited
8 partnership to a limited liability company shall cause all
9 assets of such partnership to transfer to the limited
10 liability company by operation of law without further
11 act or deed and without reversion or impairment:
12 Provided, That if such partnership owned or held title
13 to real estate in West Virginia, it shall further evidence
14 title thereto in the limited liability company by execut-
15 ing, acknowledging and recording a confirmatory deed
16 or deeds pursuant to the provisions of subsection (b),
17 section forty-four of this article.

18 (c) Nothing in this section shall be construed to
19 require, cause or be deemed to constitute a dissolution
20 of the general partnership or limited partnership prior
21 to or upon its conversion to a limited liability company
22 pursuant to this section.

§31-1A-48. Law governing foreign limited liability
companies.

1 Subject to the constitution of this state: (1) The laws
2 of the jurisdiction under which a foreign limited
3 liability company is organized govern its organization
4 and internal affairs and the liability of its members; and
5 (2) a foreign limited liability company may not be
6 denied a certificate of authority to transact business in
7 this state by reason of any difference between those laws
8 and the laws of this state.

§31-1A-49. Admission of foreign limited liability com-
pany; acts permitted to be done without
certificate of authority.

1 (a) No foreign limited liability company shall have the
2 right to conduct affairs or do or transact business in this
3 state until it shall have procured a certificate of
4 authority so to do from the secretary of state. No foreign
5 limited liability company shall be entitled to procure a
6 certificate of authority under this article to conduct
7 affairs or do or transact any business in this state which
8 would not be permitted to be conducted, done or
transacted by a limited liability company organized under this article.

(b) Without excluding other activities which may not constitute conducting affairs or doing or transacting business in this state, a foreign limited liability company shall not be considered to be conducting affairs or doing or transacting business in this state, for the purposes of this article, by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any legal action or proceeding or any administrative or arbitration proceeding, or affecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its members or managers or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Creating evidences of debt, mortgages or liens on real or personal property;

(5) Securing or collecting debts or enforcing any rights in property securing the same;

(6) Conducting its affairs or doing or transacting business in interstate commerce;

(7) Granting funds or other gifts;

(8) Distributing information to its members;

(9) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature;

(10) Maintaining offices or agencies for the transfer, exchange or registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

(11) Affecting sales through independent contractors;

(12) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders required acceptance without this state
before becoming binding contracts;

(13) The acquisition by purchase of loans secured by mortgages or deeds of trust, drawn and executed in compliance with section two, article one, chapter thirty-eight of this code on real or personal property situated in West Virginia pursuant to commitment agreements or arrangements made prior to or following the origination or creation of said loans;

(14) The ownership, modification, renewal, extension, transfer or foreclosure of such loans or the acceptance of substitute or additional obligors thereon;

(15) The maintaining or defending of any actions or suits relative to such loans, mortgages or deeds of trust;

(16) The maintenance of bank accounts in West Virginia banks in connection with the collection or servicing of such loans;

(17) The making, collection and servicing of such loans through a resident person, firm, limited liability company or corporation, or a foreign person, firm, limited liability company or corporation qualified to do business in West Virginia engaged in the business of servicing loans for investors;

(18) The taking of deeds to the mortgaged property either in lieu of foreclosure or for the purpose of transferring title either to the federal housing administration or to the veterans administration as the insurer or guarantor;

(19) The acquisition of title to property under foreclosure sale or from the owner in lieu of foreclosure;

(20) The management, rental, maintenance and sale, or the operating, maintaining, renting or otherwise dealing with, selling or disposing of property acquired under foreclosure sale or by agreement in lieu thereof;

(21) Physical inspection and appraisal of property in West Virginia as security for deeds of trust or mortgages and negotiations for the purchase of such loans;
(22) Any other transaction directly related to the activities above described: Provided, That if property acquired in or by reason of any of the activities defined in the provisions of subdivisions (18), (19) and (20) of this subsection shall be held longer than a period of five years, the provisions of this section shall thereafter be inapplicable.

§31-1A-50. Powers of foreign limited liability company.

A foreign limited liability company which shall have received a certificate of authority under this article shall enjoy the same, but no greater, rights and privileges as a domestic limited liability company organized for the purposes set forth in the application pursuant to which such certificate of authority is issued, until a certificate of revocation or of withdrawal shall have been issued as provided in this article; and except as in this article otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic limited liability company of like character.

§31-1A-51. Name of foreign limited liability company; when certificate of authority shall not be issued; change of name by foreign limited liability company.

(a) No certificate of authority shall be issued to a foreign limited liability company unless the name of such limited liability company:

(1) Satisfied the requirements of section five of this article as applicable to domestic limited liability companies;

(2) Does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes in its articles of organization; or

(3) Is not the same as, or deceptively similar to, the name of any limited liability company existing under the laws of this state or any foreign limited liability company authorized to conduct affairs or do or transact business in this state or a name reserved or registered
as permitted by the laws of this state.

(b) The provisions of subdivision (3), subsection (a) of this section shall not apply if the foreign limited liability company applying for a certificate of authority files with the secretary of state any one of the following:

(1) A resolution of its members or managers adopting a fictitious name for use in conducting affairs or doing or transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic limited liability company or of any foreign limited liability company authorized to conduct affairs or do or transact business in this state or to any name reserved or registered as provided in this article; or

(2) The written consent of such other limited liability company or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(3) A certified copy of a final order of a court of competent jurisdiction establishing the prior right of such foreign limited liability company to the use of such name in this state.

(c) Whenever a foreign limited liability company that is authorized to conduct affairs or do or transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such limited liability company shall be suspended and it shall not thereafter conduct any affairs or do or transact any business in this state until it has changed its name to a name that is available to it under the laws of this state or has otherwise complied with the provisions of this article.

§31-1A-52. Application for certificate of authority by foreign limited liability company; contents.

(a) A foreign limited liability company, in order to procure a certificate of authority to conduct affairs or do or transact business in this state, shall make
application therefor to the secretary of state, which application shall set forth:

(1) The name of the limited liability company and the state or country under the laws of which it is organized;

(2) If the name of the limited liability company does not contain the words "limited liability company", then a name for the limited liability company which it adopts and complies with the requirements of this article;

(3) The date of formation and the period of duration of the limited liability company;

(4) The address of the principal office of the limited liability company;

(5) The name and address of the person to whom shall be sent notice or process served upon, or service of which is accepted by, the secretary of state, if one has been designated;

(6) The purpose or purposes of the limited liability company which it proposes to pursue in conducting its affairs or doing or transacting business in this state; and

(7) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such limited liability company is entitled to a certificate of authority to conduct its affairs or do or transact business in this state and to determine and assess the fees payable as prescribed by law.

(b) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the limited liability company by a member or manager, and verified by one of the persons signing such application.

§31-1A-53. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

(a) Duplicate originals of the application of a foreign limited liability company for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of organization and all amendments
thereto, or a proper restatement thereof, duly certified
by the proper officer of the state or country under the
laws of which it is formed, and a statement or certificate
from such officer that the limited liability company is
in good standing with the state or country under the
laws of which it is formed. If the secretary of state finds
that such application conforms to law, he shall, when all
fees have been paid as prescribed by law: (i) Endorse
on each of such originals the word “Filed” and the
month, day and year of the filing thereof; (ii) file one
of such duplicate originals of the application and the
copy of the articles of organization and amendments
thereto; and (iii) issue a certificate of authority to
conduct affairs or to do or transact business in this state,
to which he shall affix the other duplicate original
application.

(b) The certificate of authority, together with the
duplicate original of the application affixed thereto by
the secretary of state, shall be returned to the limited
liability company or its representative.

(c) The certificate of authority, together with a copy
of the articles of organization and all amendments
thereto, or a proper restatement thereof, shall be
recorded in the office of the clerk of the county
commission of the county in which the principal office
of the limited liability company in this state is located.
If such limited liability company does not maintain a
principal office in this state, such recordation may be
completed in any county in which it is conducting its
affairs or doing or transacting business. A failure to
comply with the provisions of this subsection within six
months from the date of issuance of a certificate of
authority shall subject such limited liability company to
a fine of not more than one thousand dollars.


Upon the issuance of a certificate of authority by the
secretary of state, the limited liability company shall be
authorized to conduct its affairs or do or transact
business in this state for those purposes set forth in its
application, subject, however, to the right of this state
§31-1A-55. Appointment of person to whom notice or process may be sent by the secretary of state; change of principal office or name and address of person to receive notice or process.

(a) A foreign limited liability company may at any time appoint a person other than the limited liability company to whom notice or process served upon the secretary of state or service of which is accepted by the secretary of state may be sent, as required by section sixteen of this article, by filing with the secretary of state a statement setting forth:

(1) The name of the limited liability company and the state or country of its organization;

(2) The present address of its principal office;

(3) Express appointment of and the name and address of the person to whom notice or process shall be sent by the secretary of state under section sixteen of this article;

(4) Express authority to the secretary of state to send to such person at the address given, all notices and process served upon the secretary of state or service of which is accepted by the secretary of state; and

(5) That such appointment was duly authorized by the members or managers.

Such statement shall be signed by a member or manager, verified by the signer and delivered to the secretary of state, and upon receipt thereof shall be filed by the secretary of state in his office.

(b) A limited liability company may at any time change the address of its principal office or the name and address or the address of the person to whom shall be sent notice or process served upon, or service of which is accepted by, the secretary of state. Such change shall become effective as the name and address or address last furnished to the secretary of state for the purposes
of section sixteen of this article only when such limited
liability company has filed in the office of the secretary
of state a statement setting forth:

(1) The name of the limited liability company;
(2) The state or country under whose laws it was
organized;
(3) If the address of the principal office is changed,
then the address of the former or present principal
office and the address to which it is changed or to be
changed;
(4) If the name and address only of the person to
whom notice or process is to be sent is to be changed,
then the name and address of such person to be used
from and after the filing of the statement required by
this section; and
(5) That such change was duly authorized by the
members.

Such statement shall be signed by a member or
manager and verified by him.

§31-1A-56. Amendment to articles of organization of
foreign limited liability company; filing;
recordation; penalty for failure to record.

(a) Whenever the articles of organization of a foreign
limited liability company authorized to conduct affairs
or do or transact business in this state are amended,
such foreign limited liability company shall, within
thirty days after such amendment becomes effective, file
in the office of the secretary of state a copy of such
amendment duly authenticated by the proper officer of
the state or country under the laws of which it is
organized; but the filing thereof shall not of itself
enlarge or alter the purpose or purposes which such
limited liability company is authorized to pursue in
conducting its affairs or in doing or transacting business
in this state, nor authorize such limited liability
company to conduct affairs or do or transact business
in this state under any other name than the name set
forth in its certificate of authority.
(b) The secretary of state shall issue to such limited liability company a certificate showing the filing of such amendment and collect a fee of five dollars for such certificate. The certificate so issued by the secretary of state, together with a true copy of the amendment, shall be recorded in the office of the clerk of the county commission of the county in which its original certificate of authority was recorded, pursuant to the provisions of subsection (c), section fifty-three of this article. A failure to comply with the provisions of this subsection within six months from the date of such amendment shall subject such limited liability company to a fine of not more than one thousand dollars.

§31-1A-57. Merger of foreign limited liability company authorized to conduct affairs or do or transact business in this state; filing of articles of merger; recordation; penalty for failure to record.

(a) Whenever a foreign limited liability company authorized to conduct affairs or do or transact business in this state shall be a party to a merger permitted by the laws of the state or country under the laws of which it is organized, and such limited liability company shall be the surviving limited liability company, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such merger was effected; and it shall not be necessary for such limited liability company to procure either a new or amended certificate of authority to conduct affairs or do or transact business in this state unless the name of such limited liability company be changed thereby or unless the limited liability company desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

(b) The secretary of state shall issue to such surviving limited liability company a certificate showing the filing of a copy of the articles of merger and collect a fee of five dollars for such certificate. The certificate so issued by the secretary of state, together with a true copy of
the articles of merger, shall be recorded in the office of
the clerk of the county commission of the county in
which its original certificate of authority was recorded,
pursuant to the provisions of subsection (c), section fifty-
three of this article. A failure to comply with the
provisions of this subsection within six months from the
date of such merger shall subject such limited liability
company to a fine of not more than one thousand dollars.

§31-1A-58. Amended certificate of authority; require­
ments; recordation; penalty for failure to
record.

A foreign limited liability company authorized to
conduct its affairs or do or transact business in this state
shall procure an amended certificate of authority in the
event it changes its limited liability company name, or
desires to pursue in this state purposes other than or in
addition to those purposes set forth in its prior appli-
cation for a certificate of authority, by making applica-
tion therefor to the secretary of state.

The requirements in respect to the form and contents
of such application, the manner of its execution, the
filing of duplicate originals thereof with the secretary
of state, the issuance of an amended certificate of
authority and the effect thereof, and the recordation
requirements for such amended certificate of authority
shall be the same as in the case of an original application
for a certificate of authority. A failure to comply with
the provisions of this section within six months from the
date of such change of limited liability company name
or purposes shall subject such limited liability company
to a fine of not more than one thousand dollars.

§31-1A-59. Procedure for withdrawal of foreign limited
liability company; publication required;
application for certificate of withdrawal;
contents; filing; issuance of certificate;
recordation.

(a) A foreign limited liability company authorized to
conduct its affairs or do or transact business in this state
may withdraw from this state upon procuring from the
secretary of state a certificate of withdrawal. In order
to procure such certificate of withdrawal, such foreign
limited liability company shall publish a notice of its
intention to withdraw from the state, such notice to be
published as a Class II legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
ine of this code, and the publication area for such
publication shall be the county in which its principal
office in this state is situated, or if there be no such
office in this state, then any county in this state where
it conducts its affairs or does or transacts business.

(b) After publication of the notice required by the
provisions of subsection (a) of this section, such foreign
limited liability company shall make application to the
secretary of state for a certificate of withdrawal, which
application shall set forth:

(1) The name of the limited liability company and the
state or country under the laws of which it is organized;

(2) That the limited liability company has ceased
conducting its affairs or has ceased doing or transacting
business in this state;

(3) That the limited liability company surrenders its
authority to conduct its affairs to do or transact business
in this state;

(4) A post office address to which the secretary of
state may mail a copy of any process against the
corporation that may be served on him; and

(5) Such additional information as may be necessary
or appropriate in order to enable the secretary of state
and tax commissioner to determine and assess any
unpaid fees and taxes payable by such foreign limited
liability company as may be prescribed by law.

(c) The application for a certificate of withdrawal
shall be made on forms prescribed and furnished by the
secretary of state and shall be executed by the limited
liability company by a member or manager, and
verified by one of such persons signing the application,
or, if the limited liability company is in the hands of a
receiver or trustee, shall be executed on behalf of the
limited liability company by such receiver or trustee
and verified by him. Such application shall be accom-
panied by a copy of the notice required to be published
under the provisions of subsection (a) of this section and
the publisher's certificate of such publication.

(d) Duplicate originals of such application for a
certificate of withdrawal shall be delivered to the
secretary of state. If the secretary of state finds that
such application conforms to law, he shall, when all fees
have been paid, as prescribed by law: (i) Endorse on
each of such duplicate originals the word "Filed" and
the month, day and year of the filing thereof; (ii) file one
of such duplicate originals in his office; and (iii) issue
a certificate of withdrawal to which he shall affix the
other duplicate original.

(e) The certificate of withdrawal, together with the
duplicate original of the application for withdrawal
affixed thereto by the secretary of state, shall be
returned to the limited liability company or its repre-
sentative. The limited liability company or its representa-
tive shall record the certificate of withdrawal in the
office of the clerk of the county commission in which the
limited liability company's certificate of authority is
recorded and the clerk shall note on the margin of the
record book in which such certificate of authority is
engrossed the fact of the withdrawal of the limited
liability company.

§31-1A-60. Conditions for revocation of certificate of
authority.

(a) The certificate of authority of a foreign limited
liability company to conduct its affairs or do or transact
business in this state may be revoked by the secretary
of state upon the conditions prescribed in this section
when:

(1) The limited liability company has failed to file in
the office of the secretary of state any amendment to its
articles of organization as required by the provisions of
section fifty-six of this article; or

(2) The limited liability company has failed to file in
the office of the secretary of state any articles of merger
as required by the provisions of section fifty-seven of this article; or

(3) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such limited liability company pursuant to the provisions of this article.

(b) No certificate of authority of a foreign limited liability company shall be revoked by the secretary of state unless:

(1) He shall have given the limited liability company not less than sixty days' notice thereof by registered or certified mail, return receipt requested, addressed to its principal office; and

(2) The limited liability company shall fail, prior to revocation, to file any amendment to its articles of organization or shall fail to file any articles of merger or shall fail to correct any such misrepresentation.

§31-1A-61. Application to limited liability company heretofore authorized to conduct its affairs or do or transact business in this state.

Subject to the limitations set forth in their respective certificates of authority, foreign limited liability companies that are duly authorized to conduct their affairs or do or transact business in this state at the time this article takes effect for a purpose or purposes for which a limited liability company might secure such authority under this article, shall be entitled to all the rights and privileges applicable to foreign limited liability companies procuring certificates of authority to conduct their affairs or do or transact business in this state under this article, and shall not be required to make reapplication for authority to conduct their affairs or do or transact business in this state by reason of the adoption of this article. From the time this article takes effect each such limited liability company shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign limited liability companies procuring certificates of authority to conduct
§31-1A-62. Conducting affairs or doing or transacting business without certificate of authority.

1 No foreign limited liability company which is conducting its affairs or doing or transacting business in this state without a certificate of authority shall be permitted to maintain any action or proceeding in any court of this state until such limited liability company shall have obtained a certificate of authority. Nor shall any action or proceeding be maintained in any court of this state by any successor or assignee of such limited liability company on any right, claim or demand arising out of the conducting of affairs or the doing or transacting of business by such limited liability company in this state until a certificate of authority shall have been obtained by such limited liability company or by a limited liability company which has acquired all or substantially all of its assets.

The failure of a foreign limited liability company to obtain a certificate of authority to conduct its affairs or do or transact business in this state shall not impair the validity of any contract or act of such limited liability company, and shall not prevent such limited liability company from defending any action or proceeding in any court of this state.

A foreign limited liability company that conducts its affairs or does or transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs or did or transacted business in this state without a certificate of authority, in an amount equal to all fees and taxes that would have been imposed by this article, or by any other provisions of this code, upon such limited liability company had it duly applied for and received a certificate of authority to conduct its affairs or do or transact business in this state as required by this article and thereafter filed all reports, statements or returns required by this article or by any other provisions of this code, plus all penalties imposed for failure to pay any such fees and taxes.
§31-1A-63. Requirement for registered agent and certain reports.

1 A foreign limited liability company authorized to transact business in this state shall:
2
3 (1) Appointment and continuously maintain a registered agent in the same manner as provided in this article for domestic limited liability companies;
4
5 (2) File a report upon any change in the name or business address of its registered agent in the same manner as provided in this article for domestic limited liability companies; and
6
7 (3) File limited liability company reports as provided in this article for domestic limited liability companies.

§31-1A-64. Parties to actions.

1 A member or manager of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's or manager's right against, or liability to, the limited liability company.

§31-1A-65. Title to limited liability company property.

1 Any estate or interest in property may be acquired in the name of the limited liability company and title to any estate or interest so acquired shall vest in the limited liability company.

§31-1A-66. Waiver of notice.

1 When, under the provisions of this article or under the provisions of the articles of organization or operating agreement of a limited liability company, notice is required to be given to a member or to a manager of a limited liability company having a manager or managers, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

§31-1A-67. Applicability of provisions to foreign and interstate commerce.
1 The provisions of this article shall apply to commerce
2 with foreign nations and among the several states only
3 as permitted by law.

§31-1A-68. Definition of “person” to indicate limited
liability company.
1 For purposes of this code, whenever the term “person”
2 is defined to include both corporations and general or
3 limited partnerships, it shall include limited liability
companies.

§31-1A-69. Conflicting laws; existing rights and
liabilities.
1 This article takes precedence in the event of a conflict
2 with the provisions of article one of this chapter or other
3 laws. This article does not affect a right accrued or
4 established or any liability or penalty incurred, prior to
5 its effective date.

CHAPTER 42
(S. B. 431—By Senator Wooton)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ninety, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article eight, chapter forty-seven of said code, relating to corporations; removing the provision concerning shareholders’ preemptive rights in conflict with other provisions; and limiting the use of certain terms in corporation trade names.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations and limited partnerships not to conduct business under assumed name without filing certificate of true name; filing, recordation and indexing of certificates filed; issuance of certificate of true name.

(a) No corporation, limited partnership or association required to register with the secretary of state in order to conduct business within the state may conduct or transact any business in this state under any assumed name, or under any designation, name or style, corporate or otherwise, other than the name established by the certificate of incorporation, authority, association or limited partnership, unless the corporation, limited partnership or association files in the office of the secretary of state a certificate of registration of true name setting forth the name or names under which such business is, or is to be, conducted or transacted, with the address of the principal office within the state or, if no office is maintained within the state, the address of the principal office in the state in which the corporation, association or limited partnership is established. A new certificate of registration is to be filed if the corporation, limited partnership or association desires to conduct or transact any business in this state under any other assumed name not on file in the office of the secretary of state.

(b) Two executed originals of the application for true name registration shall be delivered to the secretary of state. If the filing officer finds that the application for true name registration conforms to law, he or she shall, when all fees have been paid as prescribed by law: (i) Endorse on each of the originals the word "filed" and the month, day and year of the filing; (ii) file one of the
29 original; and (iii) issue to the applicant the certificate
30 of registration of true name with the other original
31 attached.
32
33 (c) Upon discontinuing the use of a name other than
34 the name established by the certificate of incorporation,
35 authority, association or limited partnership, the
36 certificate of registration of true name shall be with-
37 drawn by filing a certificate of withdrawal with the
38 office of the secretary of state setting forth the name to
39 be discontinued, the real name, the address of the party
40 transacting business and the date upon which the
41 original certificate of registration of true name was
42 filed.
43
44 (d) Any corporation authorized to transact business in
45 this state shall procure an amended certificate of
46 incorporation in the event it changes its corporate name
47 by filing articles of amendment with the office of the
48 secretary of state as provided in article one, chapter
49 thirty-one of this code.
50
51 (e) A domestic corporation, limited partnership or
52 association having its principal office within the state
53 shall file a certified copy of any certificate of true name
54 with the clerk of the county commission of the county
55 in which the principal office is located. A foreign
56 corporation, limited partnership or association having
57 its principal office outside the state shall file a certified
58 copy of any such certificate with the clerk of the county
59 commission of a county in which its principal business
60 is transacted.
61
62 (f) The secretary of state shall keep an alphabetical
63 index of all persons filing certificates provided for in
64 this section.
65
66 (g) Any corporation registering a true name pursuant
67 to the provisions of this section is subject to the
68 limitations set forth in subsection (c), section eleven,
69 article one, chapter thirty-one of this code regarding use
70 of the words "engineer", "engineers", "engineering", or
71 any combination thereof.
AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one; and to amend article twenty, chapter thirty-one of said code by adding thereto a new section, designated section twenty-seven, relating to displaced correctional employees and other facilities; county and state correctional officers; priority for employment upon closure of facilities; requirements for eligibility for transfer; specifying employment conditions, promulgation of rules; and establishment of hiring list for certain facilities.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  25. Division of Corrections.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.


1 (a) Notwithstanding any provisions of this code to the contrary, any person not a temporary or probationary employee employed at the West Virginia penitentiary at Moundsville at the time of its closing shall be afforded the opportunity to transfer duty stations to the West
Virginia penitentiary at Mount Olive, the West Virginia medium security prison at Huttonsville or the northern regional jail and correctional complex at Moundsville if he or she is an employee in good standing at the time the facility is closed. Any person so transferred shall retain his or her rank or classified service classification, salary and benefits. The commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code, to effectuate notice and procedures for said transfers: Provided, That the commissioner shall have the authority to, upon consideration of an employee's age and length of service, direct an employee's transfer to one of the three facilities based on staff requirements.

(b) The commissioner shall, within thirty days of the closing of the West Virginia penitentiary at Moundsville, establish and maintain, for a period of two years, a list of all correctional officers who are eligible for transfer pursuant to subsection (a) of this section and who wish to remain eligible for a two-year period for transfer to the Mount Olive correctional complex, or the Huttonsville correctional center or the northern jail and correctional complex at Moundsville. The commissioner shall give priority to any person on the list for employment in an available position equivalent to the position that person held at the penitentiary unless the commissioner determines that that person is physically or mentally unfit for the employment: Provided, That the commissioner has the authority to transfer a correctional officer to any of the three facilities based upon his or her determination of staff requirements.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-27. Correctional officers; regional jails; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the authority, when employing correctional officers to complete the approved staffing plan of a regional jail completed after the effective date of this section, shall employ any correctional officer applying
for a position as a correctional officer at a regional jail who was employed in good standing at a county jail facility in the region at the time of its closing or at a prison facility operated by the division of corrections: Provided, That the regional jail is located within the same region as the prison facility that was closed due to relocation of the prison facility to a site outside the region. Only those correctional officers, who are employees in good standing at the time the prison facility is closed, are eligible for transfer under the provisions of this subsection. Correctional officers, employed under the provisions of this subsection, shall be employed at a salary and with benefits consistent with the approved plan of compensation of the division of personnel, created under section five, article six, chapter twenty-nine of this code. All correctional officers employed under this subsection shall also be covered by the policies and procedures of the education and state employees grievance board, created under section five, article six-a, chapter twenty-nine of this code and the classified-exempt service protection policies of the division of personnel.

(b) The authority shall, when employing correctional officers to fill positions within the approved staffing plan of any regional jail, employ any correctional officer applying for a position as a correctional officer at a regional jail who was previously employed as a correctional officer in good standing at any local jail facility: Provided, That the local jail facility is located within the same region as the regional jail at the time of the local jail facility's closing or reduction in size and was reduced in size or closed prior to or due to the completion of the regional jail within the region. Correctional officers, employed under the provisions of this subsection, shall be employed at a salary and with benefits consistent with the approved plan of compensation of the division of personnel, created under section five, article six, chapter twenty-nine of this code. Only those county correctional officers who are employees in good standing at the time the local jail facility is closed are eligible for transfer under the provisions of this subsection. All correctional officers employed under this
subsubsection shall also be covered by the policies and
procedures of the education and state employees
grievance board created under section five, article six-
a, chapter twenty-nine of this code and the classified-
exempt service protection of the division of personnel.

CHAPTER 44
(Com. Sub. for H. B. 4188—By Delegates Vest and Manuel)

[Passed March 7, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article twelve-
a, relating to authorizing the formation of maintenance
associations outside of incorporated areas; authorizing
maintenance associations outside of incorporated areas
to assess and collect fees.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article twelve-a, to
read as follows:

ARTICLE 12A. MAINTENANCE ASSOCIATIONS.

§7-12A-1. Definitions.
§7-12A-2. Purpose of the maintenance association.
§7-12A-3. Petition to establish maintenance association.
§7-12A-4. Contents of maintenance association document; approval of
recording of maintenance association documents.
§7-12A-6. Assessment and collection of fees; notice.

§7-12A-1. Definitions.

In this article, unless a different meaning plainly is
required:

(1) "Maintenance association" means an association
established pursuant to the requirements of this article.

(2) "Maintenance association member" means any
person, owning residential property that fronts on either side of a road which is designated by a maintenance association document.

(3) "Maintenance association documents" means documents approved by the county commission as meeting the requirements of this article and filed with the clerk of the county commission.

§7-12A-2. Purpose of the maintenance association.

Maintenance associations may be established in any county outside an incorporated area to protect the health, safety and welfare of persons and the general public located within the designated maintenance association area. The maintenance association shall be created with the objective of establishing and maintaining improvements for the area designated in the petition, which may include constructing and maintaining shared streets, drainage facilities, sidewalks, water and sewer systems, signs and other improvements necessary for the protection of health, safety and welfare of the general public.

§7-12A-3. Petition to establish maintenance association.

(a) A petition in writing may be made to the county commission, that duly verifies that persons owning sixty percent of the frontage of the lots on both sides of any orphan road or subdivision road in any unincorporated area request the approval of the formation of a maintenance association. The petition shall be accompanied by the proposed maintenance association’s recordable documents that establish the association.

(b) Upon the filing of such petition and the proposed maintenance association documents, the county commission shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the public road, orphan road or subdivision road of the area affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such
publication shall be the county in which the maintenance association shall be located. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

(c) At the time and place set for hearing protests, the county commission may examine witnesses and consider other evidence to show that:

(1) Said petition was filed in good faith;
(2) The signatures on the petition are genuine;
(3) The maintenance association document addresses the maintenance association purpose; and
(4) The proposed maintenance association will result in special benefits to all owners of residential property abutting on said orphan road or subdivision road.

The commission shall within ten days thereafter enter a formal order stating its decision.

(d) Any owner of residential property abutting upon said orphan road or subdivision road aggrieved by such order shall have the right to review the order on the record made before the county commission by filing a petition with the clerk of the circuit court within ten days after the entry of such order. The owner shall give bond in an amount to be fixed by the circuit court sufficient to pay costs or expenses incurred by the court and the maintenance association upon appeal if the order of the county commission is affirmed. The circuit court shall proceed to review the matter as in other appeals from the county commission.

§7-12A-4. Contents of maintenance association document; approval of recording of maintenance association documents.

(a) The maintenance association document shall include language for:

(1) Conduct of business;
(2) Fee structure;
(3) Enforcement; and
6 (4) Voting requirements: Provided, That each affected property owner shall be accorded one vote per property.

9 (b) After a maintenance association has been approved by the county commission, a certified copy of the approved maintenance association documents shall be filed with the clerk of the county commission.


1 A maintenance association formed pursuant to this article may have power and authority to:

2 (a) Assess fees for essential services, and

4 (b) Institute suits for the collection of such fees, attorneys fees and court costs.

§7-12A-6. Assessment and collection of fees; notice.

1 (a) A maintenance association which furnishes essential services, including, but not limited to, construction and maintenance of shared streets, drainage facilities, sidewalks, water and sewer systems, signs and other improvements necessary for the health, safety and welfare of the general public, may have authority to impose reasonable fees and charges on persons owning lots abutting the frontage of both sides of roads listed in the maintenance association document.

10 (b) Any new fee or fee increase assessed under this section shall not be collectable unless notice of the proposed fee or increase is sent by certified mail to each person owning property listed in the maintenance association document. If thirty percent of the members, by signed petition, protest the assessment to the association within fifteen days of the mailing, the fee shall not become effective until it is ratified by sixty percent of the members.

19 (c) All fees assessed under this section are declared to be debts owing to the maintenance association for which the debtor shall be personally liable. The maintenance association, or an individual designated to act for it, may enforce this liability by appropriate civil action in a court of competent jurisdiction. After being
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25 reduced to judgment and filed with the clerk of the
26 county commission, such liability shall be a lien on
27 property owned by the maintenance association member
28 and designated in the maintenance association docu-
29 ment.

CHAPTER 45
(Com. Sub. for H. B. 2911—By Delegates Huffman and Rowe)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections nine, ten, eleven and twelve, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article three, chapter fifty-six of said code; and to amend and reenact section thirty-one, article one, chapter fifty-nine of said code, relating to the administration of courts generally; removing obsolete statutory language relating to the appointment of special judges; eliminating circuit court bookkeeping requirements regarding service of process documentation, and eliminating certain required reports.

Be it enacted by the Legislature of West Virginia:

That sections nine, ten, eleven and twelve, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six, article three, chapter fifty-six of said code be amended and reenacted; and that section thirty-one, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

56. Pleading and Practice.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.
§56-3-6. Delivery of process.

1 The clerk of every court from whose office may be
2 issued any process, original, mesne or final, or any order
3 or decree to be served on any person, shall, unless the
4 party interested, or his attorney, direct otherwise,
5 deliver the same to the sheriff or other proper officer
6 of the county for which the court is held, if it is to be
7 executed therein, and if it is to be executed in any other
8 county, shall enclose the same in an envelope properly
9 addressed to the sheriff or other proper officer thereof,
10 pay the postage thereon and mail it in the post office.
11 Documentation of service of process will be according
12 to rules promulgated by the supreme court of appeals.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-31. Monthly payments; how credited; report required.

1 Except for the funds designated in section twenty-
2 eight-a of this article, each of the officers named in
3 section twenty-nine of this article shall at the end of each
4 month pay into the county treasury all fees, costs,
5 percentages, penalties, commissions, compensation,
6 income and all other perquisites of whatever kind
7 collected by his office during such month, which money
8 shall be credited to the general county fund.

CHAPTER 46
(H. B. 4651—By Delegates Rutledge and Williams)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of dividends by credit unions.

Be it enacted by the Legislature of West Virginia:
That section twenty-one, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. CREDIT UNIONS.

§31-10-21. When and how dividends paid.

1 At such intervals and for such periods not to exceed one year as the board of directors may authorize, and
2 after provision for the required reserves, the board of
directors of a credit union may declare dividends to be paid from the net earnings on all fully paid shares outstanding at the close of the period for which the dividend is declared. The board of directors of the credit union, upon written request to and approval of the commissioner, may declare dividends to be paid from the retained earnings of prior years. The commissioner, upon receipt of a request, shall review the condition of the credit union and if, in the opinion of the commissioner, the condition of the credit union warrants, he or she shall approve the request within twenty-one days from the receipt of such request and provide written notification of his or her decision to the directors of the credit union requesting to declare the dividend. Shares which become fully paid during such period shall be entitled to a proportional part of such dividends calculated from the first day of the month following such payment in full.

CHAPTER 47
(H. B. 4711—By Delegates Roop and Ashley)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]
defining terms; increasing fees which are added to court costs; creation of crime victims compensation fund; payment of moneys into and out of the fund; services to be provided by the office of the attorney general; grounds for denial of claims and reductions of awards; eliminating awards for noneconomic loss; and providing a retroactive effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.


As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim: Provided, That the term victim does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim; and
17 (4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor.

23 (b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

28 (1) The offender, except any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

34 (2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;

37 (3) Social security, medicare and medicaid;

40 (4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

45 (5) Workers’ compensation;

48 (6) Wage continuation programs of any employer;

51 (7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

56 (8) A contract providing prepaid hospital and other health care services or benefits for disability; and

59 (9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

59 (c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state or in any state not having a victim compensation program which by its
nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(f) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.
Allowable expense includes a total charge not in excess of three thousand dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) “Work loss” means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her, or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

(h) “Replacement services loss” means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.

(i) “Dependent’s economic loss” means loss after a victim’s death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death.

(j) “Dependent’s replacement service loss” means loss reasonably incurred or to be incurred by dependents after a victim’s death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death and not subtracted in calculating dependent’s economic loss.
“(k) "Victim" means a person who suffers personal injury or death as a result of any one of the following:

(1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) “Contributory misconduct” means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct has causal relationship to the criminally injurious conduct that is the basis of the claim and shall also include the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance when the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.


(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a traffic offense that is not a moving violation, in any magistrate court or circuit court, shall pay the sum of ten dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of eight dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c, shall pay a fee in the
amount of twenty percent of any fine imposed under said section two. This shall be in addition to any other court cost required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court wherein the additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the “Crime Victims Compensation Fund,” which is hereby created. All moneys heretofore collected and received under the prior enactment or reenactments of this article and deposited or to be deposited in the “Crime Victims Reparation Fund” are hereby transferred to the crime victims compensation fund, and the treasurer shall deposit the moneys in the state treasury. All moneys collected and received under this article and paid into the state treasury and credited to the crime victims compensation fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(c) Moneys in the crime victims compensation fund shall be available for the payment of the costs of administration of this article in accordance with the budget of the court approved therefor: Provided, That the services of the office of the attorney general, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner 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 or she is seeking an award of compensation.

(b) The judge or commissioner shall not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner 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 or her accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.

(e) A judge or commissioner shall not approve an award of compensation 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 the approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a
collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim shall not exceed twenty thousand dollars in the aggregate. Compensation payable to all claimants because of the death of the victim shall not exceed thirty thousand dollars in the aggregate.

(h) If an award of compensation of five thousand dollars or more is made to a minor, a guardian shall be appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the minor's estate.


Amendments made to the provisions of this article during the regular session of the Legislature in the year one thousand nine hundred ninety-two are retroactive in effect to the extent that the amended provisions apply to all cases wherein the criminally injurious conduct occurred after the thirty-first day of December, one thousand nine hundred ninety-one.
death for which he or she is seeking an award of compensation.

(b) The judge or commissioner shall not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner 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 or her accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.

(e) A judge or commissioner shall not approve an award of compensation 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 the approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a
collateral source, the amount of the award or the denial
of the claim shall be conditioned upon the claimant's
economic loss being recouped by the collateral source:
Provided, That if it is thereafter determined that the
claimant will not receive all or part of the expected
recoupment, the claim shall be reopened and an award
shall be approved in an amount equal to the amount of
expected recoupment that it is determined the claimant
will not receive from the collateral source, subject to the
limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable
to a victim and to all other claimants sustaining
economic loss because of injury to that victim shall not
exceed twenty thousand dollars in the aggregate.
Compensation payable to all claimants because of the
death of the victim shall not exceed thirty thousand
dollars in the aggregate.

(h) If an award of compensation of five thousand
dollars or more is made to a minor, a guardian shall be
appointed pursuant to the provisions of article ten,
chapter forty-four of this code to manage the minor's
estate.

Amendments made to the provisions of this article
during the regular session of the Legislature in the year
one thousand nine hundred ninety-two are retroactive in
effect to the extent that the amended provisions apply
to all cases wherein the criminally injurious conduct
occurred after the thirty-first day of December, one
thousand nine hundred ninety-one.

CHAPTER 48
(H. B. 4011—By Delegate Pettit)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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 twenty-seven, relating to crimes against the person; and requiring reporting of gunshot and other wounds by medical providers; and immunity solely for reporting.

Be it enacted by the Legislature of West Virginia:

That article two, 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 twenty-seven, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-27. Required reporting of gunshot and other wounds.

1 (a) Any medical provider who provides medical treatment to a person suffering from a wound caused by a gunshot or a knife or other sharp or pointed instrument, under circumstances which would lead a reasonable person to believe resulted from a violation of the criminal laws of this state, shall report the same to a law-enforcement agency located within the county within which such wound is treated. The report shall be made initially by telephone and shall be followed by a written report delivered to such agency within forty-eight hours following the initial report: Provided, That where two or more persons participate in the medical treatment of such wound, the obligation to report imposed by this section shall apply only to the attending physician or, if none, to the person primarily responsible for providing the medical treatment.

(b) Any medical provider person who in good faith reports a wound described in subsection (a) of this section shall be immune from any civil liability which may otherwise result solely from reporting the same.
AN ACT to amend and reenact section thirty-nine-e, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to worthless checks; and increasing the allowable service charge for a dishonored check.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-e, 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.

§61-3-39e. Notice of dishonor by payee; service charge.

1 The payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may send notice thereof to the drawer of the check, draft or order. The payee or holder of any such dishonored check may impose a service charge not to exceed fifteen dollars. No service charge shall be imposed or collected after a complaint for warrant has been delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit shall incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of such notice shall be substantially as follows:

"You are hereby notified that a check, number ____________, issued by you on (date of check), drawn upon (name of bank), and payable to ____________ has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of such check plus a fifteen dollar service charge to the undersigned at ____________. You are further
notified that in the event the above amount is timely
paid in full you will not be subject to legal proceedings,
civil or criminal.

Dated ________________, 19__

(Signed)."

The provisions of this section shall not authorize the
making of any other written or oral threats of prosecu-
tion to enforce or enhance the collection or honoring of
said dishonored check, draft or order.

The holder or payee of any such check, draft or note
shall relinquish the check, draft or order to the maker
upon tender of the full amount due at any time before
a complaint for warrant has been presented to magis-
trate court. In the event complaint for warrant has been
presented to magistrate court, payment may be made
only through such court and any holder or payee
unlawfully accepting payment after such time shall be
liable for all costs which may be imposed by magistrate
court in the matter, including all costs which may have
accrued by the time the magistrate court is notified of
such payment.

CHAPTER 50
(H. B. 4036—By Delegates Roop and Gallagher)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ten, article eight-b, chapter sixty-
one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend article
eight, chapter sixty-one of said code by adding thereto
a new section, designated section nine, relating to
indecent exposure; and penalty.

Be it enacted by the Legislature of West Virginia:

That section ten, article eight-b, chapter sixty-one of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be repealed; and that article eight, chapter sixty-one of said code be amended by adding thereto a new section, designated section nine, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.


(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than two hundred fifty dollars and confined in the county jail not more than ninety days.

CHAPTER 51

(Com. Sub. for H. B. 2538—By Delegate Gallagher)

[Passed March 5, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to criminal penalties for child abuse and child neglect causing injury.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article eight-d, 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 8D. CHILD ABUSE.

(a) If any parent, guardian or custodian shall abuse a child and by such abuse cause such child bodily injury as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars or imprisoned in the penitentiary not less than one nor more than five years, or in the discretion of the court, be confined in the county jail for not more than one year, or both such fine and imprisonment.

(b) If any parent, guardian or custodian shall abuse a child and by such abuse cause said child serious bodily injury as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars or imprisoned in the penitentiary not less than two nor more than ten years, or both such fine and imprisonment.


(a) If any parent, guardian or custodian shall neglect a child and by such neglect cause said child bodily injury, as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars or imprisoned in the penitentiary not less than one nor more than three years, or in the discretion of the court, be confined in the county jail for not more than one year, or both such fine and confinement or imprisonment.

(b) If any parent, guardian or custodian shall neglect a child and by such neglect cause said child serious bodily injury, as such term is defined in section one,
article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony, and upon conviction thereof, shall be fined not less than three hundred nor more than three thousand dollars or imprisoned in the penitentiary not less than one nor more than ten years, or both such fine and imprisonment.

(c) The provisions of this section shall not apply if the neglect by the parent, guardian or custodian is due primarily to a lack of financial means on the part of such parent, guardian or custodian.

(d) The provisions of this section shall not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which such parent, guardian or custodian is an adherent or member.

CHAPTER 52
(Com. Sub. for H. B. 4389—By Delegates Brown and Rowe)
[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections thirteen and fifteen, article two, chapter forty-eight of said code; to amend and reenact sections one, two, three, three-a, four, five, six, seven, nine, ten and eleven, article two-a of said chapter forty-eight; to further amend said article two-a by adding thereto two new sections, designated sections twelve and thirteen; to amend article two-c of said chapter by adding thereto a new section, designated section fifteen; to amend and reenact section one, article four, chapter forty-eight-a of said code; to amend and
reenact section three, article one, chapter forty-nine of said code; to amend and reenact section sixteen, article two, chapter forty-nine of said code; to amend and reenact sections one, two, three, five and eight, article six of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections two, five and nine, article six-a of said chapter forty-nine; to amend article seven of said chapter by adding thereto a new section, designated section twenty-nine; to amend article ten, chapter fifty-six of said code by adding thereto a new section, designated section eight; to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section nine-a; to amend and reenact section thirteen, article eight of said chapter; to amend article eight-b of said chapter by adding thereto a new section, designated section eleven-a; to amend article eight-d of said chapter by adding thereto a new section, designated section nine; to amend article eleven-a of said chapter sixty-one by adding thereto a new section, designated section eight; to amend and reenact sections seventeen-a and seventeen-c, article one-c, chapter sixty-two of said code; to amend and reenact section one, article eleven-a of said chapter; and to amend and reenact sections nine and seventeen, article twelve of said chapter, relating to the Family Protection Act of 1992; family violence training of peace officers approved by the West Virginia sheriffs' bureau; temporary relief during pendency of action for divorce, annulment or separate maintenance; relief upon ordering divorce or annulment or granting decree of separate maintenance; generally relating to the prevention of family violence, findings and purposes; definitions; jurisdiction, venue, effect of complaining party leaving residence, priority of petitions filed, who may file, and full faith and credit; divorce actions; commencement of proceedings, forms, counterclaims, accompanying persons, counties in which action may be brought, filing pleadings from other counties; temporary orders of court, hearings, persons present; protective orders; contempt; law-enforcement response to family violence; enforcement procedure for temporary and final protective orders; criminal penal-
ties; arrest powers of law-enforcement officers responding to family violence; appeals; registration of order; confidentiality; judicial education on family violence; proceedings before a master; definitions relating to abuse and neglect; right to counsel, continuing legal education for attorneys, hearings, temporary custody; disposition of neglected or abused children; notice for placement changes, repeated placement reports to the courts; conviction for offenses against children; persons mandated to report suspected abuse and neglect; reporting procedures; directing child protective services to investigate allegations of child abuse arising in child custody cases; priority of cases involving placement of children; expanding crimes against the person to include stalking; directing courts to make findings regarding abuse when the custodial parent is convicted of incest; conviction for offenses against children; victim notification of defendant's release; bail in situations of alleged child abuse; and prohibiting persons convicted of sexual abuse from residing with the child.

_Be it enacted by the Legislature of West Virginia:_

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

Chapter
  15. Public Safety.
  48. Domestic Relations.
  48A. Enforcement of Family Obligations.
  56. Pleading and Practice.
  61. Crimes and Their Punishment.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 8. WEST VIRGINIA SHERIFFS' BUREAU.

§15-8-4. Training of peace officers approved by the bureau.

1 The bureau may contract or agree with any state
2 university or college in West Virginia or any other
3 organization for such university, college or other
4 organization to provide training for peace officers,
5 which training shall embrace police techniques in
6 detecting crime, apprehending criminals, securing and
7 preserving evidence and responding to calls involving
8 family violence. All law-enforcement officers selected by
9 the various law-enforcement agencies, if their selection
10 is approved by the bureau, shall receive such training
free with the exception of actual cost of housing and meals.

The county commissions are authorized to pay the necessary travel and living expenses of sheriffs and deputies of their respective counties while receiving training.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

(a) At the time of the filing of the complaint or at any time after the commencement of an action for divorce, annulment or separate maintenance under the provisions of this article, and upon motion for temporary relief, notice of hearing and hearing, the court may order all or any portion of the following temporary relief, which order shall govern the marital rights and obligations of the parties during the pendency of the action:

(1) The court may require either party to pay temporary alimony in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party.

(2) The court may provide for the custody of minor children of the parties subject to such rights of visitation, both in and out of the residence of the custodial parent or other person or persons having custody, as may be appropriate under the circumstances.
(3) The court may require either party to pay temporary child support in the form of periodic installments for the maintenance of the minor children of the parties.

(4) The court may compel either party to pay attorney's fees and court costs reasonably necessary to enable the other party to prosecute or defend the action in the trial court. The question of whether or not a party is entitled to temporary alimony shall not be decisive of that party's right to a reasonable allowance of attorney's fees and court costs. An order for temporary relief awarding attorney fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of such fees and costs was previously ordered. If an appeal be taken or an intention to appeal be stated, the court may further order either party to pay attorney fees and costs on appeal.

(5) As an incident to requiring the payment of temporary alimony or temporary 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. If there is no such existing policy or policies, the court shall order that such health care insurance coverage be paid for by the noncustodial parent, if the court determines that such health care 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 temporary alimony or temporary child support, 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 temporary child support, then all such payments made pursuant to this subdivision shall be deemed to be temporary alimony.

(6) As an incident to requiring the payment of
temporal alimony or temporary child support, the court may grant the exclusive use and occupancy of the marital home to one of the parties during the pendency of the action, together with all or a portion of the household goods, furniture and furnishings, reasonably necessary for such use and occupancy. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision shall be deemed to be temporary alimony or temporary child support, 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 temporary child support, then all such payments made pursuant to this subdivision shall be deemed to be temporary alimony: Provided, however, that the court may order such payments to be made without denominating them either as temporary alimony or temporary child support, reserving such decision until such time as the court determines the interests of the parties in marital property and equitably divides the same: Provided further, That at the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this subdivision have affected the rights of the parties in marital property, and may treat such payments as a partial distribution of marital property notwithstanding the fact that such payments have been denominated temporary alimony or temporary child support or not so denominated under the provisions of this subdivision. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(7) As an incident to requiring the payments of temporary alimony, the court may grant the exclusive use and possession of one or more motor vehicles to
either of the parties during the pendency of the action. The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and any such payments made pursuant to this subdivision shall be deemed to be temporary alimony: Provided, That the court may order such payments to be made without denominating them as temporary alimony, reserving such decision until such time as the court determines the interests of the parties in marital property and equitably divides the same: Provided, however, That at the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this subdivision have affected the rights of the parties in marital property, and may treat such payments as a partial distribution of marital property notwithstanding the fact that such payments have been denominated temporary alimony or not so denominated under the provisions of this subdivision. 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.

(8) Where the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court may enter such order as is reasonably necessary to preserve the estate of either or both of the parties, including the imposition of a constructive trust, so that such property be forthcoming to meet any order which may be made in the action, and may compel either party to give security to abide such order, or may require the property in question to be delivered into the temporary custody of a third party. The court may further order either or both of the parties to pay the costs and expenses of maintaining and preserving the property of the parties during the pendency of the action: Provided, That at the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made for the maintenance and preservation of
property under the provisions of this subdivision have affected the rights of the parties in marital property, and may treat such payments as a partial distribution of marital property. When appropriate, the court may release all or any part of such protected property for sale and substitute all or a portion of the proceeds of the sale for such property.

(9) Unless a contrary disposition be found appropriate and ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the movant party any of his or her separate estate which may be in the possession or control of the respondent party, and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(10) The court may enjoin either party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. Any order entered by the court to protect a party from abuse may grant the relief provided in article two-a of this chapter.

(b) In ordering temporary relief under the provisions of this section, the court shall consider the financial needs of the parties, the present employment income and other recurring earnings of each party from any source, their income-earning abilities, and the respective legal obligations of each party to support himself or herself and to support any other persons. Except in extraordinary cases supported by specific findings set forth in the order granting relief, payments of temporary alimony and temporary child support are to be made from a party’s employment income and other recurring earnings, and not from the corpus of a party’s separate estate, and an award of such relief shall not be disproportionate to a party’s ability to pay as disclosed by the evidence before the court.

(c) At any time after a party is abandoned or deserted or after the parties to a marriage have lived separate
and apart in separate places of abode without any cohabitation, the party abandoned or either party living separate and apart may apply for relief pursuant to this section by instituting an action for divorce as provided in section ten of this article, alleging that the plaintiff reasonably believes that the period of abandonment or of living separate and apart will continue for the period prescribed by the applicable provisions of section four of this article. If the period of abandonment or living separate and apart continues for the period prescribed by the applicable provisions of section four of this article, the divorce action may proceed to a hearing as provided in sections twenty-four and twenty-five of this article without a new complaint being filed: Provided, That the party desiring to proceed to a hearing shall give the opposing party at least twenty days' notice of the time, place and purpose of the hearing, unless the opposing party shall have filed with the court a waiver of notice of further proceedings, signed by such opposing party. If such notice is required to be served, it shall be served in the same manner as a complaint, regardless of whether the opposing party has appeared or answered.

(d) To facilitate the resolution of issues arising at a hearing for temporary relief, the court may, or upon the motion of either party shall, order each of the parties to file with the court, and serve on the other party, a sworn statement of each party's assets, liabilities and employment income and other earnings from any source. The statement shall be in such form and contain such detailed information as the court may prescribe by general order. In addition, the court may, or upon the motion of either party shall, order the parties to comply with the disclosure requirements set forth in section thirty-three of this article, and, if necessary, continue the hearing for temporary relief from time to time to afford the parties an opportunity to obtain and provide such information.

(e) An ex parte order granting all or part of the relief provided for in this section may be granted without written or oral notice to the adverse party if:
(1) It appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or such party's attorney can be heard in opposition. Such potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following list of conditions shall not be exclusive:

(A) There is a real and present threat of physical injury to the applicant at the hands or direction of the adverse party;

(B) The adverse party is preparing to quit the state with a minor child or children of the parties, thus depriving the court of jurisdiction in the matter of child custody;

(C) The adverse party is preparing to remove property from the state, or is preparing to transfer, convey, alienate, encumber or otherwise deal with property which could otherwise be subject to the jurisdiction of the court and subject to judicial order under the provisions of this section or section fifteen of this article;

(2) The movant party or his or her attorney certifies in writing the efforts, if any, which have been made to give the notice, and the reasons supporting his claim that notice should not be required.

(f) Every ex parte order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the circuit clerk's office and entered of record; and shall set forth the finding of the court that unless the order is granted without notice there is probable cause to believe that existing conditions will result in immediate and irreparable injury, loss or damage to the movant party before the adverse party or his or her attorney can be heard in opposition. The order granting ex parte relief shall fix a time for a hearing for temporary relief to be held within a reasonable time, not to exceed twenty days, unless before the time so fixed for hearing, such hearing is
continued for good cause shown or with the consent of
the party against whom the ex parte order is directed.
The reasons for the continuance shall be entered of
record. Within the time limits described herein, when
an ex parte order is made, a motion for temporary relief
shall be set down for hearing at the earliest possible
time and shall take precedence of all matters except
older matters of the same character. If the party who
obtained the ex parte order fails to proceed with a
motion for temporary relief, the court shall set aside the
ex parte order. At any time after ex parte relief is
granted, and on two days’ notice to the party who
obtained such relief or on such shorter notice as the
court may direct, the adverse party may appear and
move the court to set aside or modify the ex parte order
on the grounds that the effects of such order are onerous
or otherwise improper. In such event, the court shall
proceed to hear and determine such motion as expedi­
tiously as the ends of justice require.

*§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 install-
ments, 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.

16 (b) Upon ordering the annulment of a marriage or a

*Clerk’s Note: This section was also amended by S. B. 36 (Chapter 53) and
H. B. 4759 (Chapter 54), which passed prior to this act.
17 divorce or granting of decree of separate maintenance, 18 the court may further order all or any part of the 19 following relief:

20 (1) The court may provide for the custody of minor 21 children of the parties, subject to such rights of 22 visitation, both in and out of the residence of the 23 custodial parent or other person or persons having 24 custody, as may be appropriate under the circumstan- 25 ces.

26 (2) The court may require either party to pay child 27 support in the form of periodic installments for the 28 maintenance of the minor children of the parties.

29 (3) As an incident to requiring the payment of 30 alimony or child support, the court may order either 31 party to continue in effect existing policies of insurance 32 covering the costs of health care and hospitalization of 33 the other party and the minor children of the parties: 34 Provided, That if the other party is no longer eligible 35 to be covered by such insurance because of the granting 36 of an annulment or divorce, the court may require a 37 party to substitute such insurance with a new policy to 38 cover the other party, or may consider the prospective 39 cost of such insurance in awarding alimony to be paid 40 in periodic installments. If there is no such existing 41 policy or policies, the court shall order such health care 42 insurance coverage to be paid for by the noncustodial 43 parent, if the court determines that such health care 44 insurance coverage is available to the noncustodial 45 parent at a reasonable cost. Payments made to an 46 insurer pursuant to this subdivision, either directly or 47 by a deduction from wages, shall be deemed to be 48 alimony, child support or installment payments for the 49 distribution of marital property, in such proportion as 50 the court shall direct: Provided, however, That if the 51 court does not set forth in the order that a portion of 52 such payments is to be deemed child support or 53 installment payments for the distribution of marital 54 property, then all such payments made pursuant to this 55 subdivision shall be deemed to be alimony: Provided 56 further, That the designation of insurance coverage as 57 alimony under the provisions of this subdivision shall
not, in and of itself, give rise to a subsequent modification of the order to provide for alimony other than insurance for covering the costs of health care and hospitalization.

(4) As an incident to requiring the payment of alimony or child support, the court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations where such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(5) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the
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 make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(8) The court shall, when allegations of abuse have been proven, enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. Such order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other in a public place.

(9) The court may order either party to take necessary
steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

(c) In any case where an annulment or divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(d) In any case where a divorce or annulment is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(e) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon the verified petition of either of the parties, revise or alter such order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, issuing it forthwith, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice. The court may also from time to time afterward, on the verified petition of either of the parties, revise or alter such order to grant relief pursuant to subdivision (8), subsection (b) of this section, 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 ascertain whether it clearly provides for alimony to continue beyond the death of the payor party or to cease in such event. Where alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the death of the payor party or is to cease, or where the parties have not entered into a separation agreement and alimony is to be awarded, the court shall specifically state as a part of its order whether such payments of alimony are to be continued beyond the death of the payor party or cease.

(g) In every case where a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to 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 ground 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
260 anticipates the payment of such alimony or child
261 support or any portion thereof to be paid out of
262 "disposable retired or retainer pay" as that term is
263 defined in 10 U.S.C. §1408, relating to members or
264 former members of the uniformed services of the United
265 States, the court shall specifically provide for the
266 payment of an amount, expressed in dollars or as a
267 percentage of disposable retired or retainer pay, from
268 the disposable retired or retainer pay of the payor party
269 to the payee party.

ARTICLE 2A. PREVENTION OF FAMILY VIOLENCE.

§48-2A-1. Findings and purposes.
§48-2A-3. Jurisdiction; venue; effect of petitioner’s leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.
§48-2A-3a. Divorce actions.
§48-2A-4. Commencement of proceeding; forms; counterclaims; accompanying persons; counties in which action may be brought; filing pleadings from other counties.
§48-2A-5. Temporary orders of court; hearings; persons present.
§48-2A-12. Registration of order.

§48-2A-1. Findings and purposes.

1 (a) The Legislature of this state finds that:

2 (1) Battered persons and other victims of family
3 violence have a right to be safe in their homes;

4 (2) Children are often physically assaulted or witness
5 violence against one of their parents and may suffer
6 deep and lasting emotional harm from victimization and
7 from exposure to family violence;

8 (3) Family violence is a major health and law-
9 enforcement problem in this state and one that affects
10 people of all racial and ethnic backgrounds and all
11 socioeconomic classes; and
(4) Family violence can be deterred, prevented or reduced by legal intervention.

(b) This article shall be liberally construed and applied to promote the following purposes:

(1) To assure victims of family violence the maximum protection from abuse that the law can provide;

(2) To create a speedy remedy to discourage violence against family members with whom the abuser has continuing contact;

(3) To expand the ability of law-enforcement officers to assist victims, to enforce the family violence law effectively, and to prevent further abuse;

(4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family members; and

(5) To recognize that battering is a crime that will no longer be excused or tolerated.


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

(a) "Family violence" or "abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together:

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, psychological abuse or threatening acts;

(4) Causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress; and

(5) Holding, confining, detaining or abducting another
person against that person's will.

(b) "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together, or a person with whom the victim has a child in common.

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.

(a) Jurisdiction. — Circuit courts and magistrate courts, as constituted under chapter fifty of this code, shall have concurrent jurisdiction over proceedings under this article.

(b) Venue. — The action may be heard in the county in which the abuse occurred or in the county in which the respondent is living. If the parties are married, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by section eight, article two of this chapter.

(c) Petitioner's rights. — The petitioner's right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.

(d) Priority of petitions. — Any petition filed under the provisions of this article shall be given priority over any other civil action before the court except actions in which trial is in progress, and shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate's judgment on a petition for the relief under this article shall be heard within ten working days of the filing of the appeal.

(e) Full faith and credit. — Any temporary or final protective order issued pursuant to this article shall be effective throughout the state in every county. Any protective order issued by the court of another state shall be accorded full faith and credit and enforced as
if it were an order of this state if its terms and conditions are substantially similar to those which may be imposed by a court of this state.

(f) The final protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if: (i) The petitioner files an affidavit with the court stating that an attempt at personal service pursuant to rule four of the West Virginia rules of civil procedure has been unsuccessful or evidence is adduced at the hearing for the final protective order that the respondent has left the state of West Virginia; and (ii) a copy of the order is mailed by certified or registered mail to the respondent at the respondent's last known residence and returned undelivered.

§48-2A-3a. Divorce actions.

(a) During the pendency of a divorce action, a person may file for and be granted relief provided by this article, until an order is entered in the divorce action pursuant to section thirteen, article two of this chapter.

(b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the right to file for and obtain any further relief, so long as no temporary or permanent order has been entered in the action for divorce, annulment and separate maintenance, pursuant to section thirteen, article two of this chapter.

(c) 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 relief under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.
(d) Notwithstanding the provisions set forth in subsection (b), section six of this article, any order issued pursuant to this section where a subsequent action is filed seeking a divorce, annulment or separate maintenance, shall remain in full force and effect by operation of this statute until a temporary or final order is issued pursuant to section thirteen, article two of this chapter or a final order granting or dismissing the action for divorce, annulment or separate maintenance.

§48-2A-4. Commencement of proceeding; forms; counterclaim; accompanying persons; counties in which action may be brought; filing pleadings from other counties.

(a) No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought.

A petition for a protective order may be filed by:

(1) A person seeking relief under this article for herself or himself; or

(2) An adult family or household member for the protection of the petitioner or for any family or household member who is a minor child or physically or mentally incapacitated to the extent that he or she cannot file on their own behalf.

(b) The West Virginia supreme court of appeals shall prescribe forms which are necessary and convenient for proceedings pursuant to 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.

(e) In the event a person who resides, temporarily or permanently, in a county not described in subsection (b), section three of this article 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, 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 (b), section three of this article 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.

(f) No fees shall be charged for filing of petitions or other papers, service of petitions or orders, copies of orders, or other costs for services provided by, or associated with, any proceedings under this article until the matter is brought before the court for final resolution.

§48-2A-5. Temporary orders of court; hearings; persons present.

(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. Copies of medical reports or records may be admitted into evidence to the same extent as though the original thereof. The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to subsection (a).

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 temporary order issued pursuant to the proceedings, 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. Copies of any order made under the provisions of this section shall also be issued to the petitioner, and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office and local office of the state police within twenty-four hours of the entry of the order. 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 state.

(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.

(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.

(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. The terms of a protective order may include:

1. Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;
2. Awarding temporary custody of or establishing temporary visitation rights with regard to minor children;
3. Establishing temporary visitation rights with regard to the minor children and requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;
4. Ordering the noncustodial parent to pay to the custodial parent a sum for temporary support and maintenance of the petitioner and children, if any;
5. Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;
6. Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order;
7. Directing the respondent to participate in counseling; or
8. Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner in any public place.

(b) Any final protective order shall be for a fixed period of time not to exceed sixty days: Provided, That if a party has filed for divorce, separate maintenance or annulment and no temporary or final divorce order is entered prior to expiration of the protective order, upon petitioner's motion, the protective order shall remain in effect until such temporary or final divorce order is
entered. 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 or the minor child or children continue 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 section shall be issued to the petitioner, the respondent and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the division of public safety within twenty-four hours of the entry of the order.

(e) No mutual protective orders shall be granted unless both parties have filed a petition under section four of this article and have proven the allegations of abuse by a preponderance of the evidence.


(a) Upon violation of any order issued pursuant to this article, the court shall, upon the filing of a petition for contempt by the petitioner, issue an order to show cause why the respondent should not be held in contempt of court and set a time for a hearing thereon within five days of the filing of said motion.

(b) Notwithstanding any other provision of law to the contrary, any sentence for contempt hereunder may include imprisonment up to thirty days and a fine not to exceed one thousand dollars or both. In lieu of confinement, the court may allow the contemnor to post bond as surety for the faithful compliance with the orders of the court.

(a) 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. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article.

(b) Any law-enforcement officer responding to an alleged incident of family violence 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. Any law-enforcement officer investigating an alleged incident of family violence shall advise the person subject to abuse of the availability of the family protection shelter to which such person may be admitted.

(c) 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.

(d) Each law-enforcement agency shall maintain records on all incidents of family or household abuse reported to it, and shall monthly make and deliver to the department of public safety a report on a form prescribed by the department, listing all such incidents of family or household abuse. Such reports shall include:

1. The age and sex of the abused and abusing parties;
2. The relationship between the parties;
3. The type and extent of abuse;
4. The number and type of weapons involved;
5. Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency's action
39 and the abused’s request for assistance;
40 (6) Whether the petitioner reported having filed
41 complaints with regard to family or household abuse on
42 any prior occasion and if so, the number of such prior
43 complaints; and
44 (7) The effective dates and terms of any protective
45 order issued prior to or following the incident to protect
46 the abused party: Provided, That no information which
47 will permit the identification of the parties involved in
48 any incident of abuse shall be included in such report.
49 (e) The department of public safety shall tabulate and
50 analyze any statistical data derived from the reports
51 made by law-enforcement agencies pursuant to this
52 section, and publish a statistical compilation in the
53 department’s annual uniform crime report, as provided
54 for in section twenty-four, article two, chapter fifteen of
55 this code. The statistical compilation shall include, but
56 is not limited to, the following:
57 (1) The number of family violence complaints
58 received;
59 (2) The number of complaints investigated;
60 (3) The number of complaints received from alleged
61 victims of each sex;
62 (4) The average time lapse in responding to such
63 complaints;
64 (5) The number of complaints received from alleged
65 victims who have filed such complaints on prior
66 occasions;
67 (6) The number of aggravated assaults and homicides
68 resulting from such repeat incidents;
69 (7) The type of police action taken in disposition of the
70 cases; and
71 (8) The number of alleged violations of protective
72 orders.
73 (f) As used in this section, the terms “abuse,” “family
74 violence” 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.

(g) 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. Following the promulgation of said rules, the committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.

(h) 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.

(i) All law-enforcement officers shall receive training relating to response to calls involving family violence by the first day of October, one thousand nine hundred ninety-three.


(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
34 promptly investigate the alleged violation.
35 (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.
46 (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. A respondent who shall abuse the petitioner and/or minor children in knowing and willful violation of the terms of a temporary or final 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 one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

1 Any party to a temporary or final protective order may as a matter of right present a petition for appeal, within five days of entry of the order in magistrate court, to the circuit court. The order shall remain in
effect pending an appeal unless stayed by the circuit court. No bond shall be required for any appeal under this section. In any case where a petition for appeal is filed under this section, the petition shall be heard de novo by the circuit court within ten days from the filing of the petition for appeal.

§48-2A-12. Registration of order.

(a) The department of public safety shall maintain a registry in which it shall enter certified copies of orders entered by courts from other counties in this state pursuant to the provisions of this article, or from other states pursuant to their laws: Provided, That provisions of this section shall not become effective until such time as a central automated record system is developed.

(b) A petitioner who obtains a protective order under this article, or from another state pursuant to its law, may register that order in any county within this state where the petitioner believes enforcement may be necessary.

(c) A protective order may be registered by the petitioner in a county other than the issuing county by obtaining a certified copy of the order of the issuing court certified by the clerk of that court and presenting that certified order to the local office of the state police where the order is to be registered.

(d) Upon receipt of a certified order for registration, the local office of the state police shall provide certified copies to any law-enforcement agency within its jurisdiction, including the city police, and the county sheriff's office.

(e) Nothing in this section shall preclude the enforcement of an order in a county other than the county in which the order was issued if the petitioner has not registered the order in the county in which the alleged violation of the order occurred.


All judges may and magistrates and family law masters shall receive a minimum of three hours of
training by the first day of October, one thousand nine
hundred ninety-three, and three hours per year each
year thereafter on family violence which shall include
training on the psychology of family violence, the
battered wife and child syndromes, sexual abuse,
courtroom treatment of victims, offenders and wit-
tnesses, available sanctions and treatment standards for
offenders, and available shelter and support services for
victims. The supreme court of appeals may provide such
training in conjunction with other judicial education
programs offered by the supreme court.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.


(a) No program or shelter receiving funds pursuant
to this article shall disclose or be compelled to disclose,
release or be compelled to release any written records
created or maintained in providing services pursuant to
this article except:

(1) Upon written consent of the person seeking or who
has sought services from the program or the shelter;

(2) In any proceeding brought under sections four and
five, article six, chapter nine of this code or section one,
article six, chapter forty-nine of this code, et seq.;

(3) Pursuant to an order of any court based upon a
finding that said information is sufficiently relevant to
a proceeding before the court to outweigh the impor-
tance of maintaining the confidentiality established by
this section;

(4) To protect against a clear and substantial danger
of imminent injury by a client to him or herself or
another;

(5) For treatment or internal review purposes to the
staff of any mental health facility if the client is also
being cared for by other health professionals in the
treatment of the client.

(b) No consent or authorization for the transmission
or disclosure of confidential information shall be
effective unless it is in writing and signed by the client.
Every person signing an authorization shall be given a copy.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

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, misconduct, neglect of duty, or physical or mental disability.

(d) A family law master may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. Family law masters who do not engage in the practice of criminal law shall be exempted from the appointments in indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(e) All family law masters, and all necessary clerical and secretarial assistants employed in the offices of family law masters, shall be deemed to be officers and employees in the judicial branch of state government. The director of the child advocate office and the commissioner of the division of human services shall enter into an agreement with the administrative office of the supreme court of appeals whereby the office and the division shall contract to pay the administrative office of the supreme court of appeals for the services of the family law masters required to be furnished under the provisions of this chapter which are not otherwise payable from the family law masters fund created under the provisions of section twenty-two, article two of this chapter.

Each county commission of this state shall enter into an agreement with the administrative office of the supreme court of appeals whereby the administrative office of the supreme court of appeals shall contract to pay to the county commission a reasonable amount as rent for premises furnished by the county commission to the family law master and its staff, which premises shall be adequate for the conduct of the duties required
of such master under the provisions of this chapter.

(f) A family law master appointed under the provisions of this article shall receive as full compensation for his or her services an annual salary of thirty-five thousand dollars. The secretary-clerk of the family law master shall receive an annual salary of 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;
(16) The counties of Marion and Taylor;
(17) The counties of Monongalia and Preston;
(18) The counties of Barbour, Randolph and Tucker;
(19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton;
(20) The counties of Berkeley, Jefferson and Morgan; and
(21) The counties of Boone, Lincoln and Wayne.

The governor shall appoint two masters to the office of the family law master for the region of Kanawha County. In each of the other regions defined by this subsection, the governor shall appoint one person as family law master from such region. Nothing contained herein shall prohibit the chief justice of the supreme court of appeals from temporarily assigning, from time to time as caseload may dictate, a family law master from one geographical region to another geographical region.

(i) A circuit court or the chief judge thereof shall refer to the master the following matters for hearing to be conducted pursuant to section two of this article: Provided, That on its own motion or upon motion of a party, the circuit judge may revoke the referral of a particular matter to a master if the master is recused, if the matter is uncontested, or for other good cause, or if the matter will be more expeditiously and inexpensively heard by the circuit judge without substantially affecting the rights of parties in actions which must be heard by the circuit court:

(1) Actions to obtain orders of support brought under the provisions of section one, article five of this chapter;
(2) All actions to establish paternity under the provisions of article six of this chapter: Provided, That all actions wherein either or both of the parties have demanded a trial by jury of the law and the facts shall be heard by the circuit court;

(3) All motions for pendente lite relief affecting child custody, visitation, child support, spousal support or family violence, wherein either party has requested such referral or the court on its own motion in individual cases or by general order has referred such motions to the 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.
CHAPTER 49. CHILD WELFARE.

Article
1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.
6. Procedure in Cases of Child Neglect or Abuse.
6A. Reports of Children Suspected to be Abused or Neglected.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

(a) "Abused child" means a child whose health or welfare is harmed or threatened by:

(1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury, or mental or emotional injury, upon the child or another child in the home; or

(2) Sexual abuse or sexual exploitation; or

(3) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of section sixteen, article four, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian, or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale, or negligent treatment or maltreatment of a child by a parent, guardian, or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

(d) "Child abuse and neglect services" means social services which are directed toward:
(1) Protecting and promoting the welfare of children who are abused or neglected;

(2) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(4) In cases where children have been removed from their families, providing services to the children and the families so as to restore such children to their families;

(5) Placing children in suitable adoptive homes when restoring the children to their families is not possible or appropriate; and

(6) Assuring the adequate care of children away from their families when the children have been placed in the custody of the department or third parties.

(e) "Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker; or

(2) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or

(3) Nutritional deprivation; or

(4) Abandonment by the parent, guardian or custodian; or

(5) Inadequate treatment of serious illness or disease; or
(6) Substantial emotional injury inflicted by a parent, guardian or custodian; or

(7) Sale or attempted sale of the child by the parent, guardian or custodian.

(f) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, child care, and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community, and may consist of several multidisciplinary teams with different functions.

(g) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child’s parent or custodian;

(2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(h) "Parenting skills" means a parent’s competencies in providing physical care, protection, supervision and psychological support appropriate to a child’s age and
(i) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(j) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(k) "Sexual exploitation" means an act whereby:
(1) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

(1) “Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(m) “Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(n) “Parental rights” means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(o) “Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home, or other facility or residence.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.


The state department is hereby authorized and empowered to provide care, support and protective services for children who are handicapped by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. Such department is also hereby authorized and empowered in its discretion to accept children for care from their parent or parents, guardian, custodian or
relatives and to accept the custody of children committed to its care by courts exercising juvenile jurisdiction.

The department of human services or any county office of such department is also hereby authorized and empowered in its discretion to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.

The department of human services shall provide care in special boarding homes for children needing detention pending disposition by a court having juvenile jurisdiction or temporary care following such court action.

Within ninety days of the date of the signatures to a voluntary placement agreement, after receipt of physical custody, the state department shall file with the court a petition for review of the placement, stating the child’s situation and the circumstance that gives rise to the voluntary placement. If the department intends to extend the voluntary placement agreement, the department shall file with the court a copy of the child’s case plan. The court shall appoint an attorney for the child, who shall also receive a copy of the case plan. The court shall schedule a hearing and shall give notice of the time and place and right to be present at such hearing to:

- The child’s attorney;
- The child, if twelve years of age or older;
- The child’s parents or guardians;
- The child’s foster parents; and
- Any other such persons as the court may in its discretion direct.

The child’s presence at such hearing may be waived by the child’s attorney at the request of the child or if the child would suffer emotional harm. At the conclusion of the proceedings, but no later than ninety days after the date of the signatures to the voluntary placement agreement, the court shall enter an order determining whether or not continuation of the voluntary placement is in the best interests of the child; specifying under what conditions the child’s placement shall continue; and specifying whether or not the department has made reasonable efforts to reunify the family and/or provide a plan for the permanent placement of the child.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.
§49-6-1. Petition to court when child believed neglected or abused; notice.

(a) If the state department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or to the judge of such court in vacation. The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how such conduct comes within the statutory definition of neglect or abuse with references thereto, any supportive services provided by the state department to remedy the alleged circumstances and the relief sought. Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to section three of this article, such hearing shall be held within thirty days of such order, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(b) The petition and notice of the hearing shall be served upon both parents and any other custodian, giving to such parents or custodian at least ten days' notice, and notice shall be given to the state department. In cases wherein personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to such person by certified mail, addressee only, return receipt requested, to the last known address of such person. If said person signs the certificate, service shall be complete and said
31 certificate shall be filed as proof of said service with the
32 clerk of the circuit court. If service cannot be obtained
33 by personal service or by certified mail, notice shall be
34 by publication as a Class II legal advertisement in
35 compliance with the provisions of article three, chapter
36 fifty-nine of this code. A notice of hearing shall specify
37 the time and place of the hearing, the right to counsel
38 of the child and parents or other custodians at every
39 stage of the proceedings and the fact that such proceed-
40 ings can result in the permanent termination of the
41 parental rights. Failure to object to defects in the
42 petition and notice shall not be construed as a waiver.
43
44 (c) At the time of the institution of any proceeding
45 under this article, the state department shall provide
46 supportive services in an effort to remedy circumstances
47 detrimental to a child.

§49-6-2. Petition to court when child believed neglected
or abused—Right to counsel; improvement
period; hearing; priority of proceeding;
transcript.

1 (a) In any proceeding under the provisions of this
2 article, the child, his parents, his custodian or other
3 persons standing in loco parentis to him, such persons
4 other than the child being hereinafter referred to as
5 other party or parties, shall have the right to be
6 represented by counsel at every stage of the proceedings
7 and shall be informed by the court of their right to be
8 so represented and that if they cannot pay for the
9 services of counsel, that counsel will be appointed. If the
10 other parties have not retained counsel and the other
11 parties cannot pay for the services of counsel, the court
12 shall, by order entered of record, at least ten days prior
13 to the date set for hearing, appoint an attorney or
14 attorneys to represent the other party or parties and so
15 inform the parties. Under no circumstances may the
16 same attorney represent both the child and the other
17 party or parties, nor shall the same attorney represent
18 both parents or custodians. However, one attorney may
19 represent both parents or custodians where both parents
20 or guardians consent to this representation after the
21 attorney fully discloses to the client the possible conflict,
and where the attorney assures the court that she or he
is able to represent each client without impairing her
or his professional judgment; however, if more than one
child from a family is involved in the proceeding, one
attorney may represent all the children. The court may
allow to each attorney so appointed a fee in the same
amount which appointed counsel can receive in felony
cases. Any attorney appointed pursuant to this section
shall by the first day of July, one thousand nine hundred
ninety-three, and three hours per year each year
thereafter, receive a minimum of three hours of
continuing legal education training on representation of
children, child abuse and neglect: Provided, That where
no attorney who has completed this training is available
for such appointment, the court shall appoint a compe-
tent attorney with demonstrated knowledge of child
welfare law to represent the child. Any attorney
appointed pursuant to this section shall perform all
duties required as an attorney licensed to practice law
in the state of West Virginia.

(b) In any proceeding under this article, any parent
or custodian may, prior to final hearing, move to be
allowed an improvement period of three to twelve
months in order to remedy the circumstances or alleged
circumstances upon which the proceeding is based. The
court shall allow one such improvement period unless it
finds compelling circumstances to justify a denial
thereof, but may require temporary custody with a
responsible relative, which may include any parent,
guardian, or other custodian, or the state department or
other agency during the improvement period. An order
granting such improvement period shall require the
department to prepare and submit to the court a family
case plan in accordance with the provisions of section
three, article six-d of this chapter.

(c) In any proceeding under this article, the party or
parties having custodial or other parental rights or
responsibilities to the child shall be afforded a meaning-
ful opportunity to be heard, including the opportunity
to testify and to present and cross-examine witnesses.
The petition shall not be taken as confessed. A transcript
or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Where relevant, the court shall consider the efforts of the state department to remedy the alleged circumstances. At the conclusion of the hearing the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected, which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the provisions of this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under the provisions of this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under the provisions of this article shall be held as nearly as practicable on successive days and, with respect to said hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of said improvement period.

(e) Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he cannot pay therefor.

§49-6-3. Petition to court when child believed neglected or abused—Temporary custody.
(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible relative, which may include any parent, guardian, or other custodian pending a preliminary hearing, if it finds that: (1) There exists imminent danger to the physical well-being of the child, and (2) there are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody: Provided, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody, or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the state department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; (2) whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the
department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the state department or a responsible relative, which may include any parent, guardian, or other custodian, or another appropriate person or agency for a period not exceeding sixty days: Provided, That the court order shall state (1) that continuation in the home is contrary to the best interests of the child and state the reasons therefor; (2) whether or not the department made reasonable efforts to prevent the child's removal from his or her home; (3) whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and (4) what efforts should be made by the department to facilitate the child's return home: Provided, however, That if the court grants an improvement period as provided in subsection (b), section two of this article, the sixty-day limit upon temporary custody may be waived.

(c) If a child or children shall, in the presence of a child protective service worker of the division of human services, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided,
That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the supreme court of appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the state department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent, guardian or custodian unless a petition has been
§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home, facilitate return of the child to his or her own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child. The term permanency plan refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give
precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the state department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; (2) whether or not the state department made a reasonable effort to prevent the placement to include a statement of what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (3) the specific circumstances of the situation which makes such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child’s commitment to the department shall continue. Considerations pertinent to the determination include whether the child should (1) be continued in foster care for a specified period, (2) should be considered for adoption, (3) because of a child’s special needs or circumstances, be continued in foster care on a permanent or long-term basis, or (4) be continued in foster care until reunification is achieved.

The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department of human services, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section.
(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child, terminate the parental or custodial rights and/or responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the state department or a licensed child welfare agency. If the court shall so find, then in fixing its dispositional order, the court shall consider the following factors: (1) The child's need for continuity of care and caretakers; (2) the amount of time required for the child to be integrated into a stable and permanent home environment; and (3) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the permanent parental rights shall not be terminated if a child fourteen years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state: (1) That continuation in the home is not in the best interest of the child and why; (2) why reunification is not in the best interests of the child; (3) whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and (4) whether or not the state department made a reasonable effort to reunify the family including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have
demonstrated an inadequate capacity to solve the problems of abuse or neglect, on their own or with help. Such conditions shall be deemed to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such abusing parent or parents have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child; or

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills.
or sufficiently improving the adequacy of such skills.

(c) The court may as an alternative disposition allow to the parents or custodians an improvement period not to exceed twelve months. During this period the parental rights shall not be permanently terminated and the court shall require the parent to rectify the conditions upon which the determination was based. No more than one such post-dispositional improvement period may be granted. The court may order the child to be placed with the parents, a relative, the state department or other appropriate placement during the period. At the end of the period the court shall hold a hearing to determine whether the conditions have been adequately improved, and at the conclusion of such hearing, shall make a further dispositional order in accordance with this section.

§49-6-8. Foster care review; annual reports to the court.

(a) If, twelve months after receipt (by the state department or its authorized agent) of physical custody of a child either by a court ordered placement or by a voluntary agreement, the state department has not placed a child in permanent foster care or an adoptive home or placed the child with a natural parent, the state department shall file with the court a petition for review of the case. The department shall also file with the court a report detailing the efforts that have been made to place the child in a permanent home and copies of the child’s case plan including the permanency plan as defined in section five, article six of this chapter. Copies of the report shall be sent to the child’s attorney and be made available to the child’s parent(s) or guardian. “Permanent foster care” shall mean a written arrangement with an adult or adults following a six-month trial period whereby the state department places the care, custody and control of a child until the child’s emancipation with such adult or adults. The court shall schedule a hearing in chambers, giving notice and the right to be present to: The child’s attorney; the child, if twelve years of age or older; the child’s parents; the child’s guardians; the child’s foster parents; and such other persons as the court may in its discretion direct.
The child's presence may be waived by the child's attorney at the request of the child or if the child would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue, and to determine what efforts are necessary to provide the child with a permanent home. At the conclusion of the hearing the court shall in accordance with the best interests of the child enter an appropriate order of disposition. The court order shall state (1) whether or not the department made reasonable effort to prevent out-of-home placement or that the specific situation made such effort unreasonable, (2) the permanency plan for the child, and (3) services required to meet the child's needs. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in temporary foster care, or, when a child is returned to his or her natural parents subject to conditions imposed by the court, for so long as the conditions are effective.

(b) The state department shall file a supplementary petition for review with the court within eighteen months and every eighteen months thereafter for every child that remains in the physical or legal custody of the state department until the child is placed in an adoptive home or permanent foster care or returned to his or her parents.

(c) The state department shall annually report to the court the current status of the placements of children in permanent care and custody of the state department who have not been adopted.

(d) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and their counsel. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a stable foster or temporary home. Provided, That no report shall be provided to any parent or parent's attorney.
whose parental rights have been terminated pursuant to this article.

(e) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child's attorney, the parents and the parents' attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family. This notice shall not be required in any case where the child is in imminent danger in the child's current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice shall be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(f) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant such petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

§49-6-11. Conviction for offenses against children.

In any case where a person is convicted of an offense described in sections twelve and twenty-six, article eight, chapter sixty-one; section one, article eight-b, chapter sixty-one, et seq.; and section one, article eight-d, chapter sixty-one of this code against any child and further has custodial, visitation, or other parental rights to the child, at the time of sentencing, the court shall make a finding that the person is an abusing parent within the meaning of section one, article six, chapter forty-nine, et seq., and the court shall take such further steps as are required by this article.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-2. Persons mandated to report suspected abuse and neglect.
§49-6A-5. Reporting procedures.
§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, member of the clergy, circuit court judge, family law master or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the state department of human services: Provided, That in any case where the reporter believes that the child has been seriously physically injured or sexually abused or sexually assaulted, the reporter shall also immediately report, or cause a report to be made to the department of public safety, and any law-enforcement agency having jurisdiction to investigate the complaint: Provided, however, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

§49-6A-5. Reporting procedures.
Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect.

A copy of any report of serious physical injury, or sexual abuse or assault, shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office. All reports under this article shall be confidential, and unless there are pending proceedings with regard thereto, shall be destroyed six years following their preparation. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article. Such documentation shall be provided within three business days of receipt by the child protective services.

§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.

(a) The state department shall establish or designate in every county a local child protective service to perform the duties and functions set forth in this article.

(b) Except in cases involving institutional abuse or cases in which police investigation also appears appropriate, the child protective service shall be the sole public agency responsible for investigating or arranging for investigation and coordinating the investigation of all reports of child abuse or neglect: Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the
 provision of those services necessary to ensure the safety
of children. The local child protective service shall be
organized to maximize the continuity of responsibility,
care and service of individual workers for individual
children and families.

Each local child protective service shall:

(1) Receive or arrange for the receipt of all reports
of children known or suspected to be abused or neg-
lected on a twenty-four hour, seven-day-a-week basis
and cross-file all such reports under the names of the
children, the family, any person substantiated as being
an abuser or neglector by investigation of the depart-
ment of human services, with use of such cross-filing of
such person's name limited to the internal use of the
department;

(2) Provide or arrange for emergency children's
services to be available at all times;

(3) Within twenty-four hours of notification of
suspected child abuse or neglect, commence or cause to
be commenced a thorough investigation of the report
and the child's environment.

(c) In those cases in which the local child protective
service determines that the best interests of the child
require court action, the local child protective service
shall initiate the appropriate legal proceeding.

(d) The local child protective service shall be respon-
sible for providing, directing or coordinating the
appropriate and timely delivery of services to any child
suspected or known to be abused or neglected, including
services to the child's family and those responsible for
the child's care.

(e) To carry out the purposes of this article, all
departments, boards, bureaus and other agencies of the
state or any of its political subdivisions and all agencies
providing services under the local child protective
service plan shall, upon request, provide to the local
child protective service such assistance and information
as will enable it to fulfill its responsibilities.
ARTICLE 7. GENERAL PROVISIONS.

§49-7-29. General provisions to read uniform court orders regarding custody; promulgation of rules.

The supreme court shall, in consultation with the department of health and human resources, develop and cause to be implemented, as soon as practicable but no later than the first day of September, one thousand nine hundred ninety-two, forms for court orders which are consistent with the provision of chapter forty-nine of this code as well as the provisions of Title 142 U.S.C. Section 620, et seq., and Title 42 U.S.C. Section 670, et seq., relating to the promulgation of uniform court orders for placement of minor children and the regulations promulgated thereunder, for the use in the magistrate and circuit courts of the state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

§56-10-8. Priority of cases involving placement of children.

Any action or motion which involves a contested issue regarding the permanent or temporary placement of a minor child shall be given priority over any civil action before the court except actions in which trial is in progress and actions brought under section one, article two-a, chapter forty-eight, et seq., of this code and shall be docketed immediately upon filing.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; penalties; definitions.

(a) Any person who shall intentionally and closely
follow, lie in wait, or make repeated threats to cause
bodily injury to any person with whom that person
formerly resided or cohabited or with whom that person
formerly engaged in a sexual or intimate relationship,
with the intent to cause or causing said person emotional
distress or placing said person in fear of his or her
personal safety shall be guilty of a misdemeanor and,
upon conviction thereof, shall be imprisoned in the
county jail for not more than six months, or be fined not
more than one thousand dollars, or both fined and
imprisoned.

(b) Any person who violates subsection (a) when there
is a temporary restraining order or a restraining order,
or both, in effect, granted pursuant to the provisions of
section nine-b of this article which prohibits the conduct
referred to in said section, is guilty of a misdemeanor
and, upon conviction thereof, shall be imprisoned in the
county jail for not more than one year, or be fined not
more than three thousand dollars, or both fined and
imprisoned.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND
DECENCY.

§61-8-13. Incest; limits on interviews of children eleven
years old or less; evidence.

(a) In any prosecution under the provisions of section
twelve of this article, the court may provide by rule for
reasonable limits on the number of interviews to which
a victim who is eleven years old or less must submit for
law-enforcement or discovery purposes. To the extent
possible the rule shall protect the mental and emotional
health of the child from the psychological damage of
repeated interrogation and at the same time preserve
the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution
under this article, the court may permit a child who is
eleven years old or less to use anatomically correct dolls,
mannequins or drawings to assist such child in
testifying.

(c) In any prosecution under this article in which the
victim's lack of consent is based solely on the incapacity
to consent because such victim was below a critical age, 
evidence of specific instances of the victim's sexual 
conduct, opinion evidence of the victim's sexual conduct 
and reputation evidence of the victim's sexual conduct 
shall not be admissible. In any other prosecution under 
this article, evidence of specific instances of the victim's 
_prior sexual conduct with the defendant shall be 
admissible on the issue of consent: Provided, That such 
evidence heard first out of the presence of the jury is 
found by the judge to be relevant.

(d) In any prosecution under this article evidence of 
pecific instances of the victim's sexual conduct with 
persons other than the defendant, opinion evidence of 
the victim's sexual conduct and reputation evidence of 
the victim's sexual conduct shall not be admissible: 
Provided, That such evidence shall be admissible solely 
for the purpose of impeaching credibility, if the victim 
first makes his or her previous sexual conduct an issue 
in the trial by introducing evidence with respect thereto.

(e) In any prosecution under this article, neither age 
or mental capacity of the victim shall preclude the 
victim from testifying.

(f) In any case where a person is convicted of an 
offense described herein against a child and further has 
or may have custodial, visitation or other parental rights 
to the child, the court shall find that the person is an 
abusing parent within the meaning of section one, 
article six, chapter forty-nine of this code, and shall take 
such further action in accord with the provisions of 
section one, article six, chapter forty-nine of this code.

ARTICLE 8B. SEXUAL OFFENSES.


In any case where a person is convicted of an offense 
described in this article against a child and further has 
or may have custodial, visitation or other parental rights 
to the child, the court shall find that the person is an 
abusing parent within the meaning of section one, 
article six, chapter forty-nine of this code, and shall take 
such further action in accord with the provisions of
8 section one, article six, chapter forty-nine of this code.

ARTICLE 8D.  CHILD ABUSE.

1 In any case where a person is convicted of an offense
2 described in this article against a child and further has
3 or may have custodial, visitation or other parental rights
4 to the child, the court shall find that such person is an
5 abusing parent within the meaning of section one,
6 article six, chapter forty-nine of this code and shall take
7 such further action in accord with the provisions of
8 section one, article six, chapter forty-nine of this code.


1 (a) At the time a complaint is sworn out for a charge
2 of murder, aggravated robbery, sexual assault in the
3 first degree, kidnapping, arson, sexual offenses against
4 minors, or any violent crime against a spouse, former
5 spouse, child or stepchild, the prosecuting attorney shall
6 provide written notice to the victim or victim's family
7 member that he or she may be notified prior to and upon
8 the release to or escape of the defendant from work
9 release, home confinement, parole, furlough or upon the
10 escape from any correctional facility.
11 (b) The commissioner of corrections, regional jail
12 supervisors, city or sheriff operating a jail which
13 releases any person shall, from which they have received
14 a written request for notification, provide written notice
15 to the last known address or addresses provided by the
16 victim, or in the case of a minor child, to the custodial
17 parent of the child, upon release of the defendant.
18 Additionally, notice provided in the case of escape shall
19 be by telephone.

CHAPTER 62.  CRIMINAL PROCEDURE.

Article
1C.  Bail.
11A.  Release for Work and Other Purposes.

ARTICLE 1C.  BAIL.
§62-1C-17a. Bail in situations of alleged child abuse.

(a) When the offense charged is an assault or other offense against a child who is defined in chapter forty-nine of this code, it shall be a condition of bond that the defendant shall not live in the same residence as and shall have no contact with the victim of the alleged offense, and the court may make such other conditions of bond with respect to contact with the victim as it deems necessary under the circumstances to protect the child: Provided, That the requirement of no contact with the victim of the alleged offense and all other conditions of bond may be reviewed by summary petition from the magistrate court to the circuit court or from the circuit court to the supreme court of appeals or any justice thereof.

(b) In cases where the charge is a sexual offense, as defined in chapter sixty-one of this code, against any person, the court, upon a showing of cause, may make such conditions of bond on the defendant or on any witness bond issued under section fifteen of this article as it deems necessary with respect to contact with the victim.

§62-1C-17c. Bail in cases of crimes between family or household members.

(a) 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.

(b) In determining conditions of release, the issuing authority shall consider whether the defendant poses a threat or danger to the victim or other family or household member. If the issuing authority makes such a determination, it shall require as a condition of bail that the defendant refrain from entering the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim and/or minor child or household member in
any manner whatsoever, and shall refrain from having
any further contact with the victim. A violation of this
condition may be punishable by the forfeiture of bail
and the issuance of a bench warrant for the defendant's
arrest or remanding the defendant to custody or a
modification of the terms of bail.

(c) The clerk of the court issuing an order pursuant
to this section shall issue certified copies of the
conditions of bail to the victim upon request without
cost.

(d) Where a law-enforcement officer observes any
violation of bail condition, including the presence of the
defendant or at the home of the victim, the officer shall
immediately arrest the defendant, and detain the
defendant pending a hearing for revocation of bail.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1. Release for work and other purposes by
courts of record with criminal jurisdic-
tion.

(1) When a defendant is sentenced or committed for
a term of one year or less by a court of record having
criminal jurisdiction, such court may in its order grant
to such defendant the privilege of leaving the jail during
necessary and reasonable hours for any of the following
purposes:

(a) To work at his employment;
(b) To seek employment;
(c) To conduct his own business or to engage in other
self-employment, including, in the case of a woman,
housekeeping and attending to the needs of her family;
(d) To attend an educational institution;
(e) To obtain medical treatment;
(f) To devote time to any other purpose approved of
or ordered by the court, including participation in the
litter control program of the county unless the court
specifically finds that this alternative service would be
inappropriate.
(2) Whenever an inmate who has been granted the privilege of leaving the jail under this section is not engaged in the activity for which such leave is granted, he shall be confined in jail.

(3) An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail under this section and may renew his petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice.

(4) If the inmate has been granted permission to leave the jail to seek or take employment, the court's probation officers, or if none, the state's division of corrections shall assist him in obtaining suitable employment and in making certain that employment already obtained is suitable. Employment shall not be deemed suitable if the wages or working conditions or other circumstances present a danger of exploitation or of interference in a labor dispute in the establishment in which the inmate would be employed.

(5) If an inmate is employed for wages or salary, the clerk of the court shall collect the same, or shall require the inmate to turn over his wages or salary in full when received, and shall deposit the same in a trust account and shall keep a ledger showing the status of the account of each inmate. Earnings levied upon pursuant to writ of attachment or execution or in other lawful manner shall be collected from the employer and shall not be collected hereunder, but when the clerk has requested transmittal of earnings prior to levy, such request shall have priority. When an employer transmits such earnings to the clerk pursuant to this subsection he shall have no liability to the inmate for such earnings. From such earnings the clerk shall pay the inmate's board and personal expenses both inside and outside the jail and shall deduct installments on fines, if any, and, to the extent directed by the court, shall pay the support of the inmate's dependents: Provided, That at least twenty-five percent of the earnings collected by the clerk on behalf of an inmate shall be paid for the support of such inmate's dependents, if any. If sufficient funds are
available after making the foregoing payments, the clerk may, with the consent of the inmate, pay, in whole or in part, any unpaid debts of the inmate. Any balance shall be retained, and shall be paid to the inmate at the time of his discharge.

(6) An inmate who is serving his sentence pursuant to this section shall be eligible for a reduction of his term for good behavior and faithful performance of duties in the same manner as if he had served his term in ordinary confinement.

(7) The court shall not make an order granting the privilege of leaving the institution under this section unless it is satisfied that there are adequate facilities for the administration of such privilege in the jail or other institution in which the defendant will be confined.

(8) In every case wherein the defendant has been convicted of an offense defined in section thirteen, article eight, chapter sixty-one, articles eight-b and eight-d, chapter sixty-one of this code, against a child, the defendant shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the defendant may petition the court of the circuit wherein he was so convicted for a modification of this term and condition of this probation and the burden shall rest upon the defendant to demonstrate that a modification is in the best interest of the child.

ARTICLE 12. PROBATION AND PAROLE.


§62-12-17. Conditions of release on 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
(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.

(4) That in every case wherein the probationer has been convicted of an offense defined in section thirteen, article eight, chapter sixty-one, articles eight-b and eight-d, chapter sixty-one of this code, against a child, the probationer shall not live in the same residence as any minor child, nor exercise visitation with any minor child, and shall have no contact with the victim of the offense: Provided, That the probationer may petition the court of the circuit wherein he was so convicted for a modification of this term and condition of his probation and the burden shall rest upon the probationer to demonstrate that a modification is in the best interest of the child.

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 inadequate and that a period of confinement is necessary.

§62-12-17. Conditions of release on parole.

Release on parole shall be upon the following conditions:

(1) That the parolee shall not, during the period of his parole, violate any criminal law of this or any other state, or of the United States.

(2) That he shall not, during the period of his parole, leave the state without the consent of the board.

(3) That he shall comply with the rules and regulations prescribed by the board for his supervision by the probation and parole officer.

(4) That in every case wherein the parolee has been convicted of an offense defined in section thirteen, article eight, chapter sixty-one; or articles eight-b and eight-d, chapter sixty-one of this code, against a child, the parolee shall not live in the same residence as any minor child, nor exercise visitation with any minor child, and shall have no contact with the victim of the offense: Provided, That the parolee may petition the court of the circuit wherein he was so convicted for a modification of this term and condition of his probation and the burden shall rest upon the parolee to demonstrate that a modification is in the best interest of the child.

In addition, the board may impose, subject to modification at any time, any other conditions which the board may deem advisable.
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; to amend and reenact section one, article two-b of said chapter; and to further amend said article by adding thereto eight new sections, designated sections two, three, four, five, six, seven, eight and nine, relating to grandparent visitation; relief upon ordering divorce or annulment or granting decree of separate maintenance; legislative findings; intent; grandparent visitation where divorce or separate maintenance is ordered; grandparent visitation upon abandonment or abrogation of visitation rights by parent or judicial preclusion of visitation; grandparent visitation when parent deceased; grandparent visitation when minor child has resided with grandparent; grandparent visitation where parents unwed; termination of grandparent visitation; attorney's fees, reasonable costs; and defining a misdemeanor offense of allowing contact between a minor and a person precluded visitation rights, and establishing the penalty therefor.

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

Article
2. Divorce, Annulment and Separate Maintenance.
2B. Grandparent Visitation.
ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

*§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

(a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay alimony in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of alimony and child support are to be ordinarily made from a party's employment income and other recurring earnings, but in cases where the employment income and other recurring earnings are not sufficient to adequately provide for payments of alimony and child support, the court may, upon specific findings set forth in the order, order the party required to make such payments to make the same from the corpus of his or her separate estate. An award of such relief shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court.

(b) Upon ordering the annulment of a marriage or a divorce or granting of a decree of separate maintenance, the court may further order all or any part of the following relief:

(1) The court may provide for the custody of minor children of the parties, subject to such rights of visitation, both in and out of the residence of the custodial parent or other person or persons having custody, as may be appropriate under the circumstances.

(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.

*Clerk's Note: This section was also amended by H. B. 4389 (Chapter 52) and H. B. 4759 (Chapter 54), which passed subsequent to this act.
Provided, That if the other party is no longer eligible to be covered by such insurance because of the granting of an annulment or divorce, the court may require a party to substitute such insurance with a new policy to cover the other party, or may consider the prospective cost of such insurance in awarding alimony to be paid in periodic installments. If there is no such existing policy or policies, the court shall order such health care insurance coverage to be paid for by the noncustodial parent, if the court determines that such health care insurance coverage is available to the noncustodial parent at a reasonable cost. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, however, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony: Provided further, That the designation of insurance coverage as alimony under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for alimony other than insurance for covering the costs of health care and hospitalization.

(4) As an incident to requiring the payment of alimony or child support, the court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations where such use and occupancy is reasonably necessary to accommodate the
rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(5) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties. The court may require payments to third parties in the form of automobile loan installments or insurance coverage if available at reasonable rates, and any such payments made pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony or installment payments for the distribution of marital property, as the court may direct. Nothing contained in this 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 make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(8) The court may enjoin either party from the molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other.

(9) The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

(10) The court may, pursuant to the provisions of article two-b of this chapter, grant visitation rights to any grandparent of the minor children.

(c) In any case where an annulment or divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(d) In any case where a divorce or annulment is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(e) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon the
verified petition of either of the parties, revise or alter
such order concerning the maintenance of the parties,
or either of them, and make a new order concerning the
same, issuing it forthwith, as the altered circumstances
or needs of the parties may render necessary to meet the
ends of justice. The court may also from time to time
afterward, on the verified petition of either of the
parties, revise or alter such order to grant relief
pursuant to subdivision (8), subsection (b) of this section,
and make a new order concerning the same, issuing it
forthwith, as the circumstances of the parties and the
benefit of the 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 forty­eight-a of this code. In granting relief under this
subsection, the court may, where other means are not
conveniently available, alter any prior order of the court
with respect to the distribution of marital property, if
such property is still held by the parties, and if
necessary to give effect to a modification of alimony,
child support or child custody or necessary to avoid an
inequitable or unjust result which would be caused by
the manner in which the modification will affect the
prior distribution of marital property.

(f) In every case where a separation agreement is the
basis for an award of alimony, the court, in approving
the agreement, shall examine the agreement to
ascertain whether it clearly provides for alimony to
199 continue beyond the death of the payor party or to cease
200 in such event. Where alimony is to be paid pursuant to
201 the terms of a separation agreement which does not
202 state whether the payment of alimony is to continue
203 beyond the death of the payor party or is to cease, or
204 where the parties have not entered into a separation
205 agreement and alimony is to be awarded, the court shall
206 specifically state as a part of its order whether such
207 payments of alimony are to be continued beyond the
208 death of the payor party or cease.

209 (g) In every case where a separation agreement is the
210 basis for an award of alimony, the court, in approving
211 the agreement, shall examine the agreement to
212 ascertain whether it clearly provides for alimony to
213 continue beyond the remarriage of the payee party or
214 to cease in such event. Where alimony is to be paid
215 pursuant to the terms of a separation agreement which
216 does not state whether the payment of alimony is to
217 continue beyond the remarriage of the payee party or
218 is to cease, or where the parties have not entered into
219 a separation agreement and alimony is to be awarded,
220 the court shall specifically state as a part of its order
221 whether such payments of alimony are to be continued
222 beyond the remarriage of the payee party or cease.

223 (h) In addition to the statement provided for in
224 subsection (d), section thirteen of this article and in
225 addition or in lieu of the disclosure requirements set
226 forth in section thirty-three of this article, the court may
227 order accounts to be taken as to all or any part of
228 marital property or the separate estates of the parties,
229 and may direct that the accounts be taken as of the date
230 of the marriage, the date upon which the parties
231 separated, or any other time deemed to be appropriate
232 in assisting the court in the determination and equitable
233 division of property.

234 (i) In determining whether alimony is to be awarded,
235 or in determining the amount of alimony, if any, to be
236 awarded under the provisions of this section, the court
237 shall consider and compare the fault or misconduct of
238 either or both of the parties and the effect of such fault
239 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.

ARTICLE 2B. GRANDPARENT VISITATION.

§48-2B-1. Legislative findings; intent.

§48-2B-2. Grandparent visitation where divorce or separate maintenance is ordered.

§48-2B-3. Grandparent visitation upon abandonment or abrogation of visitation rights by parent or judicial preclusion of visitation.


§48-2B-5. Grandparent visitation when minor child has resided with grandparent.


§48-2B-8. Attorney's fees; reasonable costs.


§48-2B-1. Legislative findings; intent.
The Legislature finds that circumstances may arise where it is appropriate for circuit courts of this state to have jurisdiction to grant to the grandparents of minor children a right of visitation to enhance the best interests of the minor child or children as well as the grandparent. The Legislature further finds that in such situations, as in all situations involving children, the best interests of children must be the paramount consideration. It is the express intent of the Legislature that the provisions for grandparent visitation set forth in this article shall be exclusive and under all circumstances the interests of the child or children involved shall be the court's first and paramount consideration.

§48-2B-2. Grandparent visitation where divorce or separate maintenance is ordered.

(a) A circuit court of this state, upon ordering a divorce or an annulment or upon the granting of separate maintenance pursuant to article two of this chapter, may grant reasonable visitation rights to a grandparent of a minor child of the parties to the divorce petitioning for visitation rights if the grandparent is related to such minor child through a party, and:

(1) The party to the divorce through which the grandparent is related to the minor child fails to answer or otherwise appear and defend the cause of action; or

(2) The whereabouts of the party through which the grandparent is related to the minor child are unknown to the party bringing the action and to the grandparent petitioning for visitation rights.

(b) Notwithstanding any provision of this code to the contrary, where service of process in a divorce action is made by means other than personal service and the whereabouts of the party-defendant are unknown or the party-defendant fails to answer the complaint, notice of the action shall be made upon the grandparents of any minor child of the party whose whereabouts are unknown or who fails to answer the complaint to afford said grandparent or grandparents the opportunity to
petition the court for visitation. Such notice shall be
given at the time of the entry of a final order of divorce
and shall be consistent with the provisions of rule four
of the West Virginia rules of civil procedure. Any
petition for grandparent visitation filed pursuant to this
section shall be so filed within thirty days of the notice
having been received.

(c) In determining the appropriateness of granting
visitation rights to the grandparent, the court shall
consider the amount of personal contact between the
grandparent and minor child prior to the filing of the
petition, whether or not the granting of visitation would
interfere with the parent-child relationship and the
overall effect on the minor child's best interests that the
granting or denial of visitation would have.

§48-2B-3. Grandparent visitation upon abandonment or
abrogation of visitation rights by parent or
judicial preclusion of visitation.

(a) A grandparent may petition a circuit court, which
has entered a final order of divorce or annulment or has
granted a decree of separate maintenance, for an order
granting visitation rights with a minor grandchild
where:

(1) The parent through whom the grandparent is
related to the minor grandchild is deemed the
noncustodial parent of the minor child by virtue of the
court's order regarding custody of the minor child;

(2) The parent through whom the grandparent is
related to the minor child having been granted visitation
rights with the minor child refuses, fails or is unable
to avail himself or herself of the right of visitation for
a period of six months or more or has been precluded
visitation rights by court order or is an active duty
member of the armed forces of the United States whose
permanent duty station is located more than one
hundred miles from the border of this state; and

(3) The petitioning grandparent has been refused
visitation with a minor grandchild by the custodial
parent for a period of six months or more.
(b) In determining the appropriateness of granting visitation rights to a grandparent pursuant to this section, the court shall consider the amount of personal contact between the grandparent and minor child prior to the filing of the petition, whether or not the granting of visitation would interfere with the parent-child relationship and the overall effect of such visitation on the minor child's best interest.


(a) Notwithstanding any provisions of this code to the contrary, a grandparent may petition the circuit court of the county of residence of any minor grandchild for an order granting said grandparent reasonable visitation rights with the minor grandchild where the parent through whom the grandparent is related is deceased.

(b) In determining the appropriateness of granting visitation rights to a grandparent pursuant to this section, the court shall consider the amount of personal contact between the grandparent and minor child prior to the filing of the petition, whether or not the granting of visitation would interfere with the parent-child relationship and the overall effect of such visitation on the minor child's best interest.

§48-2B-5. Grandparent visitation when minor child has resided with grandparent.

(a) Notwithstanding any provision of this code to the contrary, a grandparent may petition the circuit court of the county in which he or she resides for an order granting said grandparent reasonable visitation rights where:

(1) Said minor grandchild has resided without significant interruption with the grandparent with the parents residing elsewhere for a period of six consecutive months or more within the past two years;

(2) The minor grandchild is subsequently removed from the home by a parent or parents; and

(3) The removing parent or parents have refused to
allow the petitioning grandparent visitation with the minor child who formerly resided in the grandparent's home.

(b) If the circuit court determines that the requirements set forth in subsection (a) of this section have been shown, it shall grant such reasonable visitation rights to the petitioning grandparent as may be consistent with the minor child's best interests.


(a) Notwithstanding any provision of this code to the contrary, a grandparent may petition the circuit court of the county of residence of the minor child with whom visitation is sought for an order granting said grandparent reasonable visitation rights where:

(1) The child of said grandparent has been legally determined to be the parent of the minor child or the child of the grandparent has acknowledged paternity of the minor child through a sworn, notarized statement;

(2) The parent of the minor child through whom the grandparent is related is precluded by court order from visitation with the minor child or has failed to exercise the right of visitation for a period of six months or more or is an active duty member of the armed forces of the United States whose permanent duty station is located more than one hundred miles from the border of this state; and

(3) The parent of the minor child who has custody of said child refuses to allow the petitioning grandparent reasonable visitation with the minor child.

(b) In determining the appropriateness of granting visitation rights to a grandparent pursuant to this section, the court shall consider, where applicable, the amount of personal contact between the grandparent and minor child prior to the filing of the petition, whether or not the granting of visitation would interfere with the parent-child relationship and the overall effect of such visitation on the minor child's best interest.

(a) Any circuit court which grants visitation rights to a grandparent shall retain jurisdiction throughout the minority of the minor child with whom visitation is granted to modify or terminate such rights as dictated by the best interests of the minor child.

(b) A circuit court shall, based upon a petition brought by an interested person, terminate any grant of the right of grandparent visitation upon presentation of clear and convincing evidence that a grandparent granted visitation has materially violated the terms and conditions of said order of visitation.

§48-2B-8. Attorney's fees; reasonable costs.

In an action brought under the provisions of this article, a circuit court may order payment of reasonable attorney's fees and costs based upon the equities of the positions asserted by the parties to pay such fees and costs.


Any grandparent who knowingly allows contact between the minor grandchild and a parent or other person who has been precluded visitation rights with the child by court order shall, in addition to any other remedy under section seven of this article, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than thirty days or fined not less than one hundred dollars nor more than one thousand dollars.

CHAPTER 54

(H. B. 4759---By Delegates Brown and Douglas)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to repeal section eighteen, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section thirty-one, article seven of said chapter; to amend and reenact
section eighteen, article four, chapter twenty-three of said code; to amend article twenty-two, chapter twenty-nine by adding thereto a new section, designated section twenty-seven-a; to amend and reenact section three, article two, chapter thirty-three of said code; to amend and reenact sections one, fifteen, seventeen and thirty-three, article two, chapter forty-eight of said code; to amend and reenact section three, article one and sections one, four, six and seven, article two, chapter forty-eight-a of said code; to further amend said article two by adding thereto two new sections, designated sections twenty-four and twenty-five; to amend and reenact section three, article three of said chapter forty-eight-a; to further amend said article three by adding thereto two new sections, designated sections nine and ten; to amend and reenact section one, article five and sections one and three, article six of said chapter forty-eight-a; and to amend article five, chapter sixty-one of said code by adding thereto a new section, designated section twenty-nine, all relating to the enforcement of family obligations generally; authorizing the attachment of workers' compensation benefits for enforcing support orders; rearranging and clarifying certain current language; compelling the director of the lottery to forward certain prize moneys to the child advocate office and to enter into written agreements to establish such collection procedure; mandating the commissioner of insurance to enforce certain provisions; redefining certain terms; injunctive relief upon ordering divorce or annulment or granting decree of separate maintenance; revising the process in which the recording of abstracts of support judgments become liens; establishing an accounting procedure; making a crime of false swearing for the deliberate failure to disclose assets; changing certain terminology consistent with government reorganization; exempting certain positions from civil service requirements; changing certain powers and duties of the director; directing employers to furnish certain information to the child advocate office; creating a crime for the failure to report such information and setting forth criminal penalties therefor; mandating all public and private entities to cooperate in locating
missing parents; exceptions; prescribing duties of the children's advocate, subject to the supervision and control of the director of the child advocate office; revising duties of children's advocate with respect to investigation of support orders; providing that public agencies shall bill the child advocate office for fees and costs incurred; empowering the child advocate to subpoena certain information; authorizing the child advocate office to institute support and paternity proceedings; when child advocate may act on behalf of the department; revising conditions under which married women may file paternity actions; changing certain medical testing standards regarding paternity determination; when defendant may challenge tests; limiting period of time for additional testing; creating certain legal presumptions; providing for the admissibility of and weight to be given certain evidence; creating the crime of failing to meet an obligation to provide support; setting forth when such crime is a misdemeanor and when such crime is a felony; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

23. Workers' Compensation.
29. Miscellaneous Boards and Officers.
33. Insurance.
48. Domestic Relations.
48A. Enforcement of Family Obligations.
61. Crimes and Their Punishment.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

Except as provided by this section, compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in section five, article five of this chapter, and other than for the enforcement of orders for child or spousal support entered pursuant to the provisions of chapters forty-eight and forty-eight-a of this code. Payments may be made in such periodic installments as determined by the commissioner in each case, but in no event less frequently than semimonthly for any temporary award and monthly for any permanent award. Payments for permanent disability shall be paid on or before the third day of the month in which they are due. In all cases where compensation is awarded or increased, the amount thereof shall be calculated and paid from the date of disability.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.
ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the child advocate office.

(a) Upon notification by the child advocate office that a person entitled to a prize or any winning ticket is delinquent in the payment of child support or spousal support, the director shall forward to the child advocate office such portion of any prize distributed directly from the state lottery office and that is available to pay all or any portion of the delinquent support payment.

(b) The director shall enter into a written agreement with the child advocate office for the purpose of establishing a procedure for the collection of prizes as set forth in subsection (a) of this section which shall include a method by which the child advocate office may receive the names of lottery winners as expeditiously as possible.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

*§33-2-3. Duties of the commissioner; employment of legal counsel.

(a) The commissioner shall enforce the provisions of this chapter and perform the duties required thereunder; shall affix the commissioner's official seal to all documents and papers required to be filed in other states by domestic insurers and to other papers when an official seal is required; and shall, on or before the tenth day of each month, pay into the state treasury all fees and moneys which he or she has received during the preceding calendar month.

(b) Notwithstanding any provisions of this code to the contrary, the commissioner may acquire such legal services as are deemed necessary, including representation of the commissioner before any court or administrative body. Such counsel may be employed either on a salaried basis or on a reasonable fee basis.

* Clerk's Note: This section was also amended by H. B. 4666 (Chapter 108), which passed prior to this act.
In addition, the commissioner may call upon the attorney general for legal assistance and representation as provided by law.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. Definitions.

(a) "Alimony" means the allowance which a person pays to or in behalf of the support of his or her spouse or divorced spouse while they are separated or after they are divorced. The payment of alimony may be required by court order or by the terms of a separation agreement. Alimony may be paid in a lump sum or paid in installments as periodic alimony. Alimony includes temporary alimony as that term is used in section thirteen of this article, as well as alimony as that term is used in section fifteen of this article and elsewhere throughout this article.

(b) "Antenuptial agreement" or "prenuptial agreement" means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions which define the respective property rights of the parties during the marriage, or in the event of the death of either or both of the parties, and may provide for the disposition of marital property upon an annulment of the marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is made either of the parties is a minor.
(c) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(d) "Income" includes, but is not limited to, the following:

(1) Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his employer and successor employers;

(2) Any payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, workers' compensation benefits, state lottery winnings and prizes, and overtime pay;

(3) Any amount of money which is owing to an individual as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political 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.

(e) "Marital property" means:

(1) All property and earnings acquired by either spouse during a marriage, including every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal, regardless of the form of ownership, whether legal or beneficial, whether individually held, held in trust by a third party, or whether held by the parties to the marriage in some form of co-ownership such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other form of shared ownership recognized in other jurisdictions without this state, except that marital property shall not include separate property as
defined in subsection (f) of this section; and

(2) The amount of any increase in value in the separate property of either of the parties to a marriage, which increase results from (A) an expenditure of funds which are marital property, including an expenditure of such funds which reduces indebtedness against separate property, extinguishes liens, or otherwise increases the net value of separate property, or (B) work performed by either or both of the parties during the marriage.

The definitions of “marital property” contained in this subsection and “separate property” contained in subsection (f) of this section shall have no application outside of the provisions of this article, and the common law as to the ownership of the respective property and earnings of a husband and wife, as altered by the provisions of article three of this chapter and other provisions of this code, are not abrogated by implication or otherwise, except as expressly provided for by the provisions of this article as such provisions are applied in actions brought under this article or for the enforcement of rights under this article.

(f) “Separate property” means:

(1) Property acquired by a person before marriage; or

(2) Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage; or

(3) Property acquired by a person during marriage, but excluded from treatment as marital property by a valid agreement of the parties entered into before or during the marriage; or

(4) Property acquired by a party during marriage by gift, bequest, devise, descent or distribution; or

(5) Property acquired by a party during a marriage but after the separation of the parties and before the granting of a divorce, annulment or decree of separate maintenance; or

(6) Any increase in the value of separate property as defined in subdivision (1), (2), (3), (4) or (5) of this
subsection which is due to inflation or to a change in
market value resulting from conditions outside the
control of the parties.

(g) "Separation" or "separation of the parties" means
the separation of the parties next preceding the filing
of an action under the provisions of this article, which
separation continues, without the parties cohabiting or
otherwise living together as husband and wife, and
without interruption.

(h) "Separation agreement" means a written
agreement entered into by a husband and wife whereby
they agree to live separate and apart from each other
and, in connection therewith, agree to settle their
property rights; or to provide for the custody and
support of their minor child or children, if any; or to
provide for the payment or waiver of alimony by either
party to the other; or to otherwise settle and compromise
issues arising out of their marital rights and obligations.
Insofar as an antenuptial agreement as defined in
subsection (b) of this section affects the property rights
of the parties or the disposition of property upon an
annulment of the marriage, or a divorce or separation
of the parties, such antenuptial agreement shall be
regarded as a separation agreement under the
provisions of this article.

§48-2-15. Relief upon ordering divorce or annulment or
granting decree of separate maintenance.

(a) Upon ordering a divorce or granting a decree of
separate maintenance, the court may require either
party to pay alimony in the form of periodic install-
ments, 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

*Clerk's Note: This section was also amended by S. B. 36 (Chapter 53)
which passed prior to this act, and by H. B. 4389 (Chapter 52), which passed
subsequent to this act.
findings set forth in the order, order the party required
to make such payments to make the same from the
corpus of his or her separate estate. An award of such
relief shall not be disproportionate to a party's ability
to pay as disclosed by the evidence before the court.

(b) Upon ordering the annulment of a marriage or a
divorce or granting of decree of separate maintenance,
the court may further order all or any part of the
following relief:

(1) The court may provide for the custody of minor
children of the parties, subject to such rights of
visitation, both in and out of the residence of the
custodial parent or other person or persons having
custody, as may be appropriate under the
circumstances.

(2) The court may require either party to pay child
support in the form of periodic installments for the
maintenance of the minor children of the parties.

(3) As an incident to requiring the payment of
alimony or child support, the court may order either
party to continue in effect existing policies of insurance
covering the costs of health care and hospitalization of
the other party and the minor children of the parties:
Provided, That if the other party is no longer eligible
to be covered by such insurance because of the granting
of an annulment or divorce, the court may require a
party to substitute such insurance with a new policy to
cover the other party, or may consider the prospective
cost of such insurance in awarding alimony to be paid
in periodic installments. If there is no such existing
policy or policies, the court shall order such health care
insurance coverage to be paid for by the noncustodial
parent, if the court determines that such health care
insurance coverage is available to the noncustodial
parent at a reasonable cost. Payments made to an
insurer pursuant to this subdivision, either directly or
by a deduction from wages, shall be deemed to be
alimony, child support or installment payments for the
distribution of marital property, in such proportion as
the court shall direct: Provided, however, That if the
court does not set forth in the order that a portion of
such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony: Provided further, That the designation of insurance coverage as alimony under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for alimony other than insurance for covering the costs of health care and hospitalization.

(4) As an incident to requiring the payment of alimony or child support, the court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations where such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party,
or affect the rights and liabilities of either party or a third party under the terms of such contract.

(5) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties. The court may require payments to third parties in the form of automobile loan installments or insurance coverage if available at reasonable rates, and any such payments made pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony or installment payments for the distribution of marital property, as the court may direct. Nothing contained in this 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 make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(8) The court shall, when allegations of abuse have been proven, enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. Such order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or
harassing the other; or from contacting the other, in
person or by telephone, for the purpose of harassment
or threats; or from harassing or verbally abusing the
other in a public place.

(9) The court may order either party to take necessary
steps to transfer utility accounts and other accounts for
recurring expenses from the name of one party into the
name of the other party or from the joint names of the
parties into the name of one party. Nothing contained
in this subdivision shall affect the liability of the parties
for indebtedness on any such account incurred before
the transfer of such account.

(c) In any case where an annulment or divorce is
denied, the court shall retain jurisdiction of the case and
may order all or any portion of the relief provided for
in subsections (a) and (b) of this section which has been
demanded or prayed for in the pleadings.

(d) In any case where a divorce or annulment is
granted in this state upon constructive service of
process, and personal jurisdiction is thereafter obtained
of the defendant in such case, the court may order all
or any portion of the relief provided for in subsections
(a) and (b) of this section which has been demanded or
prayed for in the pleadings.

(e) At any time after the entry of an order pursuant
to the provisions of this section, the court may, upon the
verified petition of either of the parties, revise or alter
such order concerning the maintenance of the parties,
or either of them, and make a new order concerning the
same, issuing it forthwith, as the altered circumstances
or needs of the parties may render necessary to meet the
ends of justice. The court may also from time to time
afterward, on the verified petition of either of the
parties, revise or alter such order to grant relief
pursuant to subdivision (8), subsection (b) of this section,
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
ascertain whether it clearly provides for alimony to
continue beyond the death of the payor party or to cease
in such event. Where alimony is to be paid pursuant to
the terms of a separation agreement which does not
state whether the payment of alimony is to continue
beyond the death of the payor party or is to cease, or
where the parties have not entered into a separation
agreement and alimony is to be awarded, the court shall
specifically state as a part of its order whether such
payments of alimony are to be continued beyond the
death of the payor party or cease.

(g) In every case where a separation agreement is the
basis for an award of alimony, the court, in approving
the agreement, shall examine the agreement to
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.

§48-2-17. Recordation of an abstract of an order for alimony, child support or separate maintenance.

(a) An order for alimony, child support, or separate maintenance shall not give rise to a lien on any real estate of the person against whom the order is entered until the procedures set forth in this section are complied with. An abstract of the order may be recorded in the office of the clerk of the county commission in the county wherein such real property is situate without constituting a lien against such real property, until the person entitled to receive such alimony, child support or separate maintenance presents for recordation with the clerk an affidavit which sets forth allegations that the person required to pay such alimony, child support or separate maintenance is in arrears in such payment for a period of not less than thirty days.

(b) Notice of the recordation of the abstract and affidavit shall be given to the person against whom the order is entered by first class mail to his or her last known address. The notice shall inform the person against whom the order is entered of his or her right to require the filing of an accounting and the right to contest the accounting, as provided for in subsection (d).
(c) The abstract of the order and the affidavit shall be recorded in the same manner as other abstracts of judgments are recorded, but shall not constitute a lien unless both the abstract and affidavit are recorded. The abstract of judgment shall contain the name of the parties to the action in which the order of alimony, child support or separate maintenance was entered, the name of the party in whose favor such award was made, the date of the judgment and the court which rendered such judgment. In no event shall the judgment order, in its entirety, be recorded.

(d) The person against whom the order is entered may, at any time, by notice in writing, require the other party to file an accounting, in the office of the clerk of the circuit court, of the matured, unpaid installments of alimony, child support or separate maintenance alleged to be due and owing as of the date of recordation of the abstract of the order. Such accounting shall also be mailed, by first class mail, to the other party. If the party from whom the accounting is requested fails to file the accounting, within ten days after receipt of the written notice to do so, the lien created by such affidavit shall be discharged and extinguished. If the person against whom the order is entered desires to contest the accounting, then he or she shall, within fourteen days of the filing of the accounting, inform the other party in writing of the reasons that the accounting is contested and obtain a date for a hearing before the family law master. Forms for accounting and for the notices required by the provisions of this subsection shall be prescribed by the administrative office of the supreme court of appeals and made available through the office of the clerk of the circuit court. The lien created by such recording shall be effective as to the amount of any judgment rendered in such proceeding regardless of whether such judgment be for less or more than the sum contained in the accounting.

(e) The provisions of this section restricting the right of recordation of judgment orders shall not be deemed to limit the right of any person to record a judgment
§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 or who deliberately fails to disclose 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. Remedies for the Enforcement of Support Obligations and Visitation.
5. Establishment of Paternity.

ARTICLE 1. GENERAL PROVISIONS.


1 As used in this chapter:
2 (1) "Automatic data processing and retrieval system"
3 means a computerized data processing system designed to do the following:
4 (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:
5 (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;
6 (ii) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;
7 (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" includes, but is not limited to, the following:

(A) Commissions, earnings, salaries, wages and other income due or to be due in the future to an 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, workers' compensation benefits, state lottery winnings and prizes, and overtime pay;

(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 including interest:

(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-2-1. Reestablishment of the West Virginia child advocate office.

§48A-2-4. Director; appointment; qualifications; oath of office; director not to hold other office or engage in political activity.
§48A-2-6. Organization of the child advocate office.
§48A-2-7. Powers and duties of the director; advisory council.

*§48A-2-1. Reestablishment of the West Virginia child advocate office.*

(a) There is hereby established within the department of health and human resources the child advocate office.

(b) 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 the child advocate office should be continued and reestablished. Accordingly, notwithstanding 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-three, so that the joint committee on government operations may monitor compliance by the child advocate office with the recommendations of the performance audit.

§48A-2-4. Director; appointment; qualifications; oath of office; director not to hold other office or engage in political activity.

(a) There shall be a director of the child advocate office who shall be appointed by the secretary of the department of health and human resources. The salary of the director shall be set by the commissioner and be paid with funds of the office. The director shall be allowed and paid necessary expenses incident to the performance of his or her official duties.

(b) The director shall be selected with special reference and consideration given to his or her training, experience, capacity and interest in or relating to the child and spousal support enforcement programs administered by the child advocate office.

(c) Before entering upon the duties of his or her office,

*Clerk's Note: This section was also amended by S. B. 139 (Chapter 200), which passed prior to this act.*
the director shall take and subscribe to the oath of office
prescribed by section five, article IV of the West
Virginia constitution, and shall execute a corporate
surety bond in the sum of fifteen thousand dollars for
the faithful performance of his or her duties. The bond
shall be in the form prescribed by the attorney general
and approved by the governor, and both the certificate
of the oath and the bond shall be filed with the secretary
of state. Premiums upon the bond shall be paid out of
the funds of the child advocate office.

(d) The director shall not be a candidate for, or hold,
any other public office or public employment under the
federal government, or the government of this state or
any of its political subdivisions, or be a member or
officer of any political party committee, or serve as an
election official, or engage in any political activity, other
than to vote, in behalf of, or in opposition to, any
candidate, or political party in an election. Any violation
by the director of the provisions of this paragraph shall
be cause for removal from office.

§48A-2-6. Organization of the child advocate office.

(a) Within limits of state appropriations and federal
grants and subject to provisions of state and federal
laws, rules and regulations, the director shall organize
the office into appropriate administrative units which
shall be operationally and functionally distinct and
separate from any other units or programs of the
department of health and human resources so that
employees of the office shall not be required to perform
functions or duties of the department which are outside
the scope of activities of the child advocate office as
defined in this chapter. Consistent with the
requirements of article six, chapter twenty-nine of this
code, the director shall appoint and employ for the office
such assistants and employees, as may in his or her
judgment be necessary or desirable to carry out fully
and in an orderly, efficient and economical manner the
powers, duties and responsibilities of the office.

(b) Notwithstanding the provisions of sections three
and four, article six, chapter twenty-nine of this code
relating to the manner in which additions are made to
the list of positions in the classified service, and any
other provision of this code to the contrary, the positions
held by employees of the office shall be positions in the
classified service except for children’s advocate,
assistant children’s advocate, the director’s secretary
and those positions named in subdivisions (2), (3), (4), (9)
and (12), subsection (a) of said section four.

§48A-2-7. Powers and duties of the director; advisory
council.

(a) The director may promulgate legislative rules in
accordance with the provisions of article three, chapter
twenty-nine-a of this code where such rules are required
to implement the provisions of this chapter.

(b) The director shall annually prepare a proposed
budget for the next fiscal year. Such budget shall
include all sums necessary to support the activities of
the child advocate office.

(c) In addition to any other duties required by this
chapter, the director shall:

(1) Develop and recommend guidelines for the
conduct, operations and procedures of the office and his
or her employees, including, but not limited to, the
following:

(A) Caseload and staffing standards for employees
who perform investigation and recommendation
functions, enforcement functions and clerical functions.

(B) Orientation programs for recipients of services of
the office.

(C) Public educational programs regarding domestic
relations law and community resources, including
financial and other counseling, and employment
opportunities.

(D) Model pamphlets and procedural forms, which
shall be distributed to each local office serving
recipients of services.

(2) Provide training programs for the children’s
(3) Gather and monitor relevant statistics.

(4) Develop standards and procedures for the transfer of part or all of the responsibilities for a case from one office to another in situations considered appropriate.

(5) Subject to appropriation of funds by the Legislature, install in the office of each children's advocate, adequate computer hardware and software to enable the advocate to utilize word processing and other data processing functions in the preparation of pleadings and other documents required for the proper discharge of the duties of the office.

(6) Enter into contracts and agreements with public and private institutions.

(d) The director shall appoint a nine-person advisory committee, serving without compensation except as provided in subsection (e) of this section, composed of the following:

(1) Three public members who are eligible for services with an office of the children's advocate;

(2) Three attorneys who are members of the West Virginia state bar with experience in domestic relations law, not more than two of whom may be employees of the department of health and human resources: Provided, That one of the attorneys appointed shall be a children's advocate selected by the children's advocates throughout the state; and

(3) Three human service professionals who provide family counseling, not more than two of whom may be employees of the department of health and human resources.

Of the nine members initially appointed, one public member, one attorney and one professional shall be appointed for a term of one year; one public member, one attorney and one professional shall be appointed for a term of two years; and one public member, one
attorney and one professional shall be appointed for a
term of three years. After the expiration of the initial
terms, appointments thereafter shall be made for terms
of three years. The director shall fill any vacancies
resulting from death or resignation by appointment for
the unexpired term. Members of the advisory council
may be reappointed.

(e) The advisory committee established under
subsection (d) of this section shall advise the director in
the performance of his or her duties under this section.
Advisory committee members shall be reimbursed for
their actual expenses for mileage, meals, and, if
necessary, lodging.

(f) The director shall appoint general counsel for the
child advocate office to supervise and assist the
children's advocates in the performance of their
professional, nonadministrative duties and to promote
uniformity in, and increase the quality of, legal services
provided by children's advocates throughout the state.
Such general counsel shall also serve as counsel to the
director. A person appointed as general counsel shall be
a member in good standing of the West Virginia state
bar. Compensation and expenses of the general counsel
shall be fixed by the director and paid by the child
advocate office. The position of general counsel shall be
a position in the classified service.


(a) Upon notice by the director of the child advocate
office, and except as provided in subsections (b) and (c)
of this section, all employers doing business in the state
of West Virginia shall report to the child advocate office:

(1) The hiring of any person who resides or works in
this state to whom the employer anticipates paying
earnings; and

(2) The rehiring or return to work of any employee
who resides or works in this state.

(b) Employers are not required to report the hiring,
rehiring or return to work of any person who:
(1) Is employed for less than one month's duration; or
(2) Is employed sporadically so that the employee will be paid for less than three hundred fifty hours during a continuous six-month period; or
(3) Has gross earnings of less than three hundred dollars per month.

(c) The director of the child advocate office may establish additional exemptions to reduce unnecessary or burdensome reporting.

(d) Employers may report by mailing to the child advocate office a copy of the employee's W-4 form, by transmitting magnetic tape in a compatible format, or by any other means mutually agreed to by the employer and by the child advocate office to achieve timely and complete reporting.

(e) Employers shall submit a report within thirty-five days of the date of the hiring, rehiring or return to work of the employee. The report shall include the employee's name, address, social security number, and date of birth and the employer's name and address, any different address of the payroll office and the employer's federal tax identification number.

(f) An employer of an obligor shall provide to the child advocate office, upon its written request, information regarding the obligor's employment, wages or salary, medical insurance, and location of employment. The information required under this subsection is in addition to the information required by subsection (e).

(g) An employer who fails to report in accordance with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

(h) Employers required to report under this section may assess each employee so reported one dollar for the administrative costs of reporting.

(a) All state, county and municipal agencies, offices and employers receiving a request for information and assistance from the child advocate office shall cooperate with the office in the location of parents who have abandoned and deserted children and shall provide the office with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the office that the information is needed to locate a parent for the purpose of collecting child support, provide the office with the following information about the parent: Full name, social security number, date of birth, home address, wages and number of dependents listed for income tax purposes: Provided, That no entity may provide any information obtained in the course of providing legal services, medical treatment or medical services.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3. Duties of the children's advocate.
§48A-3-10. Subpoenas.

§48A-3-3. Duties of the children's advocate.

(a) The children's advocate shall supervise and direct the secretarial, clerical and other employees in his or her office in the performance of their duties as such performance affects the delivery of legal services. The children's advocate will provide appropriate instruction and supervision to employees of his or her office who are nonlawyers, concerning matters of legal ethics and matters of law, in accordance with applicable state and federal statutes, rules and regulations.

(b) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as promulgated and adopted by the supreme court of appeals, the children's advocate shall not permit a nonlawyer who is employed
by the department of health and human resources in a supervisory position over the children’s advocate to direct or regulate the advocate’s professional judgment in rendering legal services to recipients of services in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the department attempt to direct or regulate the advocate’s professional judgment.

(c) The children’s advocate shall make available to the public an informational pamphlet, designed in consultation with the director. The informational pamphlet shall explain the procedures of the court and the children’s advocate; the duties of the children’s advocate; the rights and responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the children’s advocate.

(d) The children’s advocate shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when such child’s primary caretaker is an applicant for or recipient of aid to families with dependent children, and when such primary caretaker has assigned to the division of human services any rights to support for the child which might be forthcoming from the putative father: Provided, That if the children’s advocate is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the children’s advocate shall decline to so act. The children’s advocate, upon the request of any primary caretaker of a child born out of wedlock, regardless of whether such primary caretaker is an applicant or recipient of aid to families with dependent children, shall undertake to establish the paternity of such child.

(e) The children’s advocate shall undertake to secure support for any individual who is receiving aid to
families with dependent children when such individual
has assigned to the division of human services any rights
to support from any other person such individual may
have: Provided, That if the children's advocate is
informed by the secretary of the department of health
and human resources or his or her authorized employee
that it has been determined that it is against the best
interests of a child to secure support on the child's
behalf, the children's advocate shall decline to so act.
The children's advocate, upon the request of any
individual, regardless of whether such individual is an
applicant or recipient of aid to families with dependent
children, shall undertake to secure support for the
individual. If circumstances require, the children's
advocate shall utilize the provisions of article seven of
this chapter and any other reciprocal arrangements
which may be adopted with other states for the
establishment and enforcement of support obligations,
and if such arrangements and other means have proven
ineffective, the children's advocate may utilize the
federal courts to obtain and enforce court orders for
support.

(f) The children's advocate shall pursue the
enforcement of support orders through the withholding
from income of amounts payable as support:

(1) Without the necessity of an application from the
obligee in the case of a support obligation owed to an
obligee to whom services are already being provided
under the provisions of this chapter; and

(2) On the basis of an application for services in the
case of any other support obligation arising from a
support order entered by a court of competent
jurisdiction.

(g) The children's advocate may decline to commence
an action to obtain an order of support under the
provisions of section one, article five of this chapter if
an action for divorce, annulment or separate
maintenance is pending, or the filing of such action is
imminent, and such action will determine the issue of
support for the child: Provided, That such action shall
be deemed to be imminent if it is proposed by the
obligee to be commenced within the twenty-eight days
next following a decision by the children's advocate that
an action should properly be brought to obtain an order
for support.

(h) If the child advocate office, through the children's
advocate, shall undertake paternity determination
services, child support collection or support collection
services for a spouse or former spouse upon the written
request of an individual who is not an applicant or
recipient of assistance from the division of human
services, the office may impose an application fee for
furnishing such services. Such application fee shall be
in a reasonable amount, not to exceed twenty-five
dollars, as determined by the director: Provided, That
the director may fix such amount at a higher or lower
rate which is uniform for this state and all other states
if the secretary of the federal department of health and
human services determines that a uniform rate is
appropriate for any fiscal year to reflect increases or
decreases in administrative costs. Any cost in excess of
the application fee so imposed may be collected from the
obligor who owes the child or spousal support obligation
involved.


1 A state or county official and the clerk of any court
2 who charges a deposit, library fee, filing fee or a fee for
3 filing or copying documents or other service, if the
4 filing, copying or service is for the child advocate office
5 shall bill the child advocate office monthly.

§48A-3-10. Subpoenas.

1 In order to obtain financial and medical insurance
information pursuant to the establishment, enforcement
and modification provisions set forth in chapter forty-
eight or forty-eight-a of this code, the children's
advocate may serve, by certified mail or personal
service, an administrative subpoena on any person,
corporation, partnership, financial institution, labor
union or state agency, for an appearance or for
production of financial or medical insurance
information. In case of disobedience to the subpoena, the
children's advocate may invoke the aid of any circuit
court in requiring the appearance or production of
records and financial documents.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATION.

§48A-5-1. Action to obtain an order for support of minor
child.

(a) An action may be brought in circuit court to obtain
an order for the support of a minor child when:

(1) Such child has a parent and child relationship with
an obligor;

(2) Such obligor is not the primary caretaker or
guardian of the child;

(3) The obligor is not meeting an obligation to support
the child;

(4) An enforceable order for the support of the child
by the obligor has not been entered by a court of
competent jurisdiction; and

(5) There is no pending action for divorce, separate
maintenance or annulment in which the obligation of
support owing from the obligor to the child is at issue.

(b) An action may be brought under the provisions of
subsection (a) of this section by:

(1) A custodial parent of a child, when the divorce
order or other order which granted custody did not
make provision for the support of the child by the
obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the
committee for a child; or

(4) The department of health and human resources,
or the child advocate office on its behalf, when the
department is providing assistance on behalf of the child
in the form of aid to families with dependent children,
and an assignment of any right to support has been
assigned to the department.

(c) An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

(d) If an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.

(e) Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code.

(f) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order, and make a new order, as the altered circumstances or needs of a child, an obligee, or the obligor may render necessary to meet the ends of justice.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Action for establishment of paternity.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

§48A-6-1. Action for establishment of paternity.

(a) A civil action to establish the paternity of a child and to obtain an order of support for the child may be instituted, by verified complaint, in the circuit court of the county where the plaintiff, the defendant or the child resides. Such action may be brought by any of the following persons:

(1) An unmarried woman with physical or legal custody of a child to whom she gave birth;

(2) A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:

(A) Such married woman lived separate and apart
(B) Such married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and

(C) The defendant, rather than her husband, is the father of the child.

(3) Any person, including the state of West Virginia or the department of health and human resources, or the child advocate office on its behalf, who is not the mother of the child, but who has physical or legal custody of such child;

(4) The guardian or committee of such child;

(5) The next friend of such child when the child is a minor;

(6) By such child in his own right at any time after the child’s eighteenth birthday but prior to the child’s twenty-first birthday; or

(7) A man purporting to be the father of a child born out of wedlock, when there has been no prior judicial determination of paternity.

(b) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for an action brought under this article with respect to a child who was conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

(c) If the person against whom the action is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default may be issued by the court as provided by the rules of civil procedure.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

(a) The court may, on its own motion, or shall upon the motion of any party, order the mother, her child and the man to submit to blood tests or tissue tests to aid the court in proving or disproving paternity. Such
motion may be made, upon ten days' written notice to
the mother and alleged father, without the necessity of
filing a complaint. If such tests are ordered, the court
shall direct that the inherited characteristics, including,
but not limited to, blood types, be determined by
appropriate testing procedures at a hospital,
independent medical institution or independent medical
laboratory, duly licensed under the laws of this state, or
any other state, and shall appoint an expert qualified as
an examiner of genetic markers to analyze and interpret
the results and to report to the court. The court shall
consider the results as follows:

(1) Blood or tissue test results which exclude the man
as the father of the child are admissible and shall be
clear and convincing evidence of nonpaternity and the
court shall, upon considering such evidence, dismiss the
action.

(2) Blood or tissue test results which show a statistical
probability of paternity of less than ninety-eight percent
are admissible and shall be weighed along with other
evidence of the defendant's paternity.

(3) Undisputed blood or tissue test results which show
a statistical probability of paternity of more than ninety-
eight percent shall, when filed with the court, legally
establish the man as the father of the child for all
purposes and child support may be established pursuant
to the provisions of this chapter.

(4) If the defendant desires to challenge the results of
the blood or tissue tests or the expert's analysis of
inherited characteristics, he shall file a written protest
within thirty days of the filing of such test results, and
serve a copy of such protest upon the other party. The
court, upon reasonable request of a party, shall order
that additional tests be made by the same laboratory or
another laboratory within thirty days of the entry of
such order, at the expense of the party requesting
additional testing. If the results of the blood or tissue
tests or the expert's analysis which show a statistical
probability of paternity of more than ninety-eight
percent are confirmed by the additional testing, then
such results are admissible evidence which is clear and convincing evidence of paternity. The admission of such evidence creates a presumption that the defendant is the father.

(b) Documentation of the chain of custody of the blood or tissue specimens is competent evidence to establish such chain of custody. A verified expert's report shall be admitted at trial unless a challenge to the testing procedures or a challenge to the results of test analysis has been made before trial. The costs and expenses of making such tests shall be paid by the parties in proportions and at times determined by the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.
ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.

1 (1) A person who (a) persistently fails to provide support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor; or (b) is subject to court order to pay any amount for the support of a minor child and is delinquent in meeting the full obligation established by such order and has been so delinquent for a period of at least six months' duration, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

2 (2) A person who persistently fails to provide support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor by virtue of a court or administrative order and the failure results in (a) an arrearage of not less than ten thousand dollars; or (b) twelve consecutive months without payment of support, is guilty of a felony, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for not less than one year nor more than three years, or both fined and imprisoned.
AN ACT to amend and reenact article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reorganization of the governor’s office of community and industrial development; redesignating said office the West Virginia development office; creating a council for community and economic development; members, appointment and expenses; providing that the council employ an executive director to serve at its will and pleasure; powers and duties of the council; council required to develop plan for internal reorganization of office and authorized to terminate inactive or ineffective programs; economic development initiatives; mandating plan for creating regional economic development corporations funded through matching grant program; requiring council to make certain reports to the Legislature; authorizing said office to contract with nonprofit private corporation funded from private sources; permitting payment of performance-based incentives by the nonprofit private corporation to the director and economic development representatives; authorizing public-private joint ventures; authorizing employment of economic development representatives exempted from civil service protections; transition and savings provision; and staff reorganization.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5B.
ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.
§5B-2-1. Governor’s office of community and industrial development redesignated West Virginia development office.

§5B-2-2. Council for community and economic development created; members, appointment and expenses; appointment and compensation of director.

§5B-2-3. Powers and duties of council for community economic development.

§5B-2-3a. Advertising and promotion reports; reporting same to Legislature.

§5B-2-4. Public-private partnerships.

§5B-2-5. Economic development representatives.

§5B-2-6. Transition; savings provision.

§5B-2-7. Staff reorganization.

§5B-2-1. Governor’s office of community and industrial development redesignated West Virginia development office.

1. The governor’s office of community and industrial development is hereby continued but is hereafter designated and shall be known as the West Virginia development office. All references in this code to the office of community and industrial development or the governor’s office of community and industrial development shall be construed as references to the West Virginia development office.

§5B-2-2. Council for community and economic development created; members, appointment and expenses; appointment and compensation of director.

1. (a) There is hereby created within the West Virginia development office a council for community and economic development, which is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council shall consist of:

2. (1) Nine members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism, or agriculture: Provided, That one member appointed pursuant to this subsection shall be a member of a regional planning and development
council. Of the nine members representing community or regional interests, three members shall be from each congressional district of the state, and shall be appointed in such a manner as to provide a broad geographical distribution of members of the council; (2) Two at-large members to be appointed by the governor with the advice and consent of the Senate; (3) One member to be appointed by the governor from a list of two persons recommended by the speaker of the House of Delegates; (4) One member to be appointed by the governor from a list of two persons recommended by the president of the Senate; (5) The president of the West Virginia economic development council; and (6) The secretary of the department of commerce, labor and environmental resources. (b) Not later than the first day of July, one thousand nine hundred ninety-two, the governor shall appoint the thirteen appointed members of the council for staggered terms. The terms of the board members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, three at the end of the first year, three at the end of the second year, three at the end of the third year, and four at the end of the fourth year, after the first day of July, one thousand nine hundred ninety-two. As these original appointments expire, each subsequent appointment shall be for a full four-year term. Any member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of any vacancy in the office of a member, such vacancy shall be filled by the governor in the same manner as the original appointment. (c) Members of the council shall not be entitled to compensation for services performed as members, but
shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. A majority of the members shall constitute a quorum for the purpose of conducting business. The council shall elect its chair for a term to run concurrent with the term of office of the member elected as chair. The chair is eligible for successive terms in that position.

(d) The council shall employ an executive director of the West Virginia development office qualified by reason of extensive education and experience in the field of professional economic development, to serve at the will and pleasure of the council. The salary of the director shall be fixed by the council. The director shall have overall management responsibility and administrative control and supervision within the West Virginia development office. It is the intention of the Legislature that the director shall provide professional and technical expertise in the field of professional economic development in order to support the policymaking functions of the council, but that the director is not a public officer, agent, servant or contractor within the meaning of section thirty-eight, article six of the Constitution of the state. Subject to the provisions of the contract provided for in section four of this article, the director is authorized to hire and fire economic development representatives employed pursuant to the provisions of section five of this article.

§5B-2-3. Powers and duties of council for community and economic development.

(a) The council for community and economic development shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia. "Comprehensive economic development strategy" means a plan that outlines strategies and activities designed to continue, diversify, or expand the economic base of the state as a whole; create jobs; develop a highly skilled work force; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with
respect to the needs of business and industry; facilitate cooperation among local, regional and private economic development enterprises; improve infrastructure on a state, regional, and community level; improve the business climate generally; and leverage funding from sources other than the state, including federal and private sources.

(b) The council shall develop a plan for the internal reorganization of the West Virginia development office. The plan shall evaluate programs and policies in place within the governor's office of community and industrial development on the first day of February, one thousand nine hundred ninety-two, with respect to their efficacy in yielding results with respect to economic development and is authorized to terminate, by resolution of the council, programs and policies which are either inactive, or ineffective in design or in application, in enhancing economic development. In developing its reorganization plan, the council shall consider the following initiatives:

(1) Creation of a competitiveness council composed of public and private members having as its primary goal the generation of new ideas for economic development and meeting on a periodic basis to develop broad ranging recommendations for the governor and the Legislature;

(2) Creation of a private nonprofit corporation for rural innovation to attract federal and foundation funding to develop and implement rural economic development initiatives;

(3) Creation of a consortium for work force readiness composed of members from vocational-technical-occupational education and higher education to develop initiatives for work force development, which may include mobile technology training centers;

(4) Creation of a one-stop capital access program to attract capital from sources inside and outside the state; to work with the private sector, including lending institutions; to assist entrepreneurs and businesses to access capital; and to coordinate all state economic development loan programs;
(5) Creation of a seed capital fund to be used for small business start-ups. Loans from the interest on the fund would match loans from private sources on a one-to-one basis to assist new small businesses in need of operating capital;

(6) Promotion of cooperation among municipalities and counties in funding physical infrastructure, including regional business parks; and

(7) The council shall develop a plan for the creation of regional economic development corporations or authorities and funding assistance to such corporations or authorities through a matching grant program. The council shall establish criteria for awarding funding assistance to such corporations or authorities within the limits of funds appropriated by the Legislature for the program. The West Virginia development office shall recognize existing county, regional or multi-county corporations or authorities where appropriate.

In developing its plan, the West Virginia development office shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia housing development fund; the West Virginia economic development authority; the West Virginia parkways, economic development and tourism authority; the West Virginia roundtable; the West Virginia chamber of commerce; regional planning and development councils; regional partnership for progress councils; and state appropriations.

(c) On or before the first day of December, one thousand nine hundred ninety-two, the council shall report to the governor and the Legislature on its plan for the internal reorganization of the West Virginia development office, including its recommendations with respect to necessary legislation.

(d) The council shall conduct a comprehensive survey of value-added products and report the results of the survey to the Legislature on or before the thirty-first day of December, one thousand nine hundred ninety-
two. The survey shall determine the following:

(1) What products are produced in West Virginia to which value is added at some location outside the state, and what value is added to the product;

(2) Current West Virginia businesses which add value to products produced in or outside the state, and what value is added;

(3) Opportunities which exist in the state to create jobs by establishing businesses to add value to products produced in or outside the state; and

(4) Products that are utilized by businesses in the state that are received from sources outside the state.

e) The council shall promulgate rules and regulations to carry out the purposes and programs of the West Virginia development office to include generally the programs available, and the procedure and eligibility of applications relating to assistance under such programs; these rules and regulations shall not be subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state.

§5B-2-3a. Advertising and promotion reports; reporting same to Legislature.

By the thirty-first day of December, one thousand nine hundred ninety-two, all state governmental entities having an advertising and promotion allocation within their budget shall make a report to the council containing the dollar amounts spent for advertising and promotion, to whom and for what such moneys are expended and any other information pertinent to the entity's advertising and promotion activities which may be of interest and use to the council. The council shall compile such information received pursuant to this section and shall report to the Legislature during the one thousand nine hundred ninety-three legislative session.

§5B-2-4. Public-private partnerships.

The West Virginia development office is authorized to enter into contractual or joint venture agreements with
a nonprofit corporation organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to section 501(c) of the Internal Revenue Code and for purposes of the economic development of West Virginia, and funded from sources other than the state. Members of the council are authorized to sit on the board of directors of the private nonprofit corporation. The contract shall include provisions relating to the employment of economic development representatives assigned to the West Virginia development office to be paid a base salary by the state and performance-based economic incentives from private funds of the nonprofit corporation. Provisions relating to hiring practices with respect to economic development representatives, job descriptions, accountability, public-private liaison, and performance standards may be the subject of contract negotiations. The contract shall include provision for continuing education and certification in the field of economic or industrial development for persons employed as economic development representatives. Agreements providing for the payment of performance-based incentives to the director of the West Virginia development office are authorized. Agreements providing for the payment of travel and expenses to the director of the West Virginia development office or to economic development representatives from private funds by the nonprofit corporation are authorized. The prohibitions of subdivisions (b) and (d), section five, article two, chapter six-b of this code are not applicable to the receipt by economic development representatives or by the director of performance-based incentives and other payments made by the nonprofit corporation and specifically authorized pursuant to this section.

From time to time the council may enter into joint ventures wherein the West Virginia development office and the nonprofit corporation share in the development and funding of economic development programs.

All contracts and joint venture agreements must be approved by vote of the council. Contracts entered into pursuant to this section for longer than one fiscal year
shall contain, in substance, a provision that the contract
shall be considered cancelled without further obligation
on the part of the state if the state Legislature or, where
appropriate, the federal government, shall fail to
appropriate sufficient funds therefor or shall act to
impair the contract or cause it to be cancelled.

§5B-2-5. Economic development representatives.

The director is expressly authorized to employ
economic development representatives to be paid a base
salary within legislative appropriations to the West
Virginia development office, subject to provisions set
forth by the council in its reorganization plan and
applicable contract provisions pursuant to section four
of this article. Economic development representatives
may receive performance-based incentives and expenses
paid from private funds from a nonprofit corporation
contracting with the West Virginia development office
pursuant to the provisions of section four of this article.
The director shall establish job descriptions and
responsibilities of economic development representa-
tives, subject to the provisions of any contract with a
nonprofit corporation entered into pursuant to section
four of this article.

Notwithstanding any provision of this code to the
contrary, economic development representatives
employed within the West Virginia development office
are not subject to the procedures and protections
provided by articles six and six-a, chapter twenty-nine
of this code. Any employee of the West Virginia
development office on the effective date of this article
who applies for employment as an economic
development representative is not entitled to the
protections of article six, chapter twenty-nine with
respect to hiring procedures and qualifications; and
upon accepting employment as an economic
development representative, the employee relinquishes
the protections provided for in articles six and six-a,
chapter twenty-nine.

§5B-2-6. Transition; savings provision.

All programs, orders, determinations, rules, permits,
grants, contracts, certificates, bonds, authorizations and
privileges which have been issued, made, granted, or
allowed to become effective pursuant to any prior
enactments of this article or by the governor, the
governor's office of community and industrial
development or its director, or by a court of competent
jurisdiction, and which are in effect on the first day of
February, one thousand nine hundred ninety-two, shall
continue in effect according to their terms until
modified, terminated, superseded, set aside, or revoked
by the governor, the council for community and
economic development or the director of the West
Virginia development office pursuant to this article, by
a court of competent jurisdiction, or by operation of law.

§5B-2-7. Staff reorganization.

It is the intention of the Legislature that research and
support staff for the council and for professional
economic development staff, including the director of
the West Virginia development office and economic
development representatives, be drawn, where possible,
in the reorganization developed by the council, from
qualified employees employed within the governor's
office of community and industrial development on the
first day of February, one thousand nine hundred
ninety-two.

The director, pursuant to the reorganization plan as
approved by the council, may eliminate or consolidate
positions, and name a person to fill more than one
position; delegate, assign, transfer or combine
responsibilities or duties to or among employees; and
reorganize internal functions or operations.

Except as provided in section five of this article,
nothing contained in this article shall be construed to
abridge the rights of employees within the classified
service of the state as provided in sections ten and ten-
a, article six, chapter twenty-nine of this code. The lay-
off and recall rights of employees within the classified
service of the state as provided in subsections (5) and
(6), section ten, article six, chapter twenty-nine of this
code shall be applicable within the agency as a whole:
Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this section shall be limited to two years or the length of tenure, whichever is less.

The department of commerce, labor and environmental resources, the public employees retirement system and the public employees insurance agency shall work with all employees whose jobs are terminated as a result of the reorganization of the West Virginia development office as provided for in this article in order to recommend benefits, services, training, an interagency employment transfer or other employment. The director of the West Virginia development office and directors of all other state agencies shall use best efforts to employ qualified employees who were employed in positions directly affected by the reorganization: Provided, That notwithstanding any other provision of the code to the contrary, in filling vacancies at other state agencies, the directors of such agencies shall, for a period of twenty-four months or the length of tenure, whichever is less, after the effective date of this article, give preference over all but existing employees to those qualified employees whose jobs were terminated as a result of the reorganization: Provided, however, That such preference shall not supersede those employees with recall rights in other state agencies. The director of the West Virginia development office shall provide to the division of personnel a list of those employees directly affected by the reorganization.

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CHAPTER 56

(H. B. 4731—By Delegates Mezzatesta and Faircloth)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article two, and section
nine-d, article six, chapter twelve of said code, all relating to extending for twelve months the governor's authority to borrow money from the consolidated pension fund to finance needed public improvements in education; providing for the redesignation of certain funds; and providing for repayment of such borrowing from consumers sales tax collections.

Be it enacted by the Legislature of West Virginia:

That section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article two and section nine-d, article six, chapter twelve of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.


CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


1 The proceeds of the tax imposed by this article shall be deposited in the general revenue fund of the state:

2 Provided, That beginning the first day of July, one thousand nine hundred eighty-nine, and continuing each month thereafter through the last day of July, one thousand nine hundred ninety-two, the first five million dollars of proceeds of this tax for each month shall be paid into the "Fiscal Responsibility Fund" created by section nineteen, article one, chapter five of this code and used for the purposes specified therein, and that on and after the first day of August, one thousand nine hundred ninety-two, and continuing each month thereafter until any money borrowed under section nine-d, article six, chapter twelve of this code is repaid, the first five million dollars of proceeds of this tax for each month shall be paid into the "Education Enhancement Fund" created by section nine-d, article six, chapter twelve of this code: Provided, however, That if no money is borrowed under section nine-d, article six of said
20 chapter twelve, before the first day of August, one 
21 thousand nine hundred ninety-two, then no tax collected 
22 under this article shall be deposited into the “Education 
23 Enhancement Fund”, and if money is borrowed after the 
24 thirtieth day of June, one thousand nine hundred ninety-
25 two, then payment into the “Education Enhancement 
26 Fund” shall begin the first day of the calendar month 
27 succeeding the month in which funds are borrowed 
28 under section nine-d, article six of said chapter twelve: 
29 Provided further, That if less than sixty million dollars 
30 is borrowed under said section nine-d, then the amount 
31 to be paid into the “Education Enhancement Fund” each 
32 month, as provided in this section, shall be that 
33 proportion of five million dollars that the amount of 
34 money borrowed bears to sixty million dollars.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article  
2. Payment and Deposit of Taxes and Other Amounts Due the State 
or any Political Subdivision.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER 
AMOUNTS DUE THE STATE OR ANY POLITICAL 
SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; 
regulations governing deposits; credit to state 
fund; exceptions.

1 (a) All officials and employees of the state authorized 
2 by statute to accept moneys due the state of West 
3 Virginia shall keep a daily itemized record of such 
4 moneys so received for deposit in the state treasury and 
5 shall deposit within twenty-four hours with the state 
6 board of investments all moneys received or collected by 
7 them for or on behalf of the state for any purpose 
8 whatsoever. The treasurer and the board of investments 
9 shall promulgate rules and regulations, in accordance 
10 with the provisions of chapter twenty-nine-a of this code 
11 governing the procedure for such deposits.

12 The official or employee making such deposits with 
13 the state board of investments shall prepare such deposit 
14 lists in such manner and upon such report forms as may
be prescribed by the board of investments. Once the
board has satisfied itself that all deposits have been
promptly prepared and deposited, it shall transfer all
such funds to a special bank account of the state
treasurer and provide him with such deposit report. The
original of this report shall accompany the deposit to the
treasurer. Certified or receipted copies shall be
immediately forwarded by the state treasurer to the
state auditor and to the secretary of administration, and
a copy shall be provided to the board of investments. The
original of the deposit report shall become a part of the
treasurer's permanent record.

(b) When so paid, such moneys shall be credited to the
state fund and treated by the auditor and treasurer as
part of the general revenue of the state: Provided, That
all moneys received out of appropriations made by the
Congress of the United States shall be recorded in
special fund accounts, apart from the general revenues
of the state, in the state treasury and all such moneys
shall not be used for any purpose whatsoever unless and
until authorized and directed by the Legislature,
excepting the following funds which shall be recorded
in separate accounts:

(1) All funds excluded by the provisions of section six,
article eleven, chapter four of this code;
(2) All funds derived from the sale of farm and dairy
products from farms operated by any agency of the state
government other than the farm management
commission;
(3) All endowment funds, bequests, donations,
executive emergency funds, and death and disability
funds;
(4) All fees and funds collected at state educational
institutions for student activities;
(5) All funds derived from collections from
dormitories, boardinghouses, cafeterias and road camps;
(6) All moneys received from counties by institutions
for the deaf and blind on account of clothing for indigent
pupils;
(7) All insurance collected on account of losses by fire and refunds;

(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications, all funds and moneys payable to or received by the natural resources commission of West Virginia and moneys collected and received by the division of natural resources pursuant to article two, article two-a and article two-b, chapter twenty of this code;

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received thereunder shall be used for specific purposes.

(c) All moneys, excepted as provided in subdivisions one through nine, inclusive, of subsection (b) of this section, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be recorded in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law: Provided, That amounts collected pursuant to subdivision ten, subsection (b) of this section, which are found from time to time to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

(d) The state board of investments shall have
authority to establish an imprest fund or funds in the
office of any state agency or institution making proper
application to the board. To implement this authority
the board shall promulgate rules and regulations, in
accordance with the provisions of chapter twenty-nine-
a of this code. The board or its designee shall annually
audit all such funds and prepare a list of all such funds
showing the location and amount as of fiscal year end,
retaining such list as a permanent record of the board
until such time as the legislative auditor shall have
completed an audit of the imprest funds of all agencies
and institutions involved.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-9d. Legislative findings; loans to the state; purpose
for which moneys transferred may be
disbursed and expended; terms and
conditions for repayment; creation of special
account in state treasury.

(a) The Legislature hereby finds and declares that the
West Virginia supreme court of appeals has determined
that public education has a constitutionally preferred
status; that there is a large amount of investable funds
in the consolidated pension fund; that loans made under
commercially reasonable terms to finance needed public
education improvements are necessary investments in
the future of West Virginia; and that loans from the
consolidated pension fund will assist in financing the
needs of primary and secondary education, without in
any way impairing the solvency or financial soundness
of the consolidated pension fund. This section is enacted
in view of these findings.

(b) Whenever the governor determines that there are
insufficient general revenue funds available for the
timely payment for necessary improvements in public
education as appropriated by the Legislature in the
budget bills for the fiscal years one thousand nine
hundred ninety-one, one thousand nine hundred ninety-
two, or one thousand nine hundred ninety-three, the
governor may request the state board of investments to
lend those moneys necessary to meet such payment and
the state board of investments shall transfer moneys
from the consolidated pension fund to the special sinking
fund account created in the state treasury by subsection
(d) of this section, in the amount determined by the
governor to be sufficient and necessary to meet such
payments, within the amount determined by the board
of investments to be prudently available. The manner
and timing of such transfers shall be in the discretion
of the board of investments. The total of the amounts
transferred may not exceed a total of fifty million
dollars during fiscal year one thousand nine hundred
ninety-two and ten million dollars during fiscal year one
thousand nine hundred ninety-three, respectively. On
the date the loan is transferred to the special sinking
fund created in subsection (d) of this section, interest
shall accrue at the current interest rate of the fund from
which the loan originated, plus one fourth of one
percent, and the current interest rate shall be
recalculated every six months.

(c) Full repayment of all moneys transferred, with
interest, shall be made to the board of investments by
payment into such pension fund from amounts appro-
priated by the Legislature or in the absence of
appropriations from the amounts specified in section
thirty, article fifteen, chapter eleven of this code, by
budget action as first priority from the moneys available
for each fiscal year. Repayment of the loans shall begin
six months from the date the funds were transferred
and payments shall be made every six months
thereafter, or sooner if agreed to in writing by the board
of investments and the governor: Provided, That all
loans shall be repaid in full by the last day of August,
one thousand nine hundred ninety-six.

(d) There is hereby created in the state treasury a
special account, designated the "Education
Enhancement Fund", which is a sinking fund for the
deposit, withdrawal and repayment of moneys
transferred pursuant to this section and section thirty,
article fifteen, chapter eleven of this code, in accordance
with the special fund doctrine for budgetary transfer
activities involving more than one fiscal year.
Management of such fund shall be a responsibility of the board of investments. If any moneys remain in said fund after repayment in full to the appropriate pension fund or funds, such moneys shall be transferred to the general revenue fund within thirty days of the last repayment.

(e) Upon the written request of the governor, the board of investments shall transfer to the general revenue fund, from the funds available in the education enhancement fund, those funds necessary for the timely payment for necessary improvements in public education as appropriated by the Legislature.

CHAPTER 57
(H. B. 4753—By Delegates P. White and Browning)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]
allocated state aid share for counties under court order to refund prior year taxes, unable to collect property tax while court proceedings are pending or where values levied upon are less than those calculated under a certain code section; relating to eliminating in-field masters program; and setting state minimum salaries for teachers with masters or above degrees effective on a date certain.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

Article
2. State Board of Education.
9A. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5b. Medicaid eligible children; school health services advisory committee.

§18-2-5c. Birth certificate required upon admission to public school; required notice to local law-enforcement agency of missing children.

§18-2-5b. Medicaid eligible children; school health services advisory committee.

1 (a) The state board shall become a medicaid provider and seek out medicaid eligible students for the purpose of providing medicaid and related services to students eligible under the medicaid program and to maximize federal reimbursement for all services available under the Omnibus Budget Reconciliation Act of one thousand nine hundred eighty-nine, as it relates to medicaid expansion and any future expansions in the medicaid
program for medicaid and related services for which state dollars are or will be expended: Provided, That the state board may delegate this provider status and subsequent reimbursement to regional educational service agencies (RESA) and/or county boards: Provided, however, That annually the state board shall report to the Legislature the number and age of children eligible for medicaid, the number and age of children with medicaid coverage, the types of medicaid eligible services provided, the frequency of services provided, the medicaid dollars reimbursed; and the problems encountered in the implementation of this system and that this report shall be on a county by county basis and made available no later than the first day of January, one thousand nine hundred ninety-two, and annually thereafter.

(b) The state board shall appoint and convene a school health services advisory committee to advise the secretary of health and human resources and the state superintendent on ways to improve the ability of regional education service agencies, local school boards, and department of health and human resources employees to provide medicaid eligible children with all the school-based medicaid services for which they are eligible and to ensure that the school-based medicaid service providers bill for and receive all the medicaid reimbursement to which they are entitled. The committee shall consist of at least the following individuals: The person within the department of education responsible for coordinating the provision of and billing for school-based medicaid services in schools throughout the state, who shall provide secretarial, administrative and technical support to the advisory committee; the person within the department of health and human resources responsible for coordinating the enrollment of medicaid eligible school children throughout the state; two representatives of regional education services agencies who are experienced with the process of billing medicaid for school-based health services; two department of health and human resources employees responsible for supervising employees, two persons jointly appointed by the secretary of health and
human resources and the state superintendent; and one representative of the governor's task force on school health.

The school health services advisory committee shall meet in the first instance at the direction of the state superintendent, select a chairperson from among its members, and meet thereafter at the direction of the chairperson. The committee shall report its findings and recommendations to the state board and department of health and human resources, which findings shall then be included in the report to the Legislature by the state board and department of health and human resources provided for in subsection (a) of this section.

All actual and necessary travel expenses of the members of the committee shall be reimbursed by the member's employing agency, for those members not employed by a state agency, the member's actual and necessary travel expenses shall be paid by the state board. All such expenses shall be reimbursed in the same manner as the expenses of state employees are reimbursed.

§18-2-5c. Birth certificate required upon admission to public school; required notice to local law-enforcement agency of missing children.

(a) No pupil shall be admitted for the first time to any public school in this state unless the person enrolling the pupil presents a copy of the pupil's original birth record certified by the state registrar of vital statistics confirming the pupil's identity, age, and state file number of the original birth record. 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 service and is in transit due to military orders, a three-week extension shall be granted to such person for providing the birth records.

(b) Upon the failure of any person enrolling a pupil to furnish a certified copy of the pupil's birth record in
conformance with subsection (a) above, the principal of the school in which the pupil is being enrolled or his designee shall immediately notify the local law-enforcement agency. The notice to the local law enforcement agency shall include copies of the submitted proof of the pupil's identity and age and the affidavit explaining the inability to produce a certified copy of the birth record.

(c) Within fourteen days after enrolling a transferred pupil, the principal of the school in which the pupil has been enrolled or his designee shall request that the principal or his designee of the school in which the pupil was previously enrolled transfer a certified copy of the pupil's birth record.

(d) Principals and their designees shall be immune from any civil or criminal liability in connection with any notice to a local law-enforcement agency of a pupil lacking a birth certificate or failure to give such notice as required by this section.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3a. Total state basic foundation program and foundation allowance for regional educational service agencies for fiscal year one thousand nine hundred ninety-two-ninety-three only.

§18-9A-4. Foundation allowance for professional educators.

§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-12. County basic foundation; total basic state aid allowance.

§18-9A-3a. Total state basic foundation program and foundation allowance for regional educational service agencies for fiscal year one thousand nine hundred ninety-two-ninety-three only.

(a) Notwithstanding any other provisions of this article to the contrary, the total basic foundation program for the state for the fiscal year one thousand nine hundred ninety-two-ninety-three shall be the sum of the amounts computed in accordance with this section, less the county's local share:

(1) Allowance for professional educators as determined in accordance with sections four and five-a of this article:
(2) Allowance for service personnel as determined in accordance with sections five and five-a of this article;

(3) Allowance for fixed charges as determined in accordance with the provisions of sections six and six-a of this article;

(4) Allowance for transportation cost in an amount at least equal to the appropriation for such allowance in the fiscal year one thousand nine hundred ninety-one—ninety-two;

(5) Allowance for administrative cost in accordance with the provisions of section eight of this article;

(6) Allowance for other current expense and substitute employees in an amount at least equal to the appropriation for such allowance in the fiscal year one thousand nine hundred ninety-one—ninety-two; and

(7) Allowance to improve instructional programs in an amount at least equal to the appropriation for such allowance in the fiscal year one thousand nine hundred ninety-one—ninety-two.

(b) Notwithstanding the provisions of section eight-a of this article, the foundation allowance for regional educational service agencies for the fiscal year one thousand nine hundred ninety-two shall be in an amount equal to the appropriation for such allowance in the fiscal year one thousand nine hundred ninety-one—ninety-two, unless a greater amount is appropriated by the Legislature.

§18-9A-4. Foundation allowance for professional educators.

The basic foundation allowance to the county for professional educators shall be the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of the code, to such personnel employed: Provided, That in making this computation no county shall receive an allowance for such personnel which number is in excess of fifty-four and thirty-three one-hundredths professional educators to each one thousand
students in adjusted enrollment: Provided, however, That for the school year commencing on the first day of July, one thousand nine hundred ninety-one, and thereafter, no county shall receive an allowance for such personnel which number is in excess of fifty-three and one-half professional educators to each one thousand students in adjusted enrollment: Provided further, That any county not qualifying under the provision of section fourteen of this article shall be eligible for a growth rate in professional personnel in any one year not to exceed twenty percent of its total potential increase under this provision, except that in no case shall such limit be fewer than five professionals: And provided further, That the number of and the allowance for personnel paid in part by state and county funds shall be prorated: And provided further, That where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for such school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that such personnel shall be considered within the above-stated limit: And provided further, That in the school year beginning the first day of July, one thousand nine hundred eighty-eight, and in each school year thereafter, each county board shall establish and maintain a minimum ratio of fifty professional instructional personnel per one thousand students in adjusted enrollment: And provided further, That no county shall have less than a total of five principals and central office administrators. Any county board which does not establish and maintain this minimum ratio shall suffer a pro rata reduction in the allowance for professional educators under this section: And provided further, That no county shall be penalized if it has increases in enrollment during that school year: And provided further, That any county board which does not establish and maintain this minimum ratio shall utilize any and all allocations to it by provision of section fourteen of this article solely to employ professional instructional personnel until the minimum ratio is attained. Every county shall utilize methods other than
reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section. It is the intent of the Legislature that in planning reductions in force to comply with reduced ratios of professional educators to students in adjusted enrollment, county boards shall consider positions for elimination in the following order: (1) Central office administrators, (2) assistant principals, and (3) principals.

No county shall increase the number of administrative personnel employed as either professional educators or pay grade "H" service personnel above the number which were employed, or for which positions were posted, on the thirtieth day of June, one thousand nine hundred ninety, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts:

Provided, That the governor shall submit a recommendation to the Legislature at the beginning of the regular session thereof in the year one thousand nine hundred ninety-one, which proposes a method for establishing a responsible level of administrative support for each county school system and a pay scale differentiation on a daily rate between classroom positions and administrative positions when all other factors are equal.

Every county board of education shall annually determine the number of professional educators employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplement that would be available per state authorized employee if all expenditures for such excess employees were converted to annual salaries for state authorized professional educators within their county. Such information shall be published annually in each school report card of each such county.

§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-two only, thirty-one million, two hundred sixteen thousand, eight hundred three 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-two, 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 no county shall lose or gain more than fifteen percent over the previous year's allocation:

(c) Any county whose allocation under subsections (a) and (b) of this section is less than two hundred seventy-five thousand dollars shall receive an additional appropriation which equals the difference between such allocation and two hundred seventy-five thousand dollars.

(d) 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
Provided, 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, however, That for the school year beginning on the first day of July, one thousand nine hundred ninety-two, 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 authorization 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-two. On or before the first day of June, the state superintendent 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.
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(e) Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-two, 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.

§18-9A-12. County basic foundation; total basic state aid allowance.

(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine and ten of this article. On the first working day of July in each year, the state board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in section eleven of this article, except as provided in subsection (b) of this section.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: Provided, That prior to such adjustment, the state tax
commissioner shall provide the state board, by the fifteenth day of January of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to each county board in the ensuing fiscal year as a result of the circumstance.

(1) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is under a final court order to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect or must refund due to the final court order.

(2) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the tax commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the tax commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceedings, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the tax commissioner: Provided, That the county is
required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the general revenue fund of the state.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the state tax commissioner, by the first day of January of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The state tax commissioner then shall provide the state board, by the fifteenth day of January of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the state board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18A-4-2. State minimum salaries for teachers.

§18A-4-1. Definitions.
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 under the statutory provisions of this chapter. "Classification of training" means the number of collegiate or graduate hours necessary to meet the requirements stipulated in the definitions set forth in the next paragraph in items (2) to (11), inclusive.

The column heads of the state minimum salary schedule set forth in section two of this article are defined as follows:

(1) "Years of experience" means the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools, and service in the armed forces of the United States if the teacher was under contract to teach at the time of induction. For a registered professional nurse employed by a county board, "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, 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.

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.

Effective the first day of July, one thousand nine hundred ninety-four, the following definition shall be applicable.

(11) "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.

§18A-4-2. State minimum salaries for teachers.

Effective the first day of July, one thousand nine hundred ninety-two and thereafter, each teacher shall receive the amount prescribed in the "state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the
8 contract year.

9 STATE MINIMUM SALARY SCHEDULE

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Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. Such payments shall be in addition to any amounts prescribed in the “state minimum salary schedule”, shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

### CHAPTER 58

(Com. Sub. for H. B. 4139—By Mr. Speaker, Mr. Chambers, and Delegate Burk, By Request of the Executive)

[Passed February 28, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, seven, eight and nine, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the adoption of textbooks, instructional materials, or learning technologies; permitting the state board of education to determine adoption periods; changing references from “publishers” to “vendors”; permitting magazines, newspapers and periodicals to be purchased for classroom use in certain instances; authorizing distribution of certain sample items; limiting the number of requested sample items; allowing the state board to designate contract time periods; increasing the bond requirement maximum; requiring contracts to also be filed with the board of public works; permitting the state board to determine certain specifications in bids.
and contracts; authorizing the state board to establish one or more depositories; and allowing school curriculum teams to provide input in the selection process.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, seven, eight and nine, article two-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 2A. ADOPTION OF TEXTBOOKS, INSTRUCTIONAL MATERIALS AND LEARNING TECHNOLOGIES.

§18-2A-1. Definition; adoption groups; adoption schedule.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

§18-2A-3. Disposition of and requests for samples.

§18-2A-4. Execution of contracts; bond.

§18-2A-5. Selection by county boards; school curriculum teams.

§18-2A-7. Exchange privilege; use of supplementary items; state-approved depositories authorized.

§18-2A-8. Textbooks, instructional materials, or learning technologies must be approved and listed; when changes may be effected; rules.

§18-2A-9. Gifts and bribes to influence adoption of books, instructional materials or learning technologies a felony; penalty.

§18-2A-1. Definition; adoption groups; adoption schedule.

The definition of “textbooks” includes books; instructional materials, as used therein, means systems of instructional materials, or combinations of books and supplementary materials which convey information to the pupil; learning technologies, including, but not limited to, applications using computer software, computer assisted instruction, interactive videodisc; other computer courseware and magnetic media.

Textbooks, instructional materials, learning technologies or any combination thereof adopted on the state multiple list must substantially cover the required content and skills for the subject as approved by the state board of education. Adopted materials must be current and information presented accurately.

On or before the first day of July, one thousand nine hundred ninety-two, the state board of education shall
classify the elementary and secondary school subjects required to be taught in the schools of our state into adoption groups by related subject fields as nearly as possible. A schedule for the periods of adoption shall be determined by the state board of education: Provided, That magazines, newspapers and other periodicals may be purchased by a county board of education for classroom use to supplement those items adopted on the state multiple list without having to comply with the adoption procedures provided in this article: Provided, however, That magazines, newspapers and periodicals shall be deemed to be textbooks for purposes of special excess levies subject to the provisions of section sixteen, article eight, chapter eleven of this code when the described purpose under said section is for textbooks. The state adoption cycle shall not exceed six years: Provided further, That the county textbook adoption committees may request a waiver of the six year maximum adoption cycle from the state board of education.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

Prior to each adoption year, and not later than the first day of August, the state board by written request or otherwise shall ask the various vendors of textbooks, instructional materials, learning technologies or any combination thereof to submit samples and prices on items deemed appropriate by the state board of education to teach the curriculum in the public elementary and secondary schools of the state for the current adoption period.

All bids or proposals shall be under seal, and each bidder shall deposit in the state treasury such sum of money as the state board may designate, such deposit to be not less than one thousand dollars, and not more than three thousand dollars; and such deposit shall be forfeited to the general school fund if such bidder shall fail or refuse to make and execute such contract and bond as are herein required in case of acceptance of all or part of the vendor's bid, and otherwise shall be
returned to such bidder after the contract has been made. The state board of education reserves the right to set the sum of money a vendor is required to deposit in the state treasury upon submitting a bid: Provided, That the vendor has a previous history of failure or refusal to execute contracts or bonds with the state of West Virginia.

All bids shall be opened by the state board in public session. After considering the subject matter, product quality, general suitableness, and prices of items submitted, the board shall, prior to the first day of March of each year in which adoptions are made by the state board of education, establish a committee of teachers and other educational specialists and with the aid of said committee, shall on or before the first day of December, prior to county adoptions, select, approve and publish a list of items in each subject and grade in the elementary and secondary subjects required to be taught by said board. The committee of teachers and other educational specialists shall report their recommendations to the state board on or before the fifteenth day of November of the year preceding the adoption by the county board.

§18-2A-3. Disposition of and requests for samples.

Sample items in excess of the official sample submitted to the state board for examination shall remain the property of the vendor submitting them if claimed within thirty days after adoption of the multiple list. If not claimed within that period, the items may be sold by the state board and the money credited to the general school fund or items may be distributed to state operated educational agencies. Sample items submitted to county boards of education remain the property of the vendor submitting them if claimed within thirty days after the county board of education has formally adopted its items. Unclaimed items may be distributed free of charge by the respective board of education to any school, library or individual who may have need for the sample items.

Vendors claiming samples within the thirty-day
period shall notify the respective board of education at the time samples are submitted for study of their intent to recall the samples. All costs shall be borne by the vendors.

No county adoption committee is entitled to request or receive more than eight free samples of any multigrade program being considered for adoption. Any single grade level subject area items used above grade six shall be limited to five free samples per county selection committee. Any individual requesting samples in excess of these limits shall be billed by the vendor at the lowest wholesale price plus shipping.

§18-2A-4. Execution of contracts; bond.

When the selection and approval of the multiple list have been properly made, it shall be the duty of the state board to furnish contracts for the selected items with the vendors within thirty days of the approval and adoption of the multiple list, prepare a list of the adopted items on the multiple list and publish same, and send a copy to each county superintendent and vendors who submitted bids for the particular adoption group not later than January fifteenth of the year of the county adoption. Such contracts for adoption shall run for a period of time as designated by the state board of education.

Each vendor awarded a contract by the state shall enter into a bond payable to the state of West Virginia in the penal sum of not less than two thousand dollars and not more than ten thousand dollars to be approved by the state board of public works, such bond to be executed as surety by some responsible surety company authorized to carry on its business in West Virginia. Such contract shall be prepared by the attorney general in accordance with the terms and provisions of this article. Such contract shall be executed in triplicate, one copy to be held by the vendor, one by the state board of education and one attached to the bond filed with the board of public works.

Bonds required of successful vendors shall provide that:
(a) The vendor will furnish any of the items on the multiple list under vendors contract for the period of the adoption, from the date of the bond, to any county school unit, a dealer appointed by the county, or any state board approved depository or depositories as defined in section seven of this article, at the lowest wholesale price contained in the bids or contracts made to any other county school unit, dealer, county, school or depository in any other state, like conditions prevailing. The state board shall determine, from time to time, the terms of the bids and contracts and may require the vendor to bear the costs of shipping, mail or transportation or offer any other financial benefit available in the highest amount paid by a vendor to any other county school unit, dealer, county or depository in any other state: Provided, That the state board of education shall decide whether from time to time bids and contracts for textbooks, instructional materials and learning technologies or any combination thereof are to be for the delivery directly to each county school unit, dealer appointed by the county, county or to each depository or depositories, or any combination thereof, under this section.

(b) The vendor will automatically reduce such prices in West Virginia when prices are reduced anywhere in the United States, so that no such item or items shall at any time be sold in West Virginia at a higher wholesale price than received for items elsewhere in the United States, like conditions prevailing.

(c) All items sold in West Virginia will be identical with the official samples filed with the state board of education as regards quality standards, specifications, subject matter, and other particulars which may affect the value of the items. The state board of education may, however, during the period of the contract approve revised editions of adopted items, which will authorize a vendor to furnish such revisions. All contracts and bonds shall be filed with the board of public works prior to the first day of July.

§18-2A-5. Selection by county boards; school curriculum teams.
Vendors, upon requests of county superintendents, shall furnish to county boards of education the requested sample copies of items that were selected and placed on the state multiple list by the state board of education in accordance with the provisions of section three of this article.

School curriculum teams shall make their curriculum and instructional needs known to the county superintendent and selection committees prior to the consideration of any adopted grouping in accordance with the provisions of section three of this article. The county board of education shall, upon recommendation of the county superintendent with the aid of a committee of teachers and not later than the first day of May of the year following that in which the multiple list for the group was made and approved, select from the state multiple list one or more items to deliver instruction for a period as provided for elsewhere in this article. Counties are authorized to include nonvoting advisors from the general public in the adoption process, but shall require advisors to provide their assessment of the items appropriate for the subject before the voting committee commences the selection process.

§18-2A-7. Exchange privilege; use of supplementary items; state-approved depositories authorized.

Contractors shall arrange for the exchange of items, allowing pupils or boards of education an exchange price as liberal as granted on the same items to any city, county, or state in the United States, like conditions prevailing. The exchange privilege shall extend through one entire school year. Nothing in this article is to be construed as preventing the use of supplementary books, instructional materials, or learning technologies provided they do not displace the adopted items, nor the use of more advanced items in such schools as may be ready for the same. On or before the first day of July, one thousand nine hundred ninety-four and thereafter, the state board of education is authorized to approve any depository or depositories, either public or private, to serve any county or several counties, whose purpose
includes, but is not limited to, offering the savings and
services generally associated with local distribution of
textbooks, instructional materials, or learning
technologies or any combination thereof, to counties and
schools.

§18-2A-8. Textbooks, instructional materials, or learning
technologies must be approved and listed;
when changes may be effected; rules.

No textbook, instructional materials, or learning
technologies shall be used in any public elementary or
secondary school in West Virginia as the primary source
to deliver the instructional goals and objectives for state
required courses unless it has been approved and listed
on the state multiple list by the state board of education,
extcept as otherwise provided for in this section. Any
changes of items made by the state board of education
shall become effective upon approval. The state board
of education may upon request by a county board of
education and upon justification of that request, and
subsequent to the adoption by a county board of
education, approve the adoption of additional items to
meet the needs of specific children which were not
provided for in the original adoption, or waive the
requirement to adopt and utilize items in a particular
school as provided for in section six, article five-a of this
chapter. Nothing in this section shall apply to the
supplementary items that are needed from time to time.

The state board of education is authorized to grant
permission to county boards of education for the
continued use of previously adopted items that are listed
on the most recently expired multiple list appropriate
for the subject category under consideration. The
continued use shall not exceed a period as designated by
the state board of education. The state board may make
such rules and regulations as it may deem necessary and
expedient to carry out the provisions of this article.

§18-2A-9. Gifts and bribes to influence adoption of books,
instructional materials or learning tech-
nologies a felony; penalty.

Any member of the state board of education, any
county superintendent, any member of a county board of education or any other person who shall receive,
solicit, or accept any gift, present, or thing of value to influence that individual in the vote for the adoption of books, instructional materials or learning technologies, or any combination thereof, or any person who shall either directly or indirectly give or offer to give any such gift, present, or thing of value to any person to influence that individual in voting for the adoption of books, instructional materials or learning technologies, or any combination thereof, shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary for not less than one year nor more than three years.

CHAPTER 59
(Com. Sub. for H. B. 4118—By Delegates Prezioso and Ashcraft)

[Passed March 5, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to county boards of education; defining terms; authorizing such boards to enter into energy-savings contracts; setting forth certain procedures and requirements for the use of such contracts; authorizing the “lease with option to purchase” method of contracting; and providing that the county board may annually renew the energy-savings contract up to ten years.

Be it enacted by the Legislature of West Virginia:

That article five, 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 nine-a, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.
§18-5-9a. Energy-savings contracts.
(a) For the purposes of this section:

(1) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of school facilities. They include, but are not limited to, installation of two or more of the following:

(A) Insulation of a building structure and systems within a building;

(B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door modifications that reduce energy consumption;

(C) Automatic energy control systems;

(D) Heating, ventilating or air conditioning systems, including modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase energy efficiency;

(F) Energy recovery systems;

(G) Cogeneration systems that produce steam or another form of energy for use by the county board of education in a building or complex of buildings owned by the board of education; or

(H) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building's present cost of operation.

(2) "Energy-savings contract" means a contract for the evaluation and recommendation of energy operations conservation measures, and for implementation of one or more such measures. The contract shall provide that payments, except obligations upon termination of the contract before its expiration, are to be made over time. A county board of education may supplement these payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(3) "Qualified provider" means a person, firm or corporation experienced in the design, implementation
and installation of energy-conservation measures.

(b) County boards of education are hereby authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of reducing energy operating costs of school buildings.

(c) A board of education may enter into an energy-savings contract with a qualified provider to reduce energy operating costs significantly. Before entering into such a contract or before the installation of equipment, modifications or remodeling to be furnished under such a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. Such a proposal shall contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the board finds, after receiving the proposal, that the proposal includes more than one energy-conservation measure designed to save energy operating costs, the board may enter into a contract with the provider pursuant to this section.

(d) An energy-savings contract must include the following:

(1) A guarantee of a specific minimum amount of money that the board will save in energy operating costs each year during the term of the contract;

(2) A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations.

(e) An energy-savings contract which is performance-based and includes a guarantee of savings and a comprehensive approach of energy-conservation measures for improving comfort is subject to competitive bidding requirements: Provided, That the requirements of article five-a, chapter twenty-one of this code as to prevailing wage rates shall apply to the construction and installation work performed under
such a contract.

(f) A board may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed ten years, and the lease contract includes the provisions hereinafter contained in subsection (g), and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(g) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: Provided, That such a contract may not exceed a ten-year term: Provided, however, That such long term contract shall be void unless such agreement shall provide that the board shall have the option thereunder during each fiscal year of the contract to terminate the agreement. The board may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year: Provided further, That nothing contained herein shall be deemed to require or permit the replacement of jobs performed by service personnel employed by the local school board pursuant to sections eight and eight-a, article four, chapter eighteen-a of the code, as amended.

CHAPTER 60
(Com. Sub. for S. B. 22—By Senator Holliday)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]
ascertain certain information and submit a report by a date certain; requiring state board standards to include certain additional provisions by a date certain.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

Article.
5A. Local School Involvement.
8A. Attendance of Homeless Children.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which shall be comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators as used in this section means professional educators as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held on a regular basis as determined by a schedule approved by the faculty senate and amended from time to time if needed.
Emergency meetings may be held at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting, and in the case of emergency meetings, as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which in the judgment of the teacher or librarian will assist him or her in providing instruction in his or her assigned academic subjects, or shall be returned to the faculty senate: Provided, That nothing contained herein shall prohibit such funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the
Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year shall be available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year, shall not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but shall not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.
(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, That the faculty senate shall select a member who shall have the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and shall be subject to normal auditing procedures.

(11) On or after the first day of January, one thousand nine hundred ninety-two, any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether such evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the state board of education: Provided, That nothing herein shall create any new right of access to or review of any individual’s evaluations.

(12) Each faculty senate shall be provided by its local board of education at least a two-hour per month block of noninstructional time within the school day: Provided, That any such designated day shall constitute a full instructional day. This time may be utilized and determined at the local school level and shall include, but not be limited to, faculty senate meetings.
ARTICLE 8A. ATTENDANCE OF HOMELESS CHILDREN.

§18-8A-1. Legislative findings; definition of homeless child.

(a) The Legislature hereby finds and declares that because of the growing number of children and families who are homeless in West Virginia there is a need to ensure that all homeless children receive a proper education. It is the intent of the Legislature that no child shall be denied the benefits of a free education in the public schools because the child is homeless.

The Legislature further finds that programs and materials must be made available to homeless and at-risk children to assure opportunities for an equal education. Programs shall include, but not be limited to, incorporating the ideas of academic achievement, career exploration, self-esteem enhancement, behavior modification and other programs relating to student development.

(b) As used in this article, unless the context otherwise requires, "homeless child" means:

(1) A child who lacks a fixed, regular and adequate nighttime residence; or

(2) A child who has a primary nighttime residence which is:

(i) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters and transitional housing for the mentally ill;

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.
(c) “Homeless child” does not include any individual imprisoned or otherwise detained pursuant to an act of Congress or a state law.


A child considered to be homeless pursuant to the provisions of section one of this article who presently seeks shelter or is located in a school district shall be considered to reside in that school district and may attend public school in that district.


Nothing in this article may be construed to prohibit a child from attending a public school without the payment of tuition solely because the child is homeless as defined in section one of this article.


The state board of education shall present to the Legislature no later than the first day of January, one thousand nine hundred ninety-three, a report which shall include the identification of existing programs which exemplify academic achievement, career exploration, self-esteem enhancement, behavior modification and other programs relating to student development. The report shall also include findings and recommendations for funding such programs so as to provide delivery to all children at-risk of not succeeding in school. The report shall also include teaching techniques and learning strategies and the state board definition of “children at-risk”.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

(a) The education of professional educators in the state shall be under the general direction and control of the state board of education after consultation with the secretary of education and the arts, who shall represent
the board of directors of the state college system and the
board of trustees of the university of West Virginia
system. The education of professional educators in the
state includes all programs leading to certification to
teach or serve in the public schools including: (1) Those
programs in all institutions of higher education,
including student teaching in the public schools; (2)
beginning teacher internship programs; (3) the granting
of West Virginia certification to persons who received
their preparation to teach outside the boundaries of this
state; (4) any alternative preparation programs in this
state leading to certification, including programs
established pursuant to the provisions of section one-a
of this article and programs which are in effect on the
effective date of this section; and (5) any continuing
professional education, professional development and in-
service training programs for professional educators
employed in the public schools in the state.

The state board of education, after consultation with
the secretary of education and the arts, who shall
represent the board of directors of the state college
system and the board of trustees of the university of
West Virginia system, shall adopt standards for the
education of professional educators in the state and for
the awarding of certificates valid in the public schools
of this state.

The standards approved by the board for teacher
preparation shall include a provision for the study of
multicultural education. As used in this section,
multicultural education means the study of the
pluralistic nature of American society including its
values, institutions, organizations, groups, status
positions and social roles.

Effective the first day of January, one thousand nine
hundred ninety-three, the standards approved by the
board shall also include a provision for the study of
classroom management techniques and shall include
methods of effective management of disruptive behavior
which shall include societal factors and their impact on
student behavior.
(b) To give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification, the state board of education may enter into an agreement with county boards of education for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include: (1) The minimum qualifications for the employment of public school teachers selected as supervising teachers; (2) the remuneration to be paid public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers; and (3) minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching. The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.

(c) The state superintendent of schools may issue certificates to graduates of teacher education programs and alternative teacher education programs approved by the state board of education and in accordance with rules adopted by the state board after consultation with the secretary of education and the arts, who shall represent the board of directors of the state college system and the board of trustees of the university of West Virginia system. A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his certificate is issued; except that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach, may be granted a permit to teach within the public schools of the state.

(d) In consultation with the secretary of education and the arts, who shall represent the board of directors of the state college system and the board of trustees of the university of West Virginia system, institutions of
higher education approved for teacher preparation may cooperate with each other, with the center for professional development and with one or more county boards of education in the organization and operation of centers to provide selected phases of the teacher preparation program such as student teaching, beginning teacher internship programs, instruction in methodology and seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

Such institutions of higher education, the center and county boards of education may by mutual agreement budget and expend funds for the operation of such centers through payments to the appropriate fiscal office of the participating institutions, the center and the county boards.

The provisions of this section shall not be construed to require the discontinuation of an existing student teacher training center or school which meets the standards of the state board of education.

All institutions of higher education approved for teacher preparation in the school year of one thousand nine hundred sixty-two—sixty-three shall continue to hold that distinction so long as they meet the minimum standards for teacher preparation. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

CHAPTER 61
(H. B. 4596—By Delegate Spencer)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen, twenty and twenty-one, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section
two, article one, chapter eighteen-b; to amend and reenact section four, article two of said chapter; to further amend said article two by adding thereto a new section, designated section seven; and to amend and reenact section one, article eight of said chapter, all relating to the University of West Virginia College of Graduate Studies; changing the name to West Virginia Graduate College; relating to powers and duties of governing boards of state institutions of higher education; authorizing rents, fees and charges collected in connection with the occupancy of dormitories at such institutions to be pledged for the payment of bonds issued for dormitory construction or improvement, establishing procedures for the issue and sale of such bonds; relating to Potomac State College of West Virginia University; authorizing the board of trustees to sell certain properties; and providing for the use of the proceeds therefrom.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18B. Higher Education.

CHAPTER 18. EDUCATION.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, homes and refectories; redemption of bonds.
§18-23-20. When dormitories, homes or refectories become property of state.

§18-23-21. State debt not to be incurred for dormitories, homes, or refectories; federal and private assistance; provisions separable.

§18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, homes and refectories; redemption of bonds.

Whenever bonds are issued for the construction, erection or equipment of dormitories, homes or refectories, or for the improvement or equipment of existing dormitories, homes or refectories, or for any or all of such purposes, as joint or several projects, for which a single or several issues of bonds may be issued within the discretion of the governing boards, rents, fees and charges shall be fixed, charged and collected in connection with the use or occupancy of, or service to be thereby rendered and furnished by, dormitories, homes or refectories of the particular state educational institution as the governing board thereof shall determine, and shall be so fixed or adjusted, as to provide a fund sufficient to pay the principal and interest of each such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing, operating and insuring such dormitories, homes or refectories. Whenever bonds are issued to finance the construction and erection of dormitories, homes or refectories, together with additions or extensions to an existing dormitory, home or refectory for students or teachers at state educational institutions, the revenues derivable from all such dormitories, homes or refectories of the particular state educational institution as the governing board thereof shall determine, may be pledged to provide a fund sufficient to pay the principal and interest of such issue of bonds and of any other bonds thereafter issued for the same purpose, and to provide an additional fund to pay the cost of maintaining, repairing, operating and insuring such dormitories, homes or refectories. Except as may otherwise be provided in the trust agreement authorized in section seventeen of this article, the rents, fees and charges from the dormitories, homes or refectories for
which a single issue of bonds is issued, except such part thereof as may be necessary to pay such cost of maintaining, repairing, operating and insuring during any period in which such cost is not otherwise provided for (during which period the rents, fees and charges may be reduced accordingly), shall be transmitted each month to the municipal bond commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the municipal bond commission, within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption by lot of any bonds which by their terms are then redeemable, at the redemption price then applicable: Provided, That if said revenue bonds are sold to and purchased by the United States of America or any federal or public agency or department created under and by virtue of the laws of the United States of America, then at the option of the United States of America or such federal or public agency or department in lieu of such moneys being transmitted to the municipal bond commission and by it placed in a special fund, the rents, fees and charges from such dormitories, homes or refectories, except such part thereof as may be necessary to pay such cost of maintaining, repairing, operating and insuring as provided aforesaid, may be transmitted and paid to a trustee designated and named by the United States of America or such federal or public agency or department in its agreement and contract with the appropriate governing board, for the payment of the principal of such bonds and the interest thereon, under such terms and conditions as may be agreed upon.

§18-23-20. When dormitories, homes or refectories become property of state.
When the particular bonds for any dormitory or dormitories, home or homes, refectory or refectories, and the interest on such bonds, shall have been paid, or a sufficient amount has been provided for their payment and shall continue to be held for that purpose, the said dormitories, homes or refectories shall thereafter be exclusively the property of the state of West Virginia, and thereafter the rents, fees and charges collected for the use or occupancy of, or service rendered and furnished by, such dormitories, homes or refectories shall be paid into the state board of investments as provided by the provisions of section two, article two, chapter twelve of this code, as amended, and used and expended for the benefit of the institution where collected: Provided, That nothing in this section precludes any governing board from pledging such rents, fees and charges to pay the principal and interest on any bonds thereafter issued to construct new, or to improve existing dormitories, homes or refectories pursuant to section nineteen of this article. Such rents, fees and charges shall be paid as may be provided in a trust agreement authorized pursuant to section seventeen of this article, and in the absence of such trust agreement, as provided in section nineteen of this article.

§18-23-21. State debt not to be incurred for dormitories, homes, or refectories; federal and private assistance; provisions separable.

Nothing in these sections dealing with dormitories, homes or refectories shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the constitution of this state in relation to the state debt. The dormitories, homes or refectories herein are of the character described as self-liquidating projects under the laws of the United States.

Any governing board authorized to issue bonds under the provisions of this article is authorized and empowered to accept loans or grants or temporary advances for the purpose of paying part or all of the cost of construction of the dormitories, homes or refectories and
the other purposes herein authorized, from the United States of America or such federal or public agency or department of the United States or any private agency, corporation or individual, which temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or such federal or public agency or department of the United States, or with any private agency, corporation or individual. The provisions and parts of this section are separable and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and if any of the sections or provisions, or parts thereof, are for any reason illegal or invalid, it is the intention that the remaining sections and provisions or parts thereof shall remain in full force and effect.

CHAPTER 18B. HIGHER EDUCATION.

Article
1. Governance.
2. University of West Virginia Board of Trustees.
3. Higher Education Full-Time Faculty Salaries.

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code shall have the meaning hereafter ascribed to them unless the context clearly indicates a different meaning:

(a) "Governing board" or "board" means the university of West Virginia board of trustees or the board of directors of the state college system, whichever is applicable within the context of the institution or institutions referred to in this chapter or in other provisions of law;

(b) "Governing boards" or "boards" means both the board of trustees and the board of directors;

(c) "Community colleges" means Southern West Virginia Community College, West Virginia Northern
Community College, and any institution of higher education which has been designated as a community college by the board of directors under the provisions of section four, article three of this chapter;

(d) “Directors” or “board of directors” means the board of directors of the state college system created pursuant to article three of this chapter or the members thereof;

(e) “Higher educational institution” means any institution as defined by sections 401(f), (g), (h) of the federal higher education facilities act of 1963, as amended;

(f) “Post-secondary vocational education programs” means any college-level course or program beyond the high school level provided through an institution of higher education which results in or may result in the awarding of a two-year associate degree, under the jurisdiction of the board of directors;

(g) “Rule” or “rules” means a regulation, standard, policy or interpretation of general application and future effect;

(h) “Senior administrator” means the person hired by the governing boards in accordance with section one, article four of this chapter, with such powers and duties as may be provided for in section two of said article four;

(i) “State college” means Bluefield State College, Concord College, Fairmont State College, Glenville State College, Shepherd College, West Liberty State College, West Virginia Institute of Technology, or West Virginia State College;

(j) “State college system” means the state colleges and community colleges, and also shall include post-secondary vocational education programs in the state, as those terms are defined in this section;

(k) “State institution of higher education” means any university, college or community college in the state university system or the state college system as those terms are defined in this section;
(l) "Trustees" and "board of trustees" means the university of West Virginia board of trustees created pursuant to article two of this chapter or the members thereof;

(m) "University of West Virginia" and "state university system" means the multi-campus, integrated university of the state, consisting of West Virginia University including West Virginia University at Parkersburg, Potomac State College of West Virginia University and the West Virginia University School of Medicine; Marshall University including the Marshall University School of Medicine; the West Virginia Graduate College; and the West Virginia School of Osteopathic Medicine; and

(n) "University" means the multi-campus, integrated university of the state, consisting of West Virginia University including West Virginia University at Parkersburg, Potomac State College of West Virginia University and the West Virginia University School of Medicine; Marshall University including the Marshall University School of Medicine; the West Virginia Graduate College; or the West Virginia School of Osteopathic Medicine.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

§18B-2-7. Authorization to sell all or part of Potomac State College of West Virginia University parcels of land located in New Creek and Keyser commonly known as the Potomac State College farm listed on the public lands inventory as 1PSC6. PSC Parcel No. 6, 1PSC14. PSC Parcel No. 14 and 1PSC16. PSC Parcel No. 16.

§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

The power of the board of regents, effective July one, one thousand nine hundred seventy-two, to establish, name, maintain and operate a graduate college whose major administrative offices are located in Kanawha
county shall be transferred to the board of trustees effective July one, one thousand nine hundred eighty-nine, and shall be known as the “University of West Virginia College of Graduate Studies”.

Effective the first day of July, one thousand nine hundred ninety-two, the graduate college herein established shall henceforth be known as the “West Virginia Graduate College”. Any references in this code to the University of West Virginia College of Graduate Studies, the West Virginia College of Graduate Studies or the College of Graduate Studies shall, upon said effective date, mean the West Virginia Graduate College.

The board of trustees shall employ a president and such staff and faculty as determined appropriate for the school, appoint an advisory board consistent with section one, article six of this chapter and shall exercise general determination, control, supervision and management of the financial, business and educational policies and affairs of the graduate college. The college shall be authorized to offer, in their entirety or in cooperation with other institutions, such curricula, programs, courses and services and confer such graduate degrees as may be approved by the board of trustees. The trustees shall fix tuition and establish and set other fees to be charged students as it deems appropriate, including the establishment of special fees for specific purposes. Special fees shall be paid into special funds and used only for the purposes for which collected. The board of trustees may allocate from the appropriations for the state university system for the operation and capital improvement of the graduate college.

All programs, activities, operations, accounts, and resources of the Kanawha Valley Graduate Center of West Virginia University which were transferred to the graduate college, and the title to all property of the Kanawha Valley Graduate Center of West Virginia University which was transferred to or later vested in the graduate college, shall be transferred to and remain vested in the trustees. The trustees are authorized to enter into contracts on behalf of the graduate college.
with public and private educational institutions, agencies and boards; with governmental agencies; and with corporations, partnerships and individuals for the use of physical facilities, equipment and for the performance of instructional or other services.

§18B-2-7. Authorization to sell all or part of Potomac State College of West Virginia University parcels of land located in New Creek and Keyser commonly known as the Potomac State College farm listed on the public lands inventory as 1PSC6. PSC Parcel No. 6, 1PSC14. PSC Parcel No. 14 and 1PSC16. PSC Parcel No. 16.

(a) The board of trustees is hereby authorized and empowered to sell those parcels of land located on New Creek and Keyser Districts, Mineral County, West Virginia, commonly known as the Potomac State College Farm and listed on the Potomac State College index description of parcel use and list of parcels of lands and on the public lands inventory as: (1) 1PSC6. PSC Parcel No. 6, containing approximately 223.17 acres, (2) 1PSC14. PSC Parcel No. 14, containing approximately 8.25 acres and (3) 1PSC16. PSC Parcel No. 16, containing approximately 180.6 acres.

(b) Each parcel may be subdivided and sold in parts; however, all sales shall be accomplished through public auction, the terms of which shall be to achieve the highest price for such parcels whether in whole or in part. Provided, That prior to such action the board of trustees shall have the properties appraised separately by two licensed appraisers and shall not sell the property for less than the average of the appraisals: Provided, however, That in the event of sale of all or part to the government of the United States of America, public auction shall not be required and sale price may be negotiated at or above the average of two separate valuations by licensed appraisers.

(c) Prior to public auction, the board of trustees shall schedule a public hearing to be held at a reasonable time and place within the county to allow interested members
of the public to attend the hearing without undue
hardship. Members of the public may be present, submit
statements and testimony and question the college's
representative appointed pursuant to this subsection.
The board of trustees shall cause to be published a notice
of the required public hearing. The notice shall be
published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code and the publication area shall be
the county in which the affected land is located. The
public hearing shall be held no earlier than the
fourteenth successive day following the first publication
of the notice. The notice shall contain the time and place
of the public hearing along with a brief description of
the affected land. In addition thereto, the board of
trustees shall cause a copy of the required notice to be
posted in a conspicuous place at the affected land for
members of the public to observe. Such notice shall
remain posted for two successive weeks prior to the date
of the public hearing: The board of trustees shall
appoint a representative of the college who shall conduct
the required public hearing. The college's representative
shall have full knowledge of all the facts and
circumstances surrounding the proposed sale.

(d) The proceeds from the sale of the property
referred to shall be deposited in a special revenue
account from which the board of trustees is hereby
authorized to expend the fund for horticulture,
agriculture and forestry facilities and programs at
Potomac State College of West Virginia University:
Provided, That the prioritized recommendations of the
agriculture department advisory committee shall be
considered by the agriculture department faculty and
president of the college in the expenditure of the
proceeds: Provided, however, That the advisory
committee shall include one member each representing
agricultural education, animal or dairy science, forestry,
horticulture, and veterinary medicine, of which three
shall be alumni of the agriculture department at the
college.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY
SALARIES.
§18B-8-1. Definitions.

1 As used in this article:

2 (a) "Schedule" or "salary schedule" means the grid of
3 minimum salary figures listed in section two of this
4 article;

5 (b) "Academic rank" means the position held by a
6 faculty member as determined by the president,
7 consistent with policy established by the governing
8 board, and includes the positions of professor, associate
9 professor, assistant professor and instructor; all other
10 ranks are excluded from the provisions of this article;

11 (c) "Years of experience" means the actual number of
12 years a person has been a full-time faculty member at
13 an institution of higher education within this state.
14 Employment for nine months shall equal one year of
15 experience, but no faculty member may accrue more
16 than one year of experience during any given academic
17 year. Employment for less than full time, or less than
18 nine months during any fiscal year, shall be prorated.
19 In accordance with rules established by the governing
20 boards, a faculty member may be granted additional
21 years of experience for actual years of work or teaching
22 experience at institutions other than institutions of
23 higher education within this state;

24 (d) "Doctoral institutions" means West Virginia
25 University and Marshall University at Huntington.
26 Doctoral programs at Marshall University shall be
27 selective and nonduplicative of West Virginia
28 University unless an exception is recommended by both
29 institutions and approved by the board of trustees.
30 "Master's II institutions" means West Virginia School of
31 Osteopathic Medicine and the West Virginia Graduate
32 College; "baccalaureate and two-year institutions"
33 means Bluefield State College, Concord College,
34 Fairmont State College, Glenville State College,
35 Shepherd College, West Liberty State College, West
36 Virginia Institute of Technology, West Virginia State
37 College, West Virginia University at Parkersburg,
38 Southern West Virginia Community College, West
39 Virginia Northern Community College and Potomac
State College of West Virginia University and such other institutions as are designated community colleges by the board of directors;

(e) "Salary" means the total nine-month or ten-month salary paid from state funds to a full-time faculty member, or if other than nine or ten months, adjusted to a nine-month base salary;

(f) "Full-time faculty" means any faculty member designated as such by the president, consistent with approved policy of the appropriate governing board, and those persons with faculty rank who have research or administrative responsibilities;

(g) "Fiscal year" means twelve calendar months and begins on the first day of July and ends on the thirtieth day of June; and

(h) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions, in accordance with policy established by the appropriate governing board.

CHAPTER 62

(Com. Sub. for H. B. 4602—By Delegates S. Cook and Staton)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, six and eight, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-nine by adding thereto two new sections, designated sections ten and eleven, relating to grievance procedures for education employees; authorizing filing of grievance on behalf of others similarly situated; redefining employee and chief administrator; requiring assertion of untimeliness be made prior to level two; allowing grievant to prevail by default upon untimely response; authorizing appeal of remedy received by
default; allowing grievance to be brought at higher level if evaluator at that level consents thereto; allowing presence of employee and others at certain meetings; affording protections to such employee; prohibiting certain communications between grievance evaluator and management representative; providing for appeal by adversely affected nongrievant; limiting application of doctrine of laches; amending certain deadlines; authorizing subpoena of witnesses and documents at levels two and three; allowing grievant to waive appeal to level three; requiring governing board to set forth reasons upon its waiver of level three hearing; making information and decisions of level four proceedings available at reasonable cost; requiring institution to pay for transcripts; setting forth provisions regarding self-incrimination, burden of proof and burden of going forward; authorizing court to set costs and reasonable attorneys fees to employees prevailing upon appeal to circuit or supreme court; requiring mediation attempts and report of same; requiring compilation and dissemination of level four data to governing boards; and updating references to higher education governing boards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-1. Legislative purpose and intent.

§18-29-2. Definitions.


§18-29-4. Procedural levels and procedure at each level.

§18-29-6. Hearings generally.

§18-29-8. Allocation of costs.

§18-29-10. Mediation.

§18-29-11. Compilation and dissemination of data.

§18-29-1. Legislative purpose and intent.

The purpose of this article is to provide a procedure
for employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers and their employer or agents of the employer to reach solutions to problems which arise between them within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served. This procedure is intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level and shall be construed to effectuate this purpose. Nothing herein shall prohibit the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in article two, chapter eighteen-a of this code or any other section of chapter eighteen or eighteen-a of this code: Provided, That employees of the governing boards of higher education or of state institutions of higher education shall have the option of filing grievances in accordance with the provisions of this article or in accordance with the provisions of policies and rules of the governing boards of higher education regarding such employees. Any board decision pursuant to such sections may be appealed in accordance with the provisions of this article unless otherwise provided in such section.

§18-29-2. Definitions.

For the purpose of this article:

(a) "Grievance" means any claim by one or more affected employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any
discriminatory or otherwise aggrieved application of
unwritten policies or practices of the board; any
specifically identified incident of harassment or
favoritism; or any action, policy or practice constituting
a substantial detriment to or interference with effective
classroom instruction, job performance or the health and
safety of students or employees.

A grievance may be filed by one or more employees
on behalf of a class of similarly situated employees:
Provided, That any similarly situated employee shall
indicate in writing of his or her intent to join the class
of similarly situated employees. Only one employee
filing a grievance on behalf of similarly situated
employees shall be required to participate in the level
one hearing required in section four of this article.

Any pension matter or other issue relating to the state
teachers retirement system in accordance with article
seven-a of this chapter or other retirement system
administered outside the jurisdiction of the applicable
governing board, any matter relating to public
employees insurance in accordance with article sixteen,
chapter five of this code, or any other matter in which
authority to act is not vested with the employer shall not
be the subject of any grievance filed in accordance with
the provisions of this article.

(b) "Days" means days of the employee's employment
term or prior to or subsequent to such employment term
exclusive of Saturday, Sunday, official holidays or school
closings in accordance with section two, article five,
chapter eighteen-a of this code.

(c) "Employee" means any person hired as a
temporary, probationary or permanent employee by an
institution either full or part time. A substitute is
considered an employee only on matters related to days
worked for an institution or when there is a violation,
misapplication or misinterpretation of a statute, policy,
rule, regulation or written agreement relating to such
substitute.

(d) "Grievant" means any named employee or group
of named employees filing a grievance as defined in
subsection (a) of this section.

(e) "Institution" means any state institution of higher education, the governing boards of higher education, any institution whose employees are hired by the state board of education including the department of education, and any public school, regional educational service agency or multi-county vocational center.

(f) "Employer" means that institution contracting the services of the employee.

(g) "Immediate supervisor" means that person next in rank above the grievant possessing a degree of administrative authority and designated as such in the employee's contract, if any.

(h) "Chief administrator" means, as may be applicable, the president of a state institution of higher education, the chancellor of a governing board of higher education only as to those employees employed solely by the chancellor and governing board and not assigned to a state institution of higher education, the senior administrator as to those employees hired pursuant to section two, article four, chapter eighteen-b of this code, the state superintendent of schools as to employees hired by the state board of education, the county superintendent, the executive director of a regional educational service agency or the director of a multi-county vocational center.

(i) "Governing board" means the administrative board of any state or county educational institution, including institutions whose employees are hired by the state board of education, and refers, as is applicable, to the governing boards of higher education, state board of education, county boards of education, the school board members of any board of directors of a regional educational service agency or the school board members of any administrative council of a multi-county vocational center.

(j) "Grievance evaluator" means that individual or governing board authorized to render a decision on a grievance.
(k) “Board” means the education employees grievance board.

(l) “Hearing examiner” means the individual or individuals employed by the board in accordance with section five of this article.

(m) “Discrimination” means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

(n) “Harassment” means repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.

(o) “Favoritism” means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.

(p) “Reprisal” means the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

(q) “Employee organization” means any employee advocacy organization whose membership includes employees as defined in this section which has filed with the board the name, address, chief officer and membership criteria of the organization.

(r) “Representative” means any employee organization, fellow employee, legal counsel or other person or persons designated by the grievant as the grievant’s representative.


(a) A grievance must be filed within the times specified in section four of this article and shall be processed as rapidly as possible. The number of days indicated at each level specified in section four of this article shall be considered as the maximum number of days allowed and, if a decision is not rendered at any level within the prescribed time limits, the grievant may
appeal to the next level: *Provided*, That the specified time limits may be extended by mutual written agreement and shall be extended whenever a grievant is not working because of such circumstances as provided for in section ten, article four, chapter eighteen-a of this code. Any assertion by the employer that the filing of the grievance at level one was untimely must be asserted by the employer on behalf of the employer at or before the level two hearing. If a grievance evaluator required to respond to a grievance at any level fails to make a required response in the time limits required in this article, unless prevented from doing so directly as a result of sickness or illness, the grievant shall prevail by default. Within five days of such default, the employer may request a hearing before a level four hearing examiner for the purpose of showing that the remedy received by the prevailing grievant is contrary to law or clearly wrong. In making a determination regarding the remedy, the hearing examiner shall presume the employee prevailed on the merits of the grievance and shall determine whether the remedy is contrary to law or clearly wrong in light of that presumption. If the examiner finds that the remedy is contrary to law, or clearly wrong, the examiner may modify the remedy to be granted so as to comply with the law and to make the grievant whole.

(b) If the employer or agent intends to assert the applicability of any statute, policy, rule, regulation or written agreement or submits any written response to the filed grievance at any level, a copy thereof shall be forwarded to the grievant and any representative of the grievant so named in the filed grievance. Anything so submitted and the grievant’s response thereto, if any, shall become part of the record. Failure to assert such statute, policy, rule, regulation or written agreement at any level shall not prevent the subsequent submission thereof in accordance with the provisions of this subsection.

(c) The grievant may file the grievance at the level vested with the authority to grant the requested relief if the grievance evaluator at that level agrees in writing
thereto. In the event a grievance is filed at a higher level, the employer shall provide copies to each lower administrative level.

(d) An employee may withdraw a grievance at any time by notice, in writing, to the level wherein the grievance is then current. Such grievance may not be reinstated by the grievant unless such reinstatement is granted by the grievance evaluator at the level where the grievance was withdrawn. If more than one employee is named as grievant in a particular grievance, the withdrawal of one employee shall not prejudice the rights of any other employee named in the grievance. In the event a grievance is withdrawn or an employee withdraws from a grievance, such employer shall notify in writing each lower administrative level.

(e) Grievances may be consolidated at any level by agreement of all parties.

(f) An employee may have the assistance of one or more fellow employees, an employee organization representative or representatives, legal counsel or any other person in the preparation and presentation of the grievance. At the request of the grievant, such person or persons may be present at any step of the procedure, as well as at any investigative meeting or other meeting which is held with the employee for the purpose of discussing the possibility of disciplinary action. When a fellow employee is assisting a grievant, the employee shall do so without loss of pay and shall have protection from reprisal as that term is defined in section two of this article.

(g) If a grievance is filed which cannot be resolved within the time limits set forth in section four of this article prior to the end of the employment term, the time limit set forth in said section shall be reduced as agreed to in writing by both parties so that the grievance procedure may be concluded within ten days following the end of the employment term or an otherwise reasonable time.

(h) No reprisals of any kind shall be taken by any employer or agent of the employer against any
interested party, or any other participant in the grievance procedure by reason of such participation. A reprisal constitutes a grievance, and any person held to be responsible for reprisal action shall be subject to disciplinary action for insubordination.

(i) Except for the informal attempt to resolve the grievance as provided for in subsection (a), section four of this article, decisions rendered at all levels of the grievance procedure shall be dated, shall be in writing setting forth the decision or decisions and the reasons therefor, and shall be transmitted within the time prescribed to the grievant and any representative named in the grievance. If the grievant is denied the relief sought, the decision shall include the name of the individual at the next level to whom appeal may be made.

(j) Once a grievance has been filed, supportive or corroborative evidence may be presented at any conference or hearing conducted pursuant to the provisions of this article. Whether evidence substantially alters the original grievance and renders it a different grievance is within the discretion of the grievance evaluator at the level wherein the new evidence is presented. If the grievance evaluator rules that the evidence renders it a different grievance, the party offering the evidence may withdraw same; the parties may consent to such evidence, or the grievance evaluator may decide to hear the evidence or rule that the grievant must file a new grievance. The time limitations for filing the new grievance shall be measured from the date of such ruling.

(k) Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner.

(l) Forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents shall be made available by the immediate supervisor to any employee upon request. Such forms shall include information as prescribed by
the board. The grievant shall have access to the institution’s equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of such equipment.

(m) Notwithstanding the provisions of section three, article nine-a, chapter six of this code, or any other provision relating to open proceedings, all conferences and hearings pursuant to this article shall be conducted in private except that, upon the grievant’s request, conferences and hearings at levels two and three shall be public. Within the discretion of the hearing examiner, conferences and hearings may be public at level four.

(n) No person or governing board to which appeal has been made shall confer or correspond with a grievance evaluator at a previous level or a management representative who recommended or approved the grieved action regarding the merits of the grievance unless all parties to the grievance are present.

(o) Grievances may be processed at any reasonable time, but attempts shall be made to process the grievance on work time in a manner which does not interfere with the normal operation of the institution. Grievances processed on work time shall not result in any reduction in salary, wages, rate of pay or other benefits of the employee and shall be counted as time worked.

Should any employer or the employer’s agent cause a conference or hearing to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, such employees will not suffer any loss in pay for work time lost.

(p) Any grievance evaluator may be excused from participation in the grievance process for reasonable cause, including, but not limited to, conflict of interest or incapacitation, and in such case the grievance evaluator at the next higher level shall designate an alternate grievance evaluator if such is deemed reasonable and necessary.
(q) No less than one year following resolution of a grievance at any level, the grievant may by request in writing have removed any record of the grievance from any file kept by the employer.

(r) All grievance forms and reports shall be kept in a file separate from the personnel file of the employee and shall not become a part of such personnel file, but shall remain confidential except by mutual written agreement of the parties.

(s) The number of grievances filed against an employer or agent or by an employee shall not, per se, be an indication of such employer's or agent's or such employee's job performance.

(t) Any chief administrator or governing board of an institution in which a grievance was filed may appeal such decision on the grounds that the decision (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion. Such appeal shall follow the procedure regarding appeal provided the grievant in section four of this article and provided both parties in section seven of this article.

(u) Upon a timely request, any employee shall be allowed to intervene and become a party to a grievance at any level when that employee claims that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(v) The doctrine of laches shall not be applied to prevent a grievant or grievants from recovering back pay or other appropriate relief for a period of one year prior to the filing of a grievance based upon a continuing practice.
§18-29-4. Procedural levels and procedure at each level.

(a) Level one.

(1) Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

The conference with the immediate supervisor concerning the grievance shall be conducted within ten days of the request therefor, and any discussion shall be by the grievant in the grievant's own behalf or by both the grievant and the designated representative.

(2) The immediate supervisor shall respond to the grievance within ten days of the conference.

(3) Within ten days of receipt of the response from the immediate supervisor following the informal conference, a written grievance may be filed with said supervisor by the grievant or the designated representative on a form furnished by the employer or agent.

(4) The immediate supervisor shall state the decision to such filed grievance within five days after the grievance is filed.

(b) Level two.

Within five days of receiving the decision of the immediate supervisor, the grievant may appeal the decision to the chief administrator, and such administrator or his or her designee shall conduct a hearing in accordance with section six of this article within five days of receiving the appeal and shall issue a written decision within five days of such hearing. Such decision may affirm, modify or reverse the decision appealed from. Level four hearing examiners or the chief administrator shall have the authority to subpoena
witnesses and documents for level two and level three hearings in accordance with the provision of section one, article five, chapter twenty-nine-a of this code, and may issue a subpoena upon the written request of any party to the grievance.

(c) Level three.

Within five days of receiving the decision of the chief administrator, the grievant may appeal the decision to the governing board of the institution or may proceed directly to level four. An appeal to the governing board shall set forth the reasons why the grievant is seeking a level three review of the decision of the chief administrator. Within five days of receiving the appeal, such governing board may conduct a hearing in accordance with section six of this article, may review the record submitted by the chief administrator and render a decision based on such record, or may waive the right granted herein and shall notify the grievant of such waiver. Any decision by the governing board, including a decision to waive participation in the grievance, shall be in writing and shall set forth the reasons for such decision, including the decision to waive participation in the grievance. If a hearing is held under the provisions of this subsection, the governing board shall issue a decision affirming, modifying or reversing the decision of the chief administrator within five days of such hearing.

(d) Level four.

(1) If the grievant is not satisfied with the action taken by the chief administrator, or, if appealed to level three, the action taken by the governing board, within five days of the written decision the grievant may request, in writing, on a form furnished by the employer, that the grievance be submitted to a hearing examiner as provided for in section five of this article, such hearing to be conducted in accordance with section six of this article within ten days following the request therefor: Provided, That such hearing may be held within thirty days following the request, or within such time as is mutually agreed upon by the parties, if the hearing
examiner gives reasonable cause, in writing, as to the
necessity for such delay.

(2) Within thirty days following the hearing, the
hearing examiner shall render a decision in writing to
all parties setting forth findings and conclusions on the
issues submitted. Subject to the provisions of section
seven of this article, the decision of the hearing
examiner shall be final upon the parties and shall be
enforceable in circuit court.

All information and data generated by the board and
in its custody relative to level four decisions and copies
of such decisions shall be provided at reasonable cost to
any individual requesting it.

§18-29-6. Hearings generally.

The chief administrator or his or her designee, the
governing board or the hearing examiner shall conduct
all hearings in an impartial manner and shall ensure
that all parties are accorded procedural and substantive
due process. All parties shall have an opportunity to
present evidence and argument with respect to the
matters and issues involved, to cross examine and to
rebut evidence. Notice of a hearing shall be sent to all
parties and their named representative and shall
include the date, time and place of the hearing.

The institution that is party to the grievance shall
produce prior to such hearing any documents, not
privileged, and which are relevant to the subject matter
involved in the pending grievance, that has been
requested by the grievant, in writing.

The superintendent, the president of the state or
county board of education or the state or county board
member designated by such president, the executive
director of the regional educational service agency, the
director of the multi-county vocational center, the
chancellor of the higher education governing boards, the
president of any state institution of higher education, the
senior administrator, the chief administrator or his or
her designee, each member of the governing board or
the hearing examiner shall have the power to (1)
administer oaths and affirmations, (2) regulate the
course of the hearing, (3) hold conferences for the
settlement or simplification of the issues by consent of
the parties, (4) exclude immaterial, irrelevant or
repetitious evidence, (5) sequester witnesses, (6) restrict
the number of advocates, and take any other action not
inconsistent with the rules and regulations of the board
or the provisions of this article.

All the testimony and evidence at any hearing shall
be recorded by mechanical means, and all recorded
testimony and evidence at such hearing shall be
transcribed and certified at the request of any party to
the institution or board. The institution shall be
responsible for promptly transcribing the testimony and
evidence and for providing a copy of the certified
transcription to the party requesting same. The
institution shall be responsible for all costs relating to
preparation and duplication of the transcript. The
hearing examiner may also request and be provided a
transcript upon appeal to level four and allocate the
costs therefor as prescribed in section eight of this
article.

Formal rules of evidence shall not be applied, but
parties shall be bound by the rules of privilege
recognized by law. In any grievance involving
disciplinary or discharge actions, no employee may be
compelled to testify against himself or herself. the
burden of proof is on the employer, and the employer
shall present its case first.

All materials submitted in accordance with section
three of this article; the mechanical recording of all
testimony and evidence or the transcription thereof, if
any; the decision; and any other materials considered in
reaching the decision shall be made a part and shall
constitute the record of a grievance. Such record shall
be submitted to any level at which appeal has been
made, and such record shall be considered, but the
development of such record shall not be limited thereby.

Every decision pursuant to a hearing shall be in
writing and shall be accompanied by findings of fact
§18-29-8. Allocation of costs.

Any expenses incurred relative to the grievance procedure at levels one through three shall be borne by the party incurring such expenses except as to the costs of transcriptions as provided for in section six of this article.

In the event an employee or employer appeals an adverse level four decision to the circuit court or an adverse circuit court decision to the supreme court, and the employee substantially prevails upon such appeal, the employee or the organization representing the employee is entitled to recover court costs and reasonable attorney fees, to be set by the court, from the employer.

§18-29-10. Mediation.

To such extent as may be feasible with existing personnel and resources, the education employees grievance board shall attempt mediation and other alternative dispute resolution techniques to actively assist the parties in identifying, clarifying and resolving issues regarding the grievance at any time prior to the level four hearing.

All of the information that is provided by the parties during mediation shall remain confidential. Mediators shall not be called as witnesses to provide testimony in unresolved grievances that proceed to a grievance hearing, and any hearing examiner involved in a mediation process shall not hear the grievance nor be consulted regarding the merits of the grievance.

The education employees grievance board shall monitor the results of all mediation attempts and report to the Legislature prior to the first day of January, one thousand nine hundred ninety-three, regarding the feasibility of the process, the cost effectiveness of the process, the success of the process in resolving grievances, the resources which would be required to expand the process, and such other information or
recommendations as the grievance board may deem appropriate and helpful.

§18-29-11. Compilation and dissemination of data.

In addition to such other data as may be required under the provisions of this article, beginning with the quarter ending the first day of October, one thousand nine hundred ninety-two, the education employees grievance board shall provide each governing board and employee organization, within thirty days of the end of each quarter, a statewide quarterly report summarizing matters decided by the hearing examiners during the preceding quarter. Each report shall set forth any information deemed to be helpful in providing an overview of grievance-related issues: Provided, That nothing contained in the report shall breach the confidentiality of a grievant or other person, nor shall any matter be disclosed if the disclosure may violate any provision of law. The grievance board shall make an effort to provide information applicable to particular counties, institutions or governing boards, as may be appropriate.

Each report shall then be distributed to each member of the governing board so that the governing board may monitor the significant personnel-related matters which came before the grievance board and thereby ascertain whether any personnel policies need to be reviewed, revised or enforced.

Each quarterly report shall be incorporated into the annual report required by section five of this article, which shall also be distributed to each governing board and employee organization.

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CHAPTER 63

(Com. Sub. for S. B. 550—By Senator Wagner)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article three, chapter eighteen-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to establishing requirements for certification in educational administration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2a. Authority of state superintendent to issue certificates; kinds of certificates.

1 In accordance with state board of education rules for the education of professional educators adopted after consultation with the secretary of education and the arts, the state superintendent of schools may issue certificates valid in the public schools of the state: Provided, That a certificate shall not be issued to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties for which the certification would be granted and who has not attained the age of eighteen years on or before the first day of October of the year in which the certificate is issued: Provided, however, That an exchange teacher from a foreign country or an alien person who meets the requirements to teach may be granted a permit to teach within the public schools of the state.

Certificates authorized to be issued include:

(1) Professional teaching certificates. — A professional teaching certificate for teaching in the public schools may be issued to a person who:

(A) Has at least a bachelor's degree from an accredited institution of higher education in this state, has completed a program for the education of teachers which meets the requirements approved by the state board of education or has met equivalent standards at institutions in other states and has passed appropriate state board approved basic skills and subject matter tests or has completed three years of successful
experience within the last seven years in the area for
which licensure is being sought; or

(B) Has at least a bachelor's degree in a discipline
taught in the public schools from an accredited
institution of higher education, has passed appropriate
state board approved basic skills and subject matter
tests or has completed three years of successful
experience within the last seven years in the area for
which licensure is being sought, has completed an
alternative program for teacher education approved by
the state board and is recommended for a certificate by
the chairperson of the professional support team of the
person's alternative program or the state superintendent
based on documentation submitted.

The certificate shall be endorsed to indicate the grade
level or levels or areas of specialization in which the
person is certified to teach or to serve in the public
schools. The initial professional certificate shall be
issued provisionally for a period of three years from the
date of issuance and may be converted to a professional
certificate valid for five years subject to successful
completion of a beginning teacher internship, if
applicable, or renewed subject to rules adopted by the
state board.

(2) Professional administrative certificate. — A
professional administrative certificate, endorsed for
serving in the public schools, with specific endorsement
as a principal, vocational administrator, supervisor of
instructions or superintendent, may be issued to a
person who has completed requirements all to be
approved by the state board as follows: For a master's
degree from an institution of higher education
accredited to offer a master's degree, has successfully
completed an approved program for administrative
certification, developed by the state board of education
in cooperation with the governing boards of the
university of West Virginia system and the state college
system, has successfully completed education and
training in evaluation skills through the center for
professional development, or equivalent education and
training in evaluation skills, and three years of
Provided, That anyone having received a certificate during the period from the thirtieth day of August, one thousand nine hundred ninety, until the effective date of this bill without having met the above requirements shall complete those requirements within five years after the effective date of this bill: Provided, however, That any person serving in the position of dean of students on the effective date of this section shall not be required to hold a professional administrative certificate. Beginning the first day of September, one thousand nine hundred ninety-two, the initial professional administrative certificate shall be issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board.

(3) Paraprofessional certificate. — A paraprofessional certificate may be issued to a person who has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board, and can demonstrate the proficiencies to perform duties as required of a paraprofessional as defined in section eight, article four of this chapter.

(4) Other certificates; permits. — Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional or paraprofessional certificate. Such certificates or permits shall not be given permanent status and persons holding such shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

Within the category of other certificates and permits, the state superintendent may issue certificates for persons to serve in the public schools as athletic coaches or other extracurricular activities coaches whose duties may include the supervision of students, subject to the following limitations: (A) Such person shall be employed under a contract with the county board of education which specifies the duties to be performed, which
111 specifies a rate of pay equivalent to the rate of pay for
112 professional educators in the district who accept similar
113 duties as extra duty assignments and which provides for
114 liability insurance associated with the activity: Pro-
115 vided, That such persons shall not be considered
116 employees of the board for salary and benefit purposes
117 other than as specified in the contract; (B) a currently
118 employed certified professional educator has not applied
119 for the position; and (C) such person completes an
120 orientation program designed and approved in accor-
121 dance with state board rules which shall be adopted no
122 later than the first day of January, one thousand nine
123 hundred ninety-one.

CHAPTER 64
(Com. Sub. for H. B. 4552—By Delegates Spencer and Williams)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend article three, chapter eighteen-a of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section nine; and to amend and reenact sections eight,
eight-a and eight-e, article four of said chapter, all
relating to creating county service personnel staff
development councils; establishing a class title “autism
mentor” and providing a pay scale grade for those
personnel; providing minimum pay for service personnel
engaged in the removal of asbestos material or related
duties; and redefining certain instances when an
employee is deemed qualified for a classification title.

Be it enacted by the Legislature of West Virginia:

That article three, chapter eighteen-a of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section, designated
section nine; and that sections eight, eight-a and eight-e,
article four of said chapter be amended and reenacted, all to
read as follows:
Article
3. Training, Certification, Licensing, Professional Development.
4. Salaries, Wages and Other Benefits.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-9. County service personnel staff development councils.

1 The Legislature finds the professional expertise and insight of service personnel to be an invaluable ingredient in the development and delivery of staff development programs which meet the needs of service personnel.

2 Therefore, a service personnel staff development council comprised of representation from the various categories of service personnel employment shall be established in each school district in the state in accordance with rules adopted by the state board of education. Nominations of service personnel to serve on the county service personnel staff development council may be submitted by the six groups as defined in subsection (e), section one, article one of the district to the county superintendent who shall prepare and distribute ballots and tabulate the votes of the counties service personnel voting on the persons nominated. Each county staff service personnel development council shall consist of two employees from each category of employment. Such councils shall have final authority to propose staff development programs for their peers based upon rules established by statute and the council on service personnel education. The county superintendent or a designee shall enjoy an advisory, nonvoting role on said council. The county board shall make available an amount equal to one tenth of one percent of the amounts provided in accordance with section five, article nine-a, chapter eighteen of this code and credit such funds to an account to be used by the council to fulfill its objectives. The local board will have the final approval of all proposed disbursements.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.
§18A-4-8a. Service personnel minimum monthly salaries.
§18A-4-8e. Competency testing for service personnel.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an employment term and class titles for service personnel.
2 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 employment 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 accumulated 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 a 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 of this article.

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
“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
"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.

"Autism mentor" means personnel who work with autistic students and who meet standards and experience to be determined by the state board: Provided, That the state board shall determine these standards and experience on or before the first day of July, one thousand nine hundred ninety-two.

"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 construct 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 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 eight 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
“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-4-8a. Service personnel minimum monthly salaries.
## STATE MINIMUM PAY SCALE PAY GRADE

<table>
<thead>
<tr>
<th>Years of Employment</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
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On and after the first day of July, one thousand nine hundred ninety-two, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade" as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the "state minimum pay scale pay grade" set forth in this section: Provided, That upon the
126 effective date of this section through the remainder of
127 the school year one thousand nine hundred ninety-one —
128 ninety-two, in lieu of the minimum monthly pay scale
129 pay grade for service employees in effect as set forth in
130 this section, each service employee shall be paid such
131 amount as he or she would be due under the provisions
132 of this section over his or her full employment term on
133 the basis of the "state minimum pay scale pay grade".
134 The difference between such amount and any amount
135 already paid to such employee in such school year shall
136 be prorated over such portion of the employees
137 employment term as remains: Provided, however, That
138 the state department of education shall notify each
139 service employee that the amounts paid to them for the
140 remainder of their employment term in the school year
141 one thousand nine hundred ninety-one — ninety-two will
142 be greater than they would normally be due under the
143 minimum monthly pay scale, because of the pro rata
144 distribution, and that their minimum monthly salaries
145 will decrease slightly during the next school year when
146 the salary increase is paid over the full employment
147 term: Provided further, That on and after the first day
148 of July, one thousand nine hundred ninety-two, the
149 minimum monthly pay for each service employee whose
150 employment is for a period of more than three and one-
151 half hours a day shall be at least the amounts indicated
152 in the "state minimum pay scale pay grade" as set forth
153 in this section, and the minimum monthly pay for each
154 service employee whose employment is for a period of
155 three and one-half hours or less a day shall be at least
156 one half the amount indicated in the "state minimum
157 pay scale pay grade" set forth in this section. An
158 additional ten dollars per month shall be added to the
159 minimum monthly pay of each service employee who
160 holds a high school diploma or its equivalent.

161 Any service employee required to work on any legal
162 school holiday shall be paid at a rate one and one-half
times such employee’s usual hourly rate.

164 Any full-time service personnel required to work in
165 excess of their normal working day during any week
166 which contains a school holiday for which they are paid
shall be paid for such additional hours or fraction thereof at a rate of one and one-half times their usual hourly rate and paid entirely from county board of education funds.

No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, and such employee's required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

The minimum hourly rate of pay for extra-duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided. That an alternative minimum hourly rate of pay for performing extra-duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved both by the county board of education and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if so requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra-duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra-duty assignment pay computed as though such an employee were employed on a full-day salary basis.

The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties.
Related duties required for asbestos removal shall include, but not be limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

§18A-4-8e. Competency testing for service personnel.

The state board of education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight and listed in section eight-a of this article for service personnel. Each classification title defined and listed shall be considered a separate classification category of employment for service personnel and shall have a separate competency test, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment and shall have a single competency test. The cafeteria manager class title shall be included in the same classification category as cooks and shall have the same competency test. The executive secretary class title shall be included in the same classification category as secretaries and shall have the same competency test. The classification titles of chief mechanic, mechanic, and assistant mechanic shall be included in one classification title and shall have the same competency test.
The purpose of these tests shall be to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests shall not be used to evaluate employees who hold the classification title in the category of their employment.

The competency test shall consist of an objective written and/or performance test: Provided, That applicants shall have the opportunity of taking the written test orally if requested. Oral tests shall be recorded mechanically and kept on file. Persons administering the oral test shall not know the applicant personally. The performance test for all classifications and categories other than Bus Operator shall be administered by a vocational school which serves the county board of education. A standard passing score shall be established by the state department of education for each test and shall be used by county boards of education. The subject matter of each competency test shall be commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test shall be designed in such a manner that achieving a passing grade will not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score shall conclusively demonstrate the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, said applicant shall be fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and shall not be required to take the competency test again.

An applicant who fails to achieve a passing score shall be given other opportunities to pass the competency test when making application for another vacancy within the classification category.

Competency tests shall be administered to applicants
in a uniform manner under uniform testing conditions. County boards of education shall be responsible for scheduling competency tests and shall not utilize a competency test other than the test authorized by this section.

When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, said employee must be excused from work to take said competency test without loss of pay. A minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests.

Competency tests shall be utilized to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee. Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee shall be deemed as qualified for said classification title even though that employee no longer holds that classification.

The requirements of this section shall not be construed to alter the definitions of class titles as provided in section eight of this article nor the procedure and requirements of section eight-b of this article. The testing procedures of this section shall be implemented effective the first day of July, one thousand nine hundred ninety-one.

CHAPTER 65

(H. B. 4035—By Delegates Browning and Compton)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.] AN ACT to amend and reenact section seven-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating
to requiring county boards of education to fill vacant positions in certain instances within thirty working days of the end of the posting period; dispensing with posting positions held by persons with permits working toward certification; providing that when principals acquire identical seniority reductions in force will be made on the basis of qualifications; granting retroactive relief and providing that court costs and attorneys fees be paid from county funds to prevailing parties when the county school board violates this section.

Be it enacted by the Legislature of West Virginia:

That section seven-a, 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-4-7a. Employment, promotion and transfer of professional personnel; seniority.

1 A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. Further, the county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the
basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications.

The seniority of classroom teachers as defined in section one, article one of this chapter with the exception of guidance counselors shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified and/or licensed.

Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: Provided, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as
principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: Provided, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter: Provided, That all persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release: Provided, however, That an employee subject to release shall be employed in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee's seniority is greater than the seniority of any other employee in that area of certification and/or licensure.

After the fifth day prior to the beginning of the instructional term, or after the first day of the second half of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that half of the instructional term: Provided, That such person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next half of the instructional term: Provided, however, That professional personnel who have
been on an approved leave of absence may fill these
vacancies prior to the next semester. The superintendent
may fill a position before the next instructional term
when it is determined to be in the best interest of the
students.

All professional personnel whose seniority with the
county board is insufficient to allow their retention by
the county board during a reduction in work force shall
be placed upon a preferred recall list. As to any
professional position opening within the area where they
had previously been employed or to any lateral area for
which they have certification and/or licensure, such
employee shall be recalled on the basis of seniority if no
regular, full-time professional personnel, or those
returning from leaves of absence with greater seniority,
are qualified, apply for and accept such position. Before
position openings that are known or expected to extend
for twenty consecutive employment days or longer for
professional personnel may be filled by the board, the
board shall be required to notify all qualified
professional personnel on the preferred list and give
them an opportunity to apply, but failure to apply shall
not cause such employee to forfeit any right to recall.
The notice shall be sent by certified mail to the last
known address of the employee, and it shall be the duty
of each professional personnel to notify the board of
continued availability annually of any change in address
or of any change in certification and/or licensure.

Boards shall be required to post and date notices of
all openings in established, existing or newly created
positions in conspicuous working places for all
professional personnel to observe for at least five
working days. The notice shall be posted within twenty
working days of such position openings and shall include
the job description. Any special criteria or skills that are
required by the position shall be specifically stated in
the job description and directly related to the
performance of the job. No vacancy shall be filled until
after the five-day minimum posting period. If one or
more applicants meets the qualifications listed in the job
posting, the successful applicant to fill the vacancy shall
be selected by the board within thirty working days of
the end of the posting period: Provided, That a position
held by a certified/or licensed teacher who has been
issued a permit for full-time employment and is working
toward certification in the permit area shall not be
subject to posting if the certificate is awarded within
five years. Nothing provided herein shall prevent the
county board of education from eliminating a position
due to lack of need.

Notwithstanding any other provision of the code to the
contrary, where the total number of classroom teaching
positions in an elementary school does not increase from
one school year to the next, but there exists in that
school a need to realign the number of teachers in one
or more grade levels, kindergarten through six, teachers
at the school may be reassigned to grade levels for which
they are certified without that position being posted:
Provided, That the employee and the county board of
education mutually agree to the reassignment.

When the total number of classroom teaching
positions in an elementary school needs to be reduced,
such reduction shall be made on the basis of seniority
with the least senior classroom teacher being
recommended for transfer: Provided, That a specified
grade level needs to be reduced and the least senior
employee in the school is not in that grade level, the least
senior classroom teacher in the grade level that needs
to be reduced shall be reassigned to the position made
vacant by the transfer of the least senior classroom
teacher in the school without that position being posted:
Provided, however, That the employee is certified and/or
licensed and agrees to the reassignment.

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 reasonable attorney fees as
determined and established by the court. Further,
employees denied promotion or employment in violation
of this section shall be awarded the job, pay and any
applicable benefits retroactive to the date of the
violation and payable entirely from local funds. Further,
the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

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CHAPTER 66

(Com. Sub. for S. B. 299—By Senators Lucht, Wagner, Humphreys, Felton, Brackenrich, Holliday, M. Manchin, Burdette, Mr. President, Dalton and Tomblin)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-f, relating to the seniority rights of classroom teachers in consolidated schools.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight-f, to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8f. Seniority rights, school consolidation.

1 Notwithstanding any provision of this article to the contrary, when a majority of the classroom teachers, as defined in section one, article one of this chapter, who vote to do so, in accordance with procedures established herein, and who are employed by a county board of education, the board shall give priority to classroom teachers in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by consolidation or newly created positions in existing schools as a result of the merger.

Each year a consolidation or merger is proposed, prior to the implementation of that plan, the superintendent shall cause to be prepared and distributed to all faculty senates a ballot on which teachers may indicate whether or not they desire those affected by school closings to be
given priority status in filling new positions. A secret
ballot election shall be conducted in each faculty senate
and the faculty senate chair shall convey the results of
such election to the superintendent. The superintendent
shall tabulate and post all results prior to the notice
requirements for reduction in force and transfer as
outlined in sections two and seven, article two of this
chapter. The total number of votes shall be tabulated
and the provisions of this section shall be implemented
only if a majority of the total number of teachers who
cast a ballot vote to do so. The teachers in the school or
schools to be closed shall have priority in filling new
positions in the new or merged schools for which the
teachers are certified and meet the standards set forth
in the job posting on the basis of seniority within the
county: Provided, That a teacher shall only receive
priority for filling a position at a school impacted by a
merger, or consolidation with the position being created
by the influx of students from a consolidated or merged
school into the school receiving students from their
closed school or grade level. The most senior teacher in
the closed school or schools shall be placed first, the
second most senior shall be placed next and so on until
all the newly created positions are filled, or until all the
teachers in the closed school or schools who wish to
transfer into the newly created positions are placed:
Provided, however, That if there are fewer new positions
in the newly created school or merged school than there
are classroom teachers in the school or schools to be
closed, the teachers who were not placed in the new
positions shall retain the same rights as all other
teachers with regard to seniority, transfer and reduction
in force: Provided further, That nothing herein shall be
construed to grant any employee additional rights or
protections with regard to reduction in force.

For the purposes of this section only, a consolidation
shall mean when one or more schools are closed, or one
or more grade levels are removed from one or more
schools and the students who previously attended the
closed schools or grade levels are assigned to a new
school. For purposes of this section only, a merger shall
mean when one or more schools are closed or one or
more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to another existing school.

The provisions of this section shall not apply to positions which are filled by a county board prior to the effective date of this section.

CHAPTER 67
(Com. Sub. for S. B. 284—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)
[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three-a, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five, relating to creation of an applied technology education competitive grant program to meet the needs of business and industry within the state for a competitive, technically skilled work force; providing greater flexibility in appointments to the joint commission for vocational-technical-occupational education; creating an applied technology education fund to be administered by said joint commission; setting forth program goals, application criteria and funding priorities; specifying certain obligations of grant recipients including open records; and providing for termination of grants for failure to comply with terms and conditions.

Be it enacted by the Legislature of West Virginia:

That section two, article three-a, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section five, to read as follows:
ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCUPATIONAL EDUCATION.

§18B-3A-2. Composition of commission; terms of members; qualifications of members.


§18B-3A-2. Composition of commission; terms of members; qualifications of members.

1 The members appointed by the governor shall include all of the following:

(a) Seven individuals who shall be representatives from business, industry and agriculture, including one member representing small business concerns, one member of whom shall represent the governor's office of community and industrial development, one member of whom shall represent proprietary schools and one member of whom shall represent labor organizations. In selecting private sector individuals under this subdivision, the governor shall give due consideration to the appointment of individuals who serve on a private industry council or other appropriate state agencies.

(b) Six individuals, three of whom shall be representatives of secondary vocational-technical-occupational education appointed by the governor with advice from the state superintendent of schools, and three of whom shall be representatives of post-secondary vocational-technical-occupational education appointed by the governor, with advice from the chancellor of the board of directors.

In addition to the members appointed by the governor, the state superintendent of schools and the vice chancellor of the board of directors shall serve as ex officio members.

Members of the commission shall serve for overlapping terms of four years, except that the original appointments to the commission shall be for staggered terms allocated in the following manner: One member recommended for appointment by the chancellor, one member recommended for appointment by the state superintendent of schools and two members appointed
by the governor for terms of two years; one member recommended for appointment by the chancellor, one member recommended for appointment by the state superintendent of schools and two members appointed by the governor for terms of three years; and one member recommended for appointment by the state superintendent of schools, one member recommended for appointment by the chancellor and three members appointed by the governor for terms of four years.


(a) There is hereby created in the state treasury, an applied technology education fund to be administered by the joint commission for vocational-technical-occupational education, in conjunction with its other duties as set forth in this article, to promote the development of applied technology education and training programs which meet the needs of new and existing business and industry within West Virginia for a competitive, technically skilled work force. The major goals of the applied technology education fund are: (1) To encourage the state college and university system to develop a delivery system for instruction in applied technology leading to a degree in which specialty skill instruction is built around a common core of basic skills so that the specialty areas may be readily modified to meet the changing demands of the workplace; (2) to provide partial funding for the start-up or expansion of programs of instruction leading to a degree in applied technology skills for which there is a demonstrated and recurring need for skilled employees; and (3) to respond to unique needs for instruction in applied technology which are of limited duration and for which adequate funding is not available from other sources.

(b) The joint commission shall award grants to state institutions of higher education from the applied technology education fund based upon a competitive application process which includes the following criteria:

(1) The degree to which the course or program will advance the economy of the state, region and/or local
area, including, but not limited to, the immediate and potential economic impact, the effect on labor markets and the linkages with other economic development plans for the area;

(2) The program structure, including, but not limited to, cost effectiveness in terms of maximum use of existing resources of the institution, other public and private educational institutions and the community, and flexibility in terms of minimum changes necessary to accommodate the addition, deletion and modification of degree specialties in response to changing demands;

(3) The degree of direct and ongoing involvement in the education and training program by other public and private sector agencies, organizations and enterprises, including, but not limited to, direct matching contributions, in-kind contributions, cost sharing, ad hoc faculty, endowed chairs, mentorships, internships for students and faculty, program scholarships and other student aid;

(4) The amounts and sources of funding for the entire project, including, but not limited to, all grant moneys applied for and received for the program, including notification to the joint commission of moneys received after submission of the application, all institutional costs associated directly or indirectly with the education and training program, and all costs for capital modernization and retooling to increase competitiveness attendant with employment of the program's graduates incurred by other public and private agencies, organizations and enterprises with direct and ongoing involvement in the program;

(5) The history of identified prospective employers of program graduates, including, but not limited to, job opportunities, stability of employment, past and present condition and structure, present and future market prospects and any other information deemed necessary by the joint commission to judge the present and future viability of such employers;

(6) The anticipated duration of the education and training program, including, but not limited to, whether
and how such program is expected to become self-
supporting following completion of the grant and the
time period for which the grant is requested;

(7) The importance of state funding for the viability
of the program; and

(8) Any other information deemed necessary by the
joint commission for judging the relative merits of the
course or program.

(c) Priority for funding shall be given to courses or
programs which serve new areas of technical skills,
which serve underemployed and/or displaced workers
not served by other training programs, and/or which
leverage other public or private funds. Grants may be
awarded on a multiyear basis, generally not exceeding
three years, with funding in the second and succeeding
years contingent upon successfully fulfilling prior year’s
objectives. Grant funds shall not be used to supplant
other applicable state, federal or local funds for such
purposes. Grant awards received by a state institution
of higher education shall not be used to reduce the
institution’s base budget allocation.

(d) The joint commission shall establish a grant
application and review process, including any necessary
forms. The review process shall prioritize programs for
funding on a competitive basis as, in the judgment of
the joint commission, they best serve the purposes of this
article and the needs of the state for increasing the
competitiveness of its work force. The joint commission
shall award funds to programs with the highest priority
rankings subject to the availability of funds. Priority
rankings may be periodically realigned based upon the
review of new or modified grant applications.

(e) Receipt of a grant shall obligate the recipient to
such terms and conditions as may be established by the
joint commission in connection with the grant award.
Such terms and conditions shall, at a minimum, require
the recipient to keep proper books of record and account
in accordance with generally accepted accounting
principles. Such books of record and account shall be
open to inspection and audit by the joint commission at
its request and to inspection and copying by the public in accordance with the provisions of the state freedom of information act set forth in chapter twenty-nine-b of this code. The joint commission may require an independent audit of such books of record and account at the expense of the grant recipient. Failure to comply with the terms and conditions of a grant award may result in its termination.

CHAPTER 68

(Com. Sub. for S. B. 409—By Senators Lucht, Jones, Felton, J. Manchin, Heck, Holliday, Blatnik and Wehrle)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter eighteen-b 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 five-a; and to amend and reenact section one, article twenty-nine, chapter thirty of said code, relating to campus security officers; defining such officers as law-enforcement officers; allowing supervisor to exempt officers from required training; requiring reports of crimes alleged to have occurred at institutions of higher education in this state be referred to law-enforcement agencies and reported to public by rule with exceptions.

Be it enacted by the Legislature of West Virginia:

That section five, article four, chapter eighteen-b 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 five-a; and that section one, article twenty-nine, chapter thirty of said code be amended and reenacted to read as follows:

Chapter

18B. Higher Education.

30. Professions and Occupations.

CHAPTER 18B. HIGHER EDUCATION.
ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Security officers; appointment; qualifications; authority; compensation and removal.

§18B-4-5a. Crimes committed on campus of institutions of higher education.

§18B-4-5. Security officers; appointment; qualifications; authority; compensation and removal.

1 The governing boards are hereby authorized to
2 appoint bona fide residents of this state to act as security
3 officers upon any premises owned or leased by the state
4 of West Virginia and under the jurisdiction of the
5 governing boards, subject to the conditions and restric-
6 tions hereinafter imposed. Before performing duties as
7 a security officer in any county, each person so ap-
8 pointed shall qualify therefor in the same manner as is
9 required of county officers by the taking and filing an
10 oath of office as required by article one, chapter six of
11 this code and by posting an official bond as required by
12 article two, chapter six of this code. No security officer
13 shall have authority to carry a gun or any other
14 dangerous weapon until a license therefor has been
15 obtained in the manner prescribed by section two,
16 article seven, chapter sixty-one of this code.

17 It shall be the duty of any person so appointed and
18 qualified to preserve law and order on any premises
19 under the jurisdiction of the governing boards and on
20 any other street, road or thoroughfare, except controlled
21 access and open country highways, adjacent to or
22 passing through such premises, to which the person may
23 be assigned by the president or other administrative
24 head of the state institution of higher education. For this
25 purpose the security officer shall be deemed to be a law-
26 enforcement officer in accordance with the provisions of
27 section one, article twenty-nine, chapter thirty of this
28 code and, as to offenses committed within any area so
29 assigned, have and may exercise all the powers and
30 authority and shall be subject to all the requirements
31 and responsibilities of a law-enforcement officer:
32 Provided, That the supervisor of any security officer
33 employed on the effective date of this section may
34 exempt such officer from any law-enforcement training
35 required in said article. The assignment of security
36 officers to the duties authorized by this section shall not
be deemed to supersede in any way the authority or duty of other peace officers to preserve law and order on such premises. In addition, the security officers appointed under provisions of this section shall have authority to assist local peace officers on public highways in the control of traffic in and around premises owned by the state of West Virginia whenever such traffic is generated as a result of athletic or other activities conducted or sponsored by a state institution of higher education and when such assistance has been requested by the local peace officers.

The salary of all such security officers shall be paid by the appropriate governing board. Each state institution may furnish each such security officer with an official uniform to be worn while on duty and shall furnish and require each such officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying to the person’s identity and authority as a security officer.

The governing boards may at their pleasure revoke the authority of any security officer. The president or other administrative head of the state institution of higher education shall report the termination of employment of a security officer by filing a notice to that effect in the office of the clerk of each county in which the security officer’s oath of office was filed, and in the case of a security officer licensed to carry a gun or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license therefor was granted.

§18B-4-5a. Crimes committed on campus of institutions of higher education.

The president or a designee of each institution of higher education in this state shall on a regular and timely basis provide information to the public concerning alleged crimes occurring on the institution’s property which have been reported to a security officer or any other officer of the institution. A crime shall be deemed reported whenever a security officer or other officer of the institution determines that the report is
credible, when the report is submitted in writing and
attested to by the victim on such forms as shall be made
available by the institution for such purpose, or when
the institution is notified by a law-enforcement agency
of the reporting of a crime alleged to have occurred on
the institution’s property.

Such reports shall be referred within twenty-four
hours to the appropriate law-enforcement agencies, as
defined in section one, article twenty-nine, chapter
thirty of this code, for further investigation. The
information required to be made available to the public
regarding the crime report shall be so available within
ten days of the report and shall include the nature of
the criminal offense, the date of the offense, the general
location of the offense (such as a designation of a specific
building or area of the campus) and the time of day
when the offense occurred: Provided, That this require-
ment shall not be construed to require the release of any
information which may disclose the identity of the
victim: Provided, however, That the institution shall
withhold the information required to be made available
to the public for a longer period upon certification of
investigative need that the information be withheld
from the public, such certification to be filed by an
officer of one of the investigating law-enforcement
agencies with the president of the institution or the
designee to whom the duties required by this section
have been delegated: Provided further, That the re-
quired information shall in no event be withheld after
an arrest has been made in connection with the crime
report.

For purposes of this section, “crime” shall be defined
as those offenses required to be reported under the
federal Crime Awareness and Campus Security Act of
1990, as amended, and under section eight-a, article one
of this chapter, and shall include murder, rape, robbery,
aggravated assault, burglary, motor vehicle theft and
arrests for liquor, drug or weapons laws violations.

The governing boards shall provide crime reporting
forms and promulgate such legislative rules pursuant to
the provisions of article three-a, chapter twenty-nine-a
of this code as are necessary for the implementation of
this section. Such forms and rules shall be provided by
the central office to other institutions of higher educa-
tion in this state to assist them with the implementation
of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.
ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFI-
CATION.

§30-29-1. Definitions.

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

“Approved law-enforcement training academy”
means any training facility which is approved and
authorized to conduct law-enforcement training as
provided in this article;

“Chief executive” means the superintendent of the
department of public safety; the chief conservation
officer, department of natural resources; the sheriff of
any West Virginia county; or the chief of any West
Virginia municipal law-enforcement agency;

“County” means the fifty-five major political subdivi-
sions of the state;

“Exempt rank” means any noncommissioned or
commissioned rank of sergeant or above;

“Governor’s committee on crime, delinquency and
correction” or “governor’s committee” means the
governor’s committee on crime, delinquency and correc-
tion established as a state planning agency pursuant to
section one, article nine, chapter fifteen of this code;

“Law-enforcement officer” means any duly authorized
member of a law-enforcement agency who is authorized
to maintain public peace and order, prevent and detect
crime, make arrests, and enforce the laws of the state
or any county or municipality thereof, other than
parking ordinances, and shall include those persons
employed as security officers at state institutions of
higher education in accordance with the provisions of
section five, article four, chapter eighteen-b of this code,
although no such institution shall be deemed a law-
enforcement agency. As used in this article, the term
“law-enforcement officer” does not apply to the chief
executive of any West Virginia law-enforcement agency
or any watchman or special conservation officer;

“Law-enforcement official” means the duly appointed
chief administrator of a designated law-enforcement
agency or a duly authorized designee;

“Municipality” means any incorporated town or city
whose boundaries lie within the geographic boundaries
of the state;

“Subcommittee” or “law-enforcement training sub-
committee” means the subcommittee of the governor’s
committee on crime, delinquency and correction created
by section two of this article; and

“West Virginia law-enforcement agency” means any
duly authorized state, county or municipal organization
employing one or more persons whose responsibility is
the enforcement of laws of the state or any county or
municipality thereof: Provided, That no state institution
of higher education shall be deemed a law-enforcement
agency.

CHAPTER 69

(S. B. 27—By Senators Lucht, Felton and Humphreys)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article
six, chapter eighteen-b of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact section ten, article nine of said
chapter, relating to higher education personnel; extend-
ing leave transfer provisions to nonclassified employees;
providing generally for leave banks; and providing for
election of faculty and classified employee advisory
council members in April of each even-numbered year.
Be it enacted by the Legislature of West Virginia:

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

Article 6. Other Boards and Advisory Councils.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-2. Advisory councils of faculty.

§18B-6-4. Advisory councils of classified employees.

§18B-6-2. Advisory councils of faculty.

1 Effective the first day of July, one thousand nine hundred eighty-nine, each governing board shall be assisted by an advisory council of faculty.

2 During the month of April of each even-numbered year, each president or other administrative head of a state institution of higher education, including Potomac State College of West Virginia University and West Virginia University at Parkersburg, at the direction of the councils and in accordance with procedures established by the councils, shall convene a meeting or otherwise institute a balloting process to elect one faculty to serve on the appropriate governing board’s advisory council of faculty, which shall consist of one faculty, so elected, from each such institution under the appropriate governing board. Terms of the members of each council shall be for two years and shall begin on the first day of July of each even-numbered year, and members of each advisory council shall be eligible to succeed themselves.

20 The advisory councils of faculty shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting each council shall elect a chairman, who shall be by virtue of the office a voting member of the appropriate governing board. No member may vote by proxy at such election. In the event of a tie in the last vote taken for
such election, a member authorized by the council shall
select the chairman by lot from the names of those
persons tied. Immediately following the election of a
chairman, each council shall elect, in the manner
prescribed by this section for the election of a chairman,
a member of that council to preside over meetings of the
council in the chairman's absence. Should the chairman
vacate the position, the council shall meet and elect a
new chairman to fill the unexpired term within thirty
days following such vacancy.

Each advisory council of faculty, through its chair-
man and in any other appropriate manner, shall consult
and advise its governing board in matters of higher
education in which the faculty members may have an
interest.

Members of each advisory council shall serve without
compensation, but shall be entitled to reimbursement
for actual and necessary expenses incurred in the
performance of their official duties from funds allocated
to the state institution of higher education served.

Each governing board shall furnish secretarial
services to its advisory council of faculty, and each
advisory council shall cause to be prepared minutes of
its meetings, which minutes shall be available, upon
request, to any faculty member of a state institution of
higher education represented on the council. Such
minutes shall be forwarded to the advisory council of
faculty serving the other governing board.

§18B-6-4. Advisory councils of classified employees.

Effective the first day of July, one thousand nine
hundred eighty-nine, each governing board shall be
assisted by an advisory council of classified employees.

During the month of April of each even-numbered
year, each president or other administrative head of a
state institution of higher education, including Potomac
State College of West Virginia University and West
Virginia University at Parkersburg, at the direction of
the councils and in accordance with procedures estab-
lished by the councils, shall convene a meeting or
otherwise institute a balloting process to elect one
classified employee to serve on the appropriate govern-
ing board's advisory council of classified employees,
which shall consist of one classified employee, so elected,
from each such institution under the appropriate
governing board. Terms of the members of such councils
shall be for two years and shall begin on the first day
of July of each even-numbered year, and members of the
advisory councils shall be eligible to succeed themselves.
For the purpose of this section the term “institution of
higher education” includes the facilities and staff
supervised by the senior administrator employed by the
governing boards, who shall be deemed a part of the
state college system, and the West Virginia network for
telecomputing, who shall be deemed a part of the state
university system.

Each advisory council of classified employees shall
meet at least once each quarter. One of the quarterly
meetings shall be during the month of July, at which
meeting each council shall elect a chairman, who shall
be by virtue of the office a voting member of the
appropriate governing board: Provided, That the board
of directors' advisory council for classified employees'
chairman shall not be a member of the staff supervised
by the central administrative official. No member may
vote by proxy at such election. In the event of a tie in
the last vote taken for such election, a member autho-
rized by the council shall select the chairman by lot
from the names of those persons tied. Immediately
following the election of a chairman, each council shall
elect, in the manner prescribed by this section for the
election of a chairman, a member of the council to
preside over meetings of the council in the chairman's
absence. Should the chairman vacate the position, the
council shall meet and elect a new chairman to fill the
unexpired term within thirty days following such
vacancy.

Each advisory council of classified employees,
through its chairman and in any other appropriate
manner, shall consult and advise its governing board in
matters of higher education in which the classified
employees may have an interest.

Members of each advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of classified employees, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any classified employee of a state institution of higher education represented on the council. Such minutes shall be forwarded to the advisory council of classified employees serving the other governing board.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.


(a) A classified or nonclassified employee employed by the higher education governing board or by the central office may donate sick and annual leave to a leave bank established and operated in accordance with the provisions of subsection (c) of this section or directly to another employee in accordance with the provisions of subsection (d) of this section. No employee shall be compelled to donate sick or annual leave. Any leave donated by an employee pursuant to this section shall be used only for the purpose of catastrophic illness or injury as defined in subsection (b) of this section and shall reduce, to the extent of such donation, the number of days of annual or sick leave to which the employee is entitled.

(b) 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 and annual leave and other paid time off. Catastrophic illness or injury shall also include an incapacitated immediate family member as defined by
the appropriate governing board 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 and
annual leave and other paid time off.

(c) A leave bank or banks may be established at each
state institution of higher education and the central
office to which employees may donate either sick or
annual leave. The bank or banks may be established
jointly by the central office and both governing boards,
may be established for the central office and each of the
governing boards, or may be established for the central
office and each institution of higher education under
either governing board. Sick or annual leave may be
deposited in the leave bank, and such deposit shall be
reflected as a day-for-day deduction from the sick or
annual leave balance of the depositing employee.

Such deposited leave may be withdrawn by any
employee experiencing a catastrophic illness or injury
as those terms are defined in subsection (b) of this
section 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, approval of the withdrawal by
the president of the institution or senior administrator,
and written notice to the personnel office. The withdra-
wal shall be reflected as a day-for-day addition to the
leave balance of the withdrawing employee.

(d) Sick or annual leave may be donated to any
employee experiencing a catastrophic illness or injury
as those terms are defined in subsection (b) of this
section. Such leave shall be donated at the request of the
employee upon appropriate verification that the em-
ployee is unable to work due to the catastrophic illness
or injury as determined by the president of the institu-
tion or senior administrator. Upon approval of the
transfer of sick or annual leave by the president of the
institution or senior administrator, any employee may,
upon written notice to the personnel office, donate sick
or annual leave in one-day increments. Donations shall
be reflected as a day-for-day deduction from the sick or
annual leave balance of the donating employee. An employee receiving the transfer of sick or annual 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.

(e) 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 or annual leave withdrawn or received may not exceed an amount sufficient to ensure the continuance of regular compensation and shall not be used to extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code. An employee withdrawing or receiving donations of sick or annual leave pursuant to this section shall use any leave personally accrued on a monthly basis prior to receiving additional donated sick or annual leave.

(f) Transfer of sick or annual leave deposited in an institutional leave bank or transferred under subsection (c) 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 or annual leave deposits, withdrawals and transfers of its employees. Rules implementing the provisions of this section may be adopted jointly or separately by the governing boards in accordance with article three-a, chapter twenty-nine-a of this code.

CHAPTER 70
(S. B. 352—By Senators Lucht and Felton)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to authorization of higher
education governing boards to promulgate legislative rules; providing generally for authorization, effective date and waiver of technical deficiencies; and authorizing specific regulations relating to higher education report cards, equal opportunity and affirmative action and holidays.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seventeen, to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

1 Under the provisions of article three-a, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in sections two and three of this article, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. The Legislature further declares that all rules now or hereafter authorized under sections two and three of this article are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

The effective date of the legislative rules authorized in sections two and three of this article shall be governed by the provisions of section fourteen, article three-a, chapter twenty-nine-a of this code unless the governing board promulgating the rules establishes an effective date which is earlier than that provided by said section, in which case the effective date established by the governing board shall control, unless the Legislature in the bill authorizing the rules establishes an effective date for such rules, in which case the effective date established by the Legislature shall control.
The Legislature further declares each legislative rule now or hereafter authorized under this article to have been validly promulgated notwithstanding any failure to comply with any requirement of article three-a, chapter twenty-nine-a of this code relating to the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in sections two and three of this article.

§18B-17-2. Board of trustees.

(a) The legislative rules filed in the state register on the third day of December, one thousand nine hundred ninety-one, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of trustees (report card), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of July, one thousand nine hundred ninety-one, relating to the board of trustees (equal opportunity and affirmative action), are authorized.

§18B-17-3. Board of directors.

(a) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred ninety-one, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of directors (report card), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-one, relating to the board of directors (equal opportunity and affirmative action), are authorized.

(c) The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred ninety-one, relating to the board of directors (holiday policy), are authorized.
AN ACT to amend and reenact section two, article eight, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article one, chapter twenty-two-b, all relating to excluding gas vented or released from mine areas and adjacent coal seams from the definition of waste.

Be it enacted by the Legislature of West Virginia:

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

Chapter
22. Environmental Resources.
22B. Oil and Gas.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-2. Definitions.

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

(1) "Commission" means the oil and gas conservation commission and "commissioner" means the oil and gas conservation commissioner as provided for in section four of this article;

(2) "Director" means the director for the division of oil and gas provided for in section eleven, article one, chapter twenty-two of this code;

(3) "Person" means any natural person, corporation, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind.
and includes any government or any political subdivision or any agency thereof;

(4) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

(5) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subdivision (4) of this section;

(6) "Independent producer" means a person who is actively engaged in the production of oil and gas in West Virginia, but whose gross revenue from such production in West Virginia does not exceed five hundred thousand dollars per year;

(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (7) of this section;

(9) "Pool" means an underground accumulation of petroleum in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum from one part of the pool
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52 affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be presented in the same district or on the same geologic structure;

59 (10) “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

62 (11) “Shallow well” means any well drilled and completed in a formation above the top of the uppermost member of the “Onondaga Group”: Provided, That in drilling a shallow well the operator may penetrate into the “Onondaga Group” to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the “Onondaga Group” formation be otherwise produced, perforated or stimulated in any manner;

71 (12) “Deep well” means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the “Onondaga Group”;

77 (13) “Drilling unit” means the acreage on which one well may be drilled;

(14) “Waste” means and includes: (A) Physical waste, as that term is generally understood in the oil and gas industry; (B) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or (C) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool. Waste does not include gas vented or released from any mine areas as defined in section one, article one-a, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued
Provided, That nothing in this exclusion is intended to address ownership of the gas;

(15) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof; and

(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts.

(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" shall be interchangeable, as, for example, "oil and gas" shall mean oil or gas or both.

CHAPTER 22B. OIL AND GAS.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22B-1-1. Definitions.

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

(a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

(b) "Cement" means hydraulic cement properly mixed with water;

(c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article seven, chapter twenty-two of this code;

(d) "Chief" means chief of the division of water resources of the department of natural resources;

(e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(f) "Coal seam" and "workable coal bed" are inter-
changeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

(g) “Commissioner” means commissioner of the department of energy;

(h) “Deep well” means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the “Onondaga Group”;

(i) “Division” means, for purposes of this article and articles three and four of this chapter, the division of oil and gas of the department of energy;

(j) “Director” means, for the purposes of this article and articles two, three and four of this chapter, the director of the division of oil and gas of the department of energy;

(k) “Expanding cement” means any cement approved by the division of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;

(l) “Facility” means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in article three or four of this chapter, other than a well or well site;

(m) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (n) of this section;

(n) “Oil” means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoirs;

(o) “Owner” when used with reference to any well, shall include any person or persons, firm, partnership,
partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;

(p) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

(q) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(r) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;

(s) "Review board" means the West Virginia shallow gas well review board as provided for in section four, article seven, chapter twenty-two of this code;

(t) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(u) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": Provided, That in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;

(v) "Stimulate" means any action taken by a well operator to increase the inherent productivity of an oil or gas well, including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(w) "Waste" means (i) physical waste, as the term is
generally understood in the oil and gas industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter shall be construed to authorize any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article eight, chapter twenty-two of this code and the provisions of article seven, chapter twenty-two of this code; (v) inefficient storing of oil or gas: Provided, That storage in accordance with a certificate of public convenience issued by the federal energy regulatory commission shall be conclusively presumed to be efficient and (vi) other underground or surface waste in the production or storage of oil, gas or condensate, however caused. Waste does not include gas vented or released from any mine areas as defined in section one, article one-a, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, however, That nothing in this exclusion is intended to address ownership of the gas; (x) “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term “well” does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;
(y) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well;

(z) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined;

(aa) "Pollutant" shall have the same meaning as provided in subsection (x), section two, article five-a, chapter twenty of this code; and

(bb) "Waters of this state" shall have the same meaning as the term "waters" as provided in subsection (e), section two, article five-a, chapter twenty of this code.

CHAPTER 72

(H. B. 4192—By Delegates Roop and Ashley)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to competency of witnesses; and prohibiting priests, nuns, rabbis, Christian Science practitioners and members of the clergy from being compelled to testify in criminal or domestic relations proceedings as to communications made to them in their professional capacities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COMPETENCY OF WITNESSES.
§57-3-9. Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony.

1 No priest, nun, rabbi, duly accredited Christian Science practitioner or member of the clergy authorized to celebrate the rites of marriage in this state pursuant to the provisions of article one, chapter forty-eight of this code shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this state:

(1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or other religious body to which he or she belongs, without the consent of the person making such confession or communication; or

(2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication. This subsection is in addition to the protection and privilege afforded pursuant to section ten-a, article two, chapter forty-eight of this code.

CHAPTER 73

(Com. Sub. for H. B. 4579—By Delegates J. Martin and Houvouras)

[Passed March 7, 1992; in effect July 1, 1992. 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 three-b, relating to establishing an on-site consultation program within the division of labor to assist employers in complying with federal, state, county and city environmental and hazardous waste require-
ments; legislative purpose; duties of division of labor and commissioner of labor; creating an environmental assistance resource board; and establishing procedures.

*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 three-b, to read as follows:

**ARTICLE 3B. EMPLOYER ASSISTANCE FOR ENVIRONMENTAL PROTECTION.**

§21-3B-1. Title and purpose.

§21-3B-2. Duties and responsibilities of division of labor and the commissioner of labor.

§21-3B-3. Environmental assistance resource board.

§21-3B-4. Procedures.

§21-3B-1. Title and purpose.

This article shall be known and may be cited as the "Employer Assistance For Environmental Protection Act."

It is the purpose of this article to make available to employers in this state assistance in identifying environmental and hazardous waste hazards common to the workplace and to further assist such employers in developing plans for compliance with all such concerns. Such assistance will be provided using the available personnel and resources of the various state agencies involved in the regulation and control of environmental and hazardous waste disciplines.

§21-3B-2. Duties and responsibilities of division of labor and the commissioner of labor.

(a) The division of labor shall:

(1) Encourage employers and employees to reduce existing environmental and hazardous waste hazards and to implement new or improved existing safety and health programs;

(2) Provide technical advice and information relating to environmental hazards and waste hazards;
(3) Develop and implement training programs to increase the employer and employee competence in managing and correcting environmental hazards and waste hazards;

(4) Develop and coordinate an information network relating to applicable environmental and hazardous waste law affecting the business community in West Virginia;

(5) Offer a program of on-site consultation to assist businesses in identifying environmental hazards and waste hazards; and

(6) Offer to businesses an off-site program by telephone or correspondence for information and assistance in complying with environmental regulation.

(b) The commissioner of labor shall develop and implement rules, regulations and administrative guidelines required to effectuate the purposes of this article.

(c) In carrying out the duties and responsibilities imposed by the provisions of subsection (a) of this section, or in developing and implementing rules, regulations and administrative guidelines in accordance with the provisions of subsection (b) of this section, the division of labor and the commissioner shall not expend any state funds or utilize any personnel of the division for the training of any permanent replacement employee, unless and until such permanent replacement employee has been determined by the commissioner to have been legally employed.

§21-3B-3. Environmental assistance resource board.

There is hereby created within the division of labor an environmental assistance resource board to advise and assist the commissioner of labor in developing the technical resources necessary to administer the provisions of this article. The board is composed of the commissioner of labor, who shall serve as chair; the director of the air pollution control commission; the chief of the division of water resources of the division of natural resources; the chief of the division of waste management of the division of natural resources; the
commissioner of the division of environmental protection; one member of the House of Delegates appointed by the speaker of the House; and one member of the Senate appointed by the president of the Senate. Terms of legislative members of the board shall run concurrent with the member's legislative term of office.

The board shall meet within thirty days of the effective date of this article and thereafter at the call of the chair. The board shall establish an information network wherein the commissioner of labor and any consultant advising employers, in order to provide accurate information regarding compliance with environmental and hazardous waste regulations, may access written materials or staff having technical expertise within the agencies represented on the board. At the request of the board, the secretary of the department of commerce, labor and environmental resources is authorized to direct the assignment of staff, on a temporary or permanent basis, from any agency represented on the board to the division of labor to assist in the implementation of the employer assistance program set forth in this article.

§21-3B-4. Procedures.

(a) Any employer within the state may request the commissioner of labor in writing to provide advice and assistance in identifying and eliminating environmental hazards in compliance with applicable state, federal and local law. The employer may specify a limited scope for consultation by indicating hazards or situations on which consultation will be focused. No consultation services may be provided when an agency charged with enforcing federal, state or local environmental or hazardous waste regulations has issued a citation or ordered that a condition be abated or corrected.

(b) The commissioner shall provide on-site consultation services in identifying and eliminating environmental hazards. However, since employee contact by a consultant is needed for proper identification of environmental hazards in the workplace, employers must agree to such contact before a consultation may proceed.
Employers must agree to correct all hazards noted by
the consultant as a condition of the providing of
consultation services. Employers are encouraged to
permit employees to participate in the walk-around
portion of a consultation visit.

(c) Prior to visiting a worksite, the consultant may
request specific information concerning the worksite.
Requested information must be provided before a
consultation may proceed.

(d) If, in the course of an inspection, the consultant
observes environmental hazards violating federal, state
or local law which are outside the scope of a consultation
request, the consultant shall treat such hazards as if
they were within the scope of the consultation request.

(e) During the on-site consultation, the consultant
shall point out hazards and violations observed, suggest
approaches or options for corrective action, and provide
additional information related to complying with
applicable laws. The consultant shall prepare a written
report, which shall be furnished to the employer, of all
hazards observed and methods of abatement and may
suggest where additional assistance may be secured.
The consultant may follow through after the on-site
consultation to assist in implementing recommendations
and to assure that required corrective action is taken.

(f) Information obtained by a consultant related to
environmental hazards and violations may not be
disclosed to enforcement officials, except when an
employer fails or refuses to take corrective action to
eliminate imminent danger or serious hazards.

(g) No fees, penalties or costs may be assessed against
the employer.

(h) The use of the consultation services contemplated
by this article by any employer shall raise no presump-
tion, inference, or defense to any action, order, citation,
charge, rule to show cause, or any other enforcement
effort brought against such employer by any agency of
the state of West Virginia.
AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to a statutory rule against perpetuities; the creation of nonvested property interest or power of appointment; reformation of a disposition; exclusions from rule; prospective application of article and exception; short title; uniformity of application and construction; and supersession.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

§36-1A-1. Statutory rule against perpetuities.
§36-1A-2. When nonvested property interest or power of appointment created.
§36-1A-3. Reformation.
§36-1A-4. Exclusions from statutory rule against perpetuities.
§36-1A-5. Prospective application.
§36-1A-6. Short title.
§36-1A-7. Uniformity of application and construction.
§36-1A-8. Supersession repeal.

§36-1A-1. Statutory rule against perpetuities.

1 (a) A nonvested property interest is invalid unless:
2 (1) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
3 (2) The interest either vests or terminates within ninety years after its creation.
4 (b) A general power of appointment not presently
exercisable because of a condition precedent is invalid unless:

1. When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under the provisions of subdivision (1), subsection (a), or subdivision (1), subsection (b), or subdivision (1), subsection (c) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

§36-1A-2. When nonvested property interest or power of appointment created.

(a) Except as provided in subsections (b) and (c) of this section and in subsection (a), section five of this article, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this article, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (1) a nonvested property interest or (2) a property interest subject to a power of appointment described in subsections (b) or (c), section one of this article, the nonvested property interest or power of appointment is
created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this article, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

§36-1A-3. Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor’s manifested plan of distribution and is within the ninety years allowed by the provisions of subdivision (2), subsection (a), or subdivision (2), subsection (b), or subdivision (2), subsection (c), section one of this article and if:

(1) A nonvested property interest or a power of appointment becomes invalid pursuant to the provisions of section one of this article;

(2) A class gift is not but might become invalid pursuant to the provisions of section one of this article and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by the provisions of subdivision (1), subsection (a), section one of this article can vest but not within ninety years after its creation.

§36-1A-4. Exclusions from statutory rule against perpetuities.

The provisions of section one of this article do not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of: (A) A premarital or post-marital agreement; (B) a separation or divorce settlement; (C) a spouse’s election; (D) a similar arrangement arising out of a prospective, existing, or previous
marital relationship between the parties; (E) a contract
to make or not to revoke a will or trust; (F) a contract
to exercise or not to exercise a power of appointment;
(G) a transfer in satisfaction of a duty of support; or (H)
a reciprocal transfer;

(2) A fiduciary's power relating to the administration
or management of assets, including the power of a
fiduciary to sell, lease or mortgage property, and the
power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute
principal before termination of a trust to a beneficiary
having an indefeasibly vested interest in the income and
principal;

(5) A nonvested property interest held by a charity,
government, or governmental agency or subdivision, if
the nonvested property interest is preceded by an
interest held by another charity, government, or
governmental agency or subdivision;

(6) A nonvested property interest in or a power of
appointment with respect to a trust or other property
arrangement forming part of a pension, profit-sharing,
stock bonus, health, disability, death benefit, income
deferral, or other current or deferred benefit plan for
one or more employees, independent contractors, or
their beneficiaries or spouses, to which contributions are
made for the purpose of distributing to or for the benefit
of the participants or their beneficiaries or spouses the
property, income, or principal in the trust or other
property arrangement, except a nonvested property
interest or a power of appointment that is created by
an election of a participant or a beneficiary or spouse;
or

(7) A property interest, power of appointment, or
arrangement that was not subject to the common-law
rule against perpetuities or is excluded by another
provision of this code.

§36-1A-5. Prospective application.
(a) Except as extended by subsection (b) of this section, this article applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this article. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before the effective date of this article and is determined in a judicial proceeding, commenced on or after the effective date of this article, to violate this state's rule against perpetuities as that rule existed before the effective date of this article, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

§36-1A-6. Short title.

This article may be cited as the “Uniform Statutory Rule Against Perpetuities.”

§36-1A-7. Uniformity of application and construction.

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

§36-1A-8. Supersession repeal.

The provisions of this article supersede the rule of the common law known as the rule against perpetuities.
AN ACT to repeal section one, article two, chapter thirty-seven; article two, chapter forty-two; section one, article four of said chapter; and sections three through twenty, inclusive, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article one, chapter forty-one of said code; to amend and reenact sections one, two, three and four, article one, chapter forty-two; to further amend article one of said chapter by adding thereto eight new sections, designated sections three-a, three-b, three-c, three-d, three-e, three-f, three-g and ten; to amend and reenact sections one, two and three, article three, chapter forty-two; to further amend article three of said chapter by adding thereto five new sections, designated sections three-a, four, five, six and seven; to amend and reenact sections one and two, article one, chapter forty-three; and to amend and reenact section six, article seven, chapter fifty-five of said code, all relating to intestate succession and distribution of damages in wrongful death actions; spousal and surviving heirs shares; representation; the abolition of dower and curtesy; effects of premarital will on spouse's share; and requiring spousal notice if certain property is conveyed.

Be it enacted by the Legislature of West Virginia:

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

Chapter

41. Wills.
42. Descent and Distribution.
43. Dower and Valuation of Life Estates.
55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 41. WILLS.

ARTICLE 1. CAPACITY TO MAKE; REQUISITES; VALIDITY.

§41-1-6. Revocation by divorce; no revocation by other changes of circumstances.

If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. Notwithstanding the provisions of section three, article three, chapter forty-one of this code, the share of such spouse shall be distributed according to the residuary clause of the decedent’s will or according to the statute of intestate succession for the decedents property. If provisions are revoked solely by this section, they are revived by testator’s remarriage to the former spouse. For purposes of this section, divorce or annul-
ment means any divorce or annulment which would exclude the spouse as a surviving spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

CHAPTER 42. DESCENT AND DISTRIBUTION.

Article
1. Descent.

ARTICLE 1. DESCENT.

§42-1-1. General definitions.
§42-1-2. Intestate estate.
§42-1-3a. Share of heirs other than surviving spouse.
§42-1-3b. Requirement that heir survive decedent for one hundred twenty hours.
§42-1-3c. No taker.
§42-1-3d. Representation.
§42-1-3e. Kindred of half blood.
§42-1-3f. Afterborn heirs.
§42-1-3g. Advancements.
§42-1-4. Alienage.
§42-1-10. Individuals related to decedent through two lines.

§42-1-1. General definitions.

1 Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires in this code:

(1) “Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care, and an individual authorized to make decisions for another under a natural death act.

(2) “Beneficiary” as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a “beneficiary of a
beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(3) "Court" means the county commission or branch in this state having jurisdiction in matters relating to the affairs of decedents.

(4) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(5) "Descendant" of an individual means all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

(6) "Devise" when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(7) "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(8) "Distributee" means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received
from a personal representative is a distributee of the
personal representative. For the purposes of this
provision, "testamentary trustee" includes a trustee to
whom assets are transferred by will, to the extent of the
devised assets.

(9) "Estate" includes the property of the decedent,
trust, or other person whose affairs are subject to this
code as originally constituted and as it exists from time
to time during administration.

(10) "Exempt property" means that property of a
decedent's estate which is provided for in Section 48,
Article VI of the constitution.

(11) "Fiduciary" includes a personal representative,
guardian, conservator and trustee.

(12) "Foreign personal representative" means a
personal representative appointed by another
jurisdiction.

(13) "Formal proceedings" means proceedings con-
ducted before a judge with notice to interested persons.

(14) "Governing instrument" means a deed, will,
trust, insurance or annuity policy, account with POD
designation, security registered in beneficiary form
(TOD), pension, profit-sharing, retirement or similar
benefit plan, instrument creating or exercising a power
of appointment or a power of attorney, or a donative,
appointive, or nominative instrument of any other type.

(15) "Guardian" means a person who has qualified as
a guardian of a minor or incapacitated person pursuant
to testamentary or court appointment, but excludes one
who is merely a guardian ad litem.

(16) "Heirs" means persons, including the surviving
spouse and the state, who are entitled under the statutes
of intestate succession to the property of a decedent.

(17) "Informal proceedings" mean those conducted
without notice to interested persons by an officer of the
court acting as a registrar for probate of a will or
appointment of a personal representative.
92  (18) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

93  (19) "Issue" of a person means descendant as defined in subsection (5).

94  (20) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

95  (21) "Lease" includes an oil, gas, or other mineral lease.

96  (22) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

97  (23) "Minor" means a person who is under eighteen years of age.

98  (24) "Mortgage" means any deed of trust, conveyance, agreement, or arrangement in which property is encumbered or used as security.

99  (25) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his or her death.

100 (26) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and
excludes any person who is only a stepparent, foster parent, or grandparent.

(27) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(28) "Person" means an individual or an organization.

(29) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(30) "Petition" means a written request to the court for an order after notice.

(31) "Proceeding" includes action at law and suit in equity.

(32) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(33) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(34) "Settlement" in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(35) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
(36) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(37) "Successors" means persons, other than creditors, who are entitled to property of a decedent under his or her will or this code.

(38) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event. The term includes its derivatives, such as "survives," "survived," "survivor," "surviving."

(39) "Surviving spouse" means the person to whom the decedent was married at the time of the decedent's death.

(40) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(41) "Testator" includes an individual of either sex.

(42) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives and custodial arrangements, including that relating to gifts or transfers to minors, dealing with special custodial situations, business trusts providing for certificates to be issued to beneficiaries.

(43) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(44) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.
§42-1-2. **Intestate estate.**

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this code, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

§42-1-3. **Share of spouse.**

The intestate share of a decedent's surviving spouse is:

(a) The entire intestate estate if:

(1) No descendant or parent of the decedent survives the decedent; or

(2) All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(b) Three fourths of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

(c) Three fifths of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(d) One half of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

§42-1-3a. **Share of heirs other than surviving spouse.**

Any part of the intestate estate not passing to the...
decedent's surviving spouse under section three of this article, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(a) To the decedent's descendants by representation;

(b) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

(c) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but, if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

§42-1-3b. Requirement that heir survive decedent for one hundred twenty hours.

An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of a decedent or of an individual who would otherwise be an heir, or the times of death of both, cannot be determined, and it is not established that the individual who would otherwise be an heir survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would
result in a taking of intestate estate by the state under section three-c of this article.

§42-1-3c. No taker.

If there is no taker under the provisions of this article, the intestate estate passes to the state.

§42-1-3d. Representation.

(a) In this section:

(1) “Deceased descendant,” “deceased parent,” or “deceased grandparent” means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under section three-b of this article.

(2) “Surviving descendant” means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section three-b of this article.

(b) If, under section three-a of this article, a decedent's intestate estate or a part thereof passes “by representation” to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are: (i) Surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants; and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(c) If, under section three-a of this article, a decedent's intestate estate or a part thereof passes “by representation” to the descendants of the decedent’s deceased parents or either of them or to the descendants of the decedent’s deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are: (i)
Surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allotted a share and their surviving descendants had predeceased the decedent.

§42-1-3e. Kindred of half blood.

1 Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

§42-1-3f. Afterborn heirs.

1 An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.

§42-1-3g. Advancements.

1 (a) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent’s lifetime to an individual who, at the decedent’s death, is an heir is treated as an advancement against the heir’s intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (ii) the decedent’s contemporaneous writing or the heir’s written acknowledgement otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent’s intestate estate.

13 (b) For purposes of subsection (a), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent’s death, whichever first occurs.

17 (c) If the recipient of the property fails to survive the decedent, the property is not taken into account in
§42-1-4. Alienage.

1 No individual is disqualified to take as an heir because the individual or an individual through whom he or she claims is or has been an alien.

§42-1-10. Individuals related to decedent through two lines.

1 An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

ARTICLE 3. PROVISIONS RELATING TO HUSBAND OR WIFE OF DECEDEENT.

§42-3-1. Right to elective share.

(a) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Length of Time Married</th>
<th>Elective-Share Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>Supplemental Amount Only</td>
</tr>
<tr>
<td>1 year but less than 2 years</td>
<td>3% of the augmented estate.</td>
</tr>
<tr>
<td>2 years but less than 3 years</td>
<td>6% of the augmented estate.</td>
</tr>
<tr>
<td>3 years but less than 4 years</td>
<td>9% of the augmented estate.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If the decedent and the spouse</th>
<th>The elective-share percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>were married to each other</td>
<td></td>
</tr>
<tr>
<td>Less than 1 year</td>
<td>Supplemental Amount Only</td>
</tr>
<tr>
<td>1 year but less than 2 years</td>
<td>3% of the augmented estate.</td>
</tr>
<tr>
<td>2 years but less than 3 years</td>
<td>6% of the augmented estate.</td>
</tr>
<tr>
<td>3 years but less than 4 years</td>
<td>9% of the augmented estate.</td>
</tr>
</tbody>
</table>
15 4 years but less than 5 years........12% of the augmented estate.
16 5 years but less than 6 years.........15% of the augmented estate.
17 6 years but less than 7 years........18% of the augmented estate.
18 7 years but less than 8 years........21% of the augmented estate.
19 8 years but less than 9 years........24% of the augmented estate.
20 9 years but less than 10 years.......27% of the augmented estate.
21 10 years but less than 11 years.....30% of the augmented estate.
22 11 years but less than 12 years.....34% of the augmented estate.
23 12 years but less than 13 years.....38% of the augmented estate.
24 13 years but less than 14 years.....42% of the augmented estate.
25 14 years but less than 15 years.....46% of the augmented estate.
26 15 years or more........................50% of the augmented estate.
27 (b) If the sum of the amounts described in subdivi-
28 sions (3) and (4), subsection (b) of section two, and
29 subdivisions (1) and (3), subsection (a), section six of this
30 article, and that part of the elective-share amount
31 payable from the decedent's probate and reclaimable
32 estates under subsections (b) and (c), section six of this
33 article, is less than twenty-five thousand dollars, the
34 surviving spouse is entitled to a supplemental elective-
35 share amount equal to fifty thousand dollars, minus the
36 sum of the amounts described in those sections. The
37 supplemental elective share amount is payable from the
38 decedent's probate estate and from recipients of the
39 decedent's probate estate and from recipients of the
40 decedent's reclaimable estate in the order of priority set
41 forth in subsections (b) and (c), section six of this article.
42 (c) The right, if any, of the surviving spouse of a
43 decedent who dies domiciled outside this state to take
44 an elective share in property in this state is governed
45 by the law of the decedent's domicile at death.

§42-3-2. Augmented estate.

1 (a) Definitions.

2 (1) In this section:

3 (i) "Bona fide purchaser" means a purchaser for value
4 in good faith and without notice of an adverse claim. The
5 notation of a state documentary fee on a recorded
6 instrument is prima facie evidence that the transfer
7 described therein was made to a bona fide purchaser.
(ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he or she possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in himself or herself or his or her creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(2) In subsections (b) (2) (iii) and (iv), "transfer" includes an exercise or release of a power of appointment, but does not include a lapse of a power of appointment.

(b) The augmented estate consists of the sum of:

(1) The value of the decedent's probate estate, reduced by funeral and administration expenses, homestead exemption, property exemption, and enforceable claims;
(2) The value of the decedent’s reclaimable estate. The decedent’s reclaimable estate is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent’s probate estate, of any of the following types:

(i) Property to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent’s surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before his or her death, or if and to the extent the decedent, while married to his or her surviving spouse and during the two-year period next preceding the decedent’s death, released that power or exercised that power in favor of any person other than the decedent or the decedent’s estate, spouse or surviving spouse;

(ii) Property, to the extent of the decedent’s unilaterally severable interest therein, held by the decedent and any other person, except the decedent’s surviving spouse, with right of survivorship, acquired during the marriage of the decedent and the surviving spouse, if the decedent held that interest immediately before his or her death or if and to the extent the decedent, while married to his or her surviving spouse and during the two-year period preceding the decedent’s death, transferred that interest to any person other than the decedent’s surviving spouse;

(iii) Proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent’s surviving spouse, if the decedent owned the insurance policy, had the power to change the beneficiary of the insurance policy, or the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before his or her death or if and to the extent the decedent, while married to his or her surviving spouse and during the two-year period next preceding the decedent’s death, transferred that policy to any person other than the decedent’s surviving spouse; and
(iv) Property transferred by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any person, other than the decedent's surviving spouse, if the transfer is of any of the following types:

(A) Any transfer to the extent that the decedent retained at the time of or during the two-year period next preceding his or her death the possession or enjoyment of, or right to income from the property;

(B) Any transfer to the extent that, at the time of or during the two-year period next preceding the decedent's death, the income or principal was subject to a power, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party, for the benefit of the decedent or the decedent's estate;

(C) Any transfer of property, to the extent the decedent's contribution to it, as a percentage of the whole, was made within two years before the decedent's death, by which the property is held, at the time of or during the two-year period next preceding the decedent's death, by the decedent and another, other than the decedent's surviving spouse, with right of survivorship; or

(D) Any transfer made to a donee within two years before the decedent's death to the extent that the aggregate transfers to any one donee in either of the years exceed ten thousand dollars.

(3) The value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by homestead exemption, exempt property, testate succession, or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(4) The value of property owned by the surviving spouse at the decedent's death, reduced by enforceable
claims against that property or that spouse, plus the
value of amounts that would have been includible in the
surviving spouse's reclaimable estate had the spouse
predeceased the decedent. But amounts that would have
been includible in the surviving spouse's reclaimable
estate under subsection (b) (2) (iii) are not valued as if
he or she were deceased.

(c) Any transfer or exercise or release of a power of
appointment is excluded from the decedent's reclaima-
ble estate (i) to the extent the decedent received
adequate and full consideration in money or money's
worth for the transfer, exercise or release, or (ii) if
irrevocably made with the written consent or joinder of
the surviving spouse.

(d) Property is valued as of the decedent's death, but
property irrevocably transferred during the two-year
period next preceding the decedent's death which is
included in the decedent's reclaimable estate under
subsection (b) (2) (i), (ii) and (iv) is valued as of the time
of the transfer. If the terms of more than one of the
subparagraphs or sub-subparagraphs of subsection (b)
(2) apply, the property is included in the augmented
estate under the subparagraph or sub-subparagraph
that yields the highest value. For the purposes of this
subsection, an "irrevocable transfer of property"
includes an irrevocable exercise or release of a power
of appointment.

(e) (1) Although under this section a payment, item
of property, or other benefit is included in the decedent's
reclaimable estate, a payor or other third party is not
liable for having made a payment or transferred an item
of property or other benefit to a beneficiary designated
in a governing instrument, or for having taken any other
action in good faith reliance on the validity of a
governing instrument, upon request and satisfactory
proof of the decedent's death, before the payor or other
third party received written notice from the surviving
spouse or spouse's representative of an intention to file
a petition for the elective share or that a petition for the
elective share has been filed. A payor or other third
party is liable for payments made or other actions taken
after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(2) The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under subsection (d) of section four of this article, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection (a) of section four of this article or, if filed, the demand for an elective share is withdrawn under subsection (c) of section four of this article, the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(f) (1) A person who purchases property from a recipient for value and without notice, or who receives a payment or other item of property in partial or full
satisfaction of a legally enforceable obligation, is neither obligated under this part to return the payment, item of property, or benefit nor is liable under this part for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit included in the decedent’s reclaimable estate is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in section six of this article.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent’s reclaimable estate, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section six of this article to the person who would have been entitled to it were that section or part of that section not preempted.

§42-3-3. Right of election personal to surviving spouse.

(a) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under subsection (a) of this section. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse’s behalf by his or her conservator, guardian, or agent under the authority of a power of attorney.

(b) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent’s probate estate and recipients of the decedent’s reclaimable estate under subsections (b) and (c) of section six of this article and must appoint a trustee to administer that property for the support of the surviving spouse.

For the purposes of this subsection, an election on behalf
of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee must administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

1. Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse and benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need;

2. During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination;

3. Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse.

§42-3-3a. Waiver of right to elect; other rights.

(a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead exemption, exempt property, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

1. He or she did not execute the waiver voluntarily;
or

(2) The waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, and exempt property by each spouse in the property of the other and renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

§42-3-4. Proceeding for elective share; time limit.

(a) Except as provided in subsection (b), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (b), the
decedent's reclaimable estate, described in subdivision (2), subsection (b) of section two of this article, is not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in subdivision (2), subsection (b) of section two of this article, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts. If the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section six of this article. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been under section two had relief been secured against all persons subject to contribution.
§42-3-5. Effect of election on statutory benefits.

1 If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead exemption and exempt property, if any, are not charged against but are in addition to the elective share and supplemental elective-share amounts.

§42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.

(a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's reclaimable estate:

(1) Amounts included in the augmented estate which pass or have passed to the surviving spouse by testate or intestate succession;

(2) Amounts included in the augmented estate under subdivision (3), subsection (b), section two of this article;

(3) Amounts included in the augmented estate which would have passed to the spouse but were disclaimed; and

(4) Amounts included in the augmented estate under subdivision (4), subsection (b), section two of this article up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in section one of this article appropriate to the length of time the spouse and the decedent were married to each other.

(b) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's
probate estate and that portion of the decedent's reclaimable estate other than amounts irrevocably transferred within two years before the decedent's death are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(c) If, after the application of subsections (a) and (b), the elective share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable estate is so applied that liability for the unsatisfied balance of the elective share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(d) Only original recipients of the reclaimable estate described in subdivision (2) of subsection (b) of section two of this article, and the donees of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which he or she is liable.

§42-3-7. Entitlement of spouse; premarital will.

(a) If a testator's surviving spouse married the testator after the testator executed his or her will, the surviving spouse is entitled to receive, as an intestate share no less than the value of the share of the estate he or she would have received if the testator had died intestate as to that portion of the testator's estate, if any.
that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised or passes to a descendant of such a child, unless:

(1) It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(3) The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(b) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift to a descendant of such a child, abate.

CHAPTER 43. DOWER AND VALUATION OF LIFE ESTATES.

ARTICLE 1. DOWER.

§43-1-1. Dower and curtesy abolished.


§43-1-1. Dower and curtesy abolished.

The estates of dower and curtesy are abolished.


(a) For purposes of this section, "conveyance" means a dispositive act intended to create a property interest in land and includes the creation of a security interest in real estate.

(b) Any married person who conveys an interest in real estate shall notify his or her spouse prior to or within thirty days of the time of the conveyance if the conveyance involves an interest in real estate to which
dower would have attached if the conveyance had been made prior to the date of enactment of this statute.

(c) A person making a conveyance described in the previous sections shall have the burden of proof to show compliance with this section. Such burden shall be met either by:

(1) The signature of the spouse of the conveying party on the conveyance instrument; or

(2) Such other forms of competent evidence as are admissible in a court of general jurisdiction in this state under the rules of evidence.

(d) When a married person fails to comply with the notification requirements of this section, then in the event of a subsequent divorce within five years of said conveyance, the value of the real estate conveyed, as determined at the time of the conveyance, shall be deemed a part of the conveyancer's marital property for purposes of determining equitable distribution or awards of support, notwithstanding that any consideration for said interest in the real estate may already be included in the marital property.

(e) Nothing in this section shall be construed to create a lien or claim against the interest in real estate conveyed in violations of this provision.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

(a) Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance here-with. If the personal representative was duly appointed
in another state, territory or district of the United States, or in any foreign country, such personal representative shall, at the time of filing of the complaint, post bond with a corporate surety thereon authorized to do business in this state, in the sum of one hundred dollars, conditioned that such personal representative shall pay all costs adjudged against him or her and that he or she shall comply with the provisions of this section. The circuit court may increase or decrease the amount of said bond for good cause.

(b) In every such action for wrongful death, the jury, or in a case tried without a jury, the court, may award such damages as to it may seem fair and just, and may direct in what proportions the damages shall be distributed to the surviving spouse and children, including adopted children and stepchildren, brothers, sisters, parents and any persons who were financially dependent upon the decedent at the time of his or her death or would otherwise be equitably entitled to share in such distribution after making provision for those expenditures, if any, specified in subdivision (2), subsection (c) of this section. If there are no such survivors, then the damages shall be distributed in accordance with the decedent's will or, if there is no will, in accordance with the laws of descent and distribution as set forth in chapter forty-two of this code. If the jury renders only a general verdict on damages and does not provide for the distribution thereof, the court shall distribute the damages in accordance with the provisions of this subsection.

(c) (1) The verdict of the jury shall include, but may not be limited to, damages for the following: (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (D) reasonable funeral expenses.

(2) In its verdict the jury shall set forth separately the
amount of damages, if any, awarded by it for reasonable 
funeral, hospital, medical and said other expenses 
incurred as a result of the wrongful act, neglect or 
default of the defendant or defendants which resulted 
in death, and any such amount recovered for such 
expenses shall be so expended by the personal 
representative.

(d) Every such action shall be commenced within two 
years after the death of such deceased person, subject 
to the provisions of section eighteen, article two, chapter 
fifty-five. The provisions of this section shall not apply 
to actions brought for the death of any person occurring 
prior to the first day of July, one thousand nine hundred 
and eighty-eight.

CHAPTER 76
(Com. Sub. for S. B. 310—By Senator Humphreys)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-two, article three-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees to be charged by a fiduciary supervisor; and basis for fee charged.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDEDENTS; COUNTY OPTION.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.

(a) When necessary solely for the purpose of financing 
the cost of settling estates, the county commission may
authorize the fiduciary supervisor to charge and collect at the time of qualification of the fiduciary of a decedent's estate a fee not to exceed: (1) Twenty-five dollars for all estates in which the gross assets do not exceed ten thousand dollars; (2) one hundred dollars for all estates in which the gross assets are more than ten thousand dollars and do not exceed fifty thousand dollars; and (3) one hundred seventy-five dollars for all estates in which the gross assets exceed fifty thousand dollars. Of the sums collected by the fiduciary supervisor, five dollars shall be forwarded to the state tax commissioner. The moneys so forwarded to the state tax commissioner shall be deposited in the office of the treasurer of the state in the special fund, designated "The Inheritance Tax Administration Fund", to be used to defray, in whole or in part, the costs of administration of taxes imposed by article eleven, chapter eleven of this code in order to facilitate the prompt administration of the provisions imposed by said article. The remaining amounts shall be deposited in the county fiduciary fund as provided in section forty-three of this article. Such fee shall be paid to include all services of the fiduciary supervisor for the settlement of every such decedent's estate which is settled pursuant to the provisions of section nineteen of this article. All such fees shall also include the cost of publication of the notice required by section four of this article, and the notice required by section nineteen of this article, but shall not include the cost of any mailings or of the cost of recording any documents required to be recorded in the office of the clerk of the county commission by the provisions of this chapter.

In the event the fiduciary supervisor is required to examine and prepare a statement of deficiencies, including reasons for disapproving any of the documents required to be filed by the personal representative of any decedent's estate, he shall charge and collect from such personal representative a fee of ten dollars.

(b) In addition to the fees set forth in subsection (a) of this section, the fiduciary supervisor shall charge a fee to be fixed by the county commission in the manner
provided in subsection (c) of this section for conducting hearings, granting continuances of hearings, considering evidence, for drafting recommendations with respect to such hearings and for appearing before the county commission with respect thereto and any other matters of an extraordinary nature not normally included within a summary settlement as contemplated by section nineteen of this article. Such fee shall be used to defray the costs imposed by or incidental to any extraordinary demands by or conditions imposed by a fiduciary or imposed by the circumstances of the estate.

(c) The fiduciary supervisor or fiduciary commissioner shall prepare a voucher for the county commission, which voucher shall be itemized and shall set forth in detail all of the services performed and the amount charged for such service or services. Such voucher shall also indicate in each instance if the service was actually performed by the fiduciary supervisor or fiduciary commissioner or whether such service was performed by an employee or deputy of such supervisor or commissioner. All vouchers shall reflect the services rendered pursuant to the initial fee charged and collected as provided in subsection (a) of this section and, in addition thereto, shall indicate those services for which charges are to be made over and above that amount. In the case of any service for which a fee is not fixed by this section, or the fee fixed is based on time expended, the voucher shall show the actual time personally expended by the supervisor or commissioner, to the nearest tenth of an hour. All such vouchers shall be verified prior to submission to the county commission for approval. Upon approval of any such voucher, the same shall be charged against the estate to which the same applies. In reviewing any fee charged by either the fiduciary supervisor or a fiduciary commissioner, the county commission shall consider the following:

(1) The time and effort expended;

(2) The difficulty of the questions raised;

(3) The skill required to perform properly the services rendered;
(4) The reasonableness of the fee;

(5) Any time limitations imposed by the personal representative, any beneficiary or claimant, or by the attendant circumstances; and

(6) Any unusual or extraordinary circumstances or demands or conditions imposed by the personal representative, any beneficiary or claimant or by the attendant circumstances. The county commission may approve any such voucher or may reduce the same, as it deems proper, after considering those matters set forth in this subsection. Any such approval shall be by order of the commission and be entered of record by the clerk of the county commission in the fiduciary record book and the general order books of the commission. In no event shall any fee for any service, whether performed by the fiduciary supervisor or the fiduciary commissioner, be fixed, charged or approved which is based upon or with reference to the monetary value of the estate or of the amount in controversy upon any disputed issue or fact of law.

(d) For every estate other than a decedent's estate, there shall be charged by the fiduciary supervisor at the time of qualification a fee of twenty-five dollars, which fee shall include all services performed by the fiduciary supervisor with respect to such estate from the time of qualification of the personal representative thereof until and including the filing of the first annual settlement. For each additional or subsequent annual or triennial settlement, the fiduciary supervisor shall charge and collect a fee of ten dollars.

(e) The county commission or other tribunal in lieu thereof shall, by order, establish or fix a schedule of suggested fees or rates of compensation for the guidance of the fiduciary supervisor and any fiduciary commissioner in preparing their respective vouchers for fees other than those fees fixed by any provision of this section or of this chapter. A copy of these fees or rates shall be posted in a conspicuous place in the county courthouse.
AN ACT to amend article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to investment of fiduciary assets by a bank or trust company in mutual funds; permitting investments in mutual fund companies which receive other services by the bank or trust company; and investments of fiduciary assets in time deposits of the bank or trust company.

Be it enacted by the Legislature of West Virginia:

That article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine, to read as follows:

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-9. Investment of trust assets in mutual funds; investments in mutual fund companies otherwise served by the bank; investment of trust assets in time deposits.

(a) A bank or trust company qualified and acting in a fiduciary capacity in this state may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as fiduciary, invest and reinvest trust assets in mutual funds which are the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1, et seq.), as amended: Provided, That the portfolio of such investment company or investment trust does not consist of investments prohibited by the governing fiduciary instrument.

(b) The fact that a bank or trust company or an
affiliate of the same provides services to an investment
company or investment trust, including, but not limited
to, services as an investment advisor, custodian, transfer
agent, registrar, sponsor, distributor, manager or
otherwise, and is receiving reasonable compensation for
those services, does not preclude such bank or trust
company from investing or reinvesting in mutual funds
which are the securities of the open-end or closed-end
management investment trust registered under the
Investment Company Act of 1940 (15 U.S.C. Section 80a-
1, et seq.), as amended. Such bank or trust company or
affiliate thereof is entitled to receive fiduciary fees with
respect to such assets. For such services the bank or
trust company or affiliate thereof shall also be entitled
to the normal fiduciary fee.

(c) A bank or trust company qualified and acting in
a fiduciary capacity in this state may, in the exercise
of its investment discretion or at the direction of another
person authorized to direct investment of funds held by
the bank or trust company as fiduciary, invest and
reinvest trust assets in time deposits, including certif-
icates of deposit, of the bank or trust company in
accordance with the provisions of subdivision (f), section
two of this article: Provided, That such investments are
authorized by the governing fiduciary instrument.

CHAPTER 78
(Com. Sub. for H. B. 2872—By Delegates Staton and Damron)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and
four, article fourteen, chapter forty-four of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended; and to further amend said article fourteen by
adding thereto a new section, designated section five,
relating to the substitution of trustees generally;
providing for the appointment of a substitute trustee for
a trust deed securing a debt or obligation by the party
secured by the trust deed, any surety indemnified by such deed, or the assignee or personal representative of such secured party or surety, independent of court action; providing for notice of such substitution by first class mail; recordation of notice; and validation of good faith acts by substitute trustees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. SUBSTITUTION OF TRUSTEES; POWERS OF SURVIVING OR REMAINING TRUSTEES.

§44-14-1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances; substitution of trustee by party secured by trust deed.

§44-14-2. Procedure for appointment by court or judge; appointment by secured party under trust deed.

§44-14-3. Remaining trustees, or personal representative of sole or surviving trustee, may execute trust.

§44-14-4. Powers and responsibilities of substituted or remaining trustee.

§44-14-5. Validation of good faith acts by substitute trustees.

§44-14-1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances; substitution of trustee by party secured by trust deed.

(a) When the trustee, or, if there is more than one trustee, one or more of the trustees, in any will, deed or other writing, die or remove beyond the limits of this state, or decline to accept the trust, or having accepted, resign the same, or refuse to act as trustee, or be unable due to physical or mental disability to perform his, her, or their duties under the trust, the circuit court of the county in which such will was admitted to probate, or such deed or other writing is or may be recorded, may, on motion of any party interested, and upon satisfactory evidence of such death, removal, declination, resignation, refusal or inability, appoint a trustee or trustees
in the place of the trustee or trustees named in such
instrument and so dying, removing, declining, resigning
or refusing, or being unable to perform his, her, or their
duties under the trust.

(b) As an alternative to the method of substitution
provided for in subsection (a) of this section, in the case
of a trust deed to secure a debt or obligation if the trust
deed does not by its terms prescribe a method for
substitution, the party secured by the trust deed, or any
surety indemnified by the deed, or the assignee or
personal representative of any such secured party or
surety has the authority, in the event of such death,
removal, declination, resignation, refusal or inability as
is described in subsection (a), to substitute a trustee or
trustees in the place of the trustee or trustees named in
such instrument, independent of any court action
otherwise required by the provisions of subsection (a).

(c) If any such trust, other than a security trust,
include real property situate in this state, and the
trustee, or, if there be more than one trustee, one or
more of the trustees, appointed by or under the will,
deed or other writing creating such trust and required
under the provisions thereof to act in respect of such real
property, be a corporation or association chartered
under the laws of any other state or jurisdiction which
is not qualified under the laws of this state to hold
property or transact business in this state, and refuses
or is unable to so qualify, such court may in like manner
appoint an ancillary trustee of such trust to act with
respect to such real property situate in this state
pursuant to, and with all the powers and authorities
granted to the trustee or trustees of such trust by, the
provision of the will, deed or other writing creating such
trust.

§44-14-2. Procedure for appointment by court or judge;
appointment by secured party under trust deed.

(a) A motion under the provisions of subsection (a) of
the preceding section shall be after ten days' notice to
all persons interested in the execution of the trust other
than the plaintiff in such motion. If any of the parties on whom such notice is required to be served be under disability and have no guardian or committee, the court, judge or clerk shall appoint some discreet and competent attorney-at-law as guardian ad litem to such person, on whom notice may be served. If there be such guardian or committee, the notice shall be served on him.

(b) In the case of a substitution made under subsection (b) of the preceding section, substituting a trustee or trustees of a trust deed securing a debt or obligation, the substitution is effected when the party secured, or a surety indemnified by the deed, or the assignee or personal representative of any such secured party or surety has deposited true copies of the notice of such substitution in the United States mail, first class postage prepaid, addressed to the last known addresses of the grantor or grantors or any other person owing the debt or obligation, and to the trustee or trustees, and has presented the original of such notice to the clerk of the county commission in whose office the trust deed is recorded, causing such notice to be recorded and indexed in a general lien book or other such appropriate book wherein trust deeds or assignments of trust deeds are recorded. There shall be appended to the notice presented for recordation a certificate by the party making the substitution, certifying that copies of the notice were mailed as required by this subsection, and showing the date of such mailing.

(c) It shall not be necessary to give notice under this section to a trustee who has removed from the state, declined to accept the trust, refused to act as trustee, or has resigned, nor to the personal representative of one who has died.

§44-14-3. Remaining trustees, or personal representative of sole or surviving trustee, may execute trust.

The personal representative of a sole or surviving trustee, or if there be more than one trustee, and one or more of them die, resign, or remove from the state,
or decline to accept the trust, or refuse to act as such trustee or trustees, the remaining trustee or trustees, may execute the trust, or so much thereof as remained unexecuted at the death, removal, declination, resignation, or refusal aforesaid (whether the trust subject be real or personal property), unless the instrument creating the trust directs otherwise, or some other trustee be appointed for the purpose pursuant to the provisions of this article.

§44-14-4. Powers and responsibilities of substituted or remaining trustee.

Any trustee or trustees appointed under authority of this article, if he, she, or they accept, or the personal representative of a sole or surviving trustee, or the surviving or remaining trustee, who has power to execute any trust or the remainder of any trust under authority of this article, shall be vested with all the estates, rights and powers, and charged with all the duties and responsibilities, of the trustee or trustees named in the trust instrument.

§44-14-5. Validation of good faith acts by substitute trustees.

This section is enacted to prevent or redress problems which might be caused by the improper appointment of substitute trustees under a trust deed to secure a debt or obligation who in good faith performed their acts as trustees in substantial compliance with the provisions of article one, chapter thirty-eight of this code. With respect to acts performed by such trustees in good faith and in substantial compliance with the statutory law of this state and the terms of their trust deed the otherwise lawful acts of a substitute trustee performed prior to the effective date of this section shall be conclusively presumed to be valid, notwithstanding that the method of appointment of such trustee did not comply with the provisions of a prior enactment of this article.
AN ACT to amend and reenact sections three and five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to advisory opinions subject to legislative rule making and review; and the exclusion of legislators and legislative staff from the prohibition against current or subsequent representation of clients in matters in which he or she participated in the legislative process.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rule making.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rule making.

1 A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter or the provisions of section fifteen, article ten, chapter sixty-one of this code and would thereby expose the person to sanctions by the commission or criminal prosecution. The commission shall respond within thirty days from the receipt of the request by issuing an advisory opinion on the matter raised in the request. All advisory opinions shall be published and indexed in the code of
state rules by the secretary of state: Provided, That
before an advisory opinion is made public, any material
which may identify the person who is the subject of the
opinion shall, to the fullest extent possible, be deleted
and the identity of the person shall not be revealed. A
person subject to the provisions of this chapter may rely
upon the published guidelines or an advisory opinion of
the commission, and any person acting in good faith
reliance on any such guideline or opinion shall be
immune from the sanctions of this chapter and the
sanctions of section fifteen, article ten, chapter sixty-one
of this code, and shall have an absolute defense to any
criminal prosecution for actions taken in good faith
reliance upon any such opinion or guideline in regard
to the sanctions of this chapter and the sanctions of
section fifteen, article ten, chapter sixty-one of this code.

*§6B-2-5. Ethical standards for elected and appointed
officials and public employees.

(a) Persons subject to section. — The provisions of this
section apply to all elected and appointed public officials
and public employees, whether full or part time, in
state, county, municipal governments and their respec-
tive boards, agencies, departments and commissions and
in any other regional or local governmental agency,
including county school boards.

(b) Use of public office for private gain. — (1) A public
official or public employee may not knowingly and
intentionally use his or her office or the prestige of his
or her office for his or her own private gain or that of
another person. The performance of usual and custom-
ary duties associated with the office or position or the
advancement of public policy goals or constituent
services, without compensation, does not constitute the
use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection,
relating to the use of public office or public employment
for private gain, recognizes that there may be certain
public officials or public employees who bring to their

* Clerk's Note: This section was also amended by H. B. 4361 (Chapter 80),
which passed subsequent to this act.
respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official
or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee:

*Provided, however,* That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the
101 official or employee participates in a panel or speaking engagement at the meeting;

103 (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

108 (F) Gifts that are purely private and personal in nature; or

110 (G) Gifts from relatives by blood or marriage, or a member of the same household.

117 The acceptance of an honorarium by an elected public official is prohibited. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials and public employees other than elected public officials.

118 (4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

120 (5) The governor or his designee may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the division of culture and history.

126 (d) Interests in public contracts. — (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any
governmental body, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a business; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract.

(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information. — No present or former public official or employee may knowingly and improp-
erly disclose any confidential information acquired by
him or her in the course of his or her official duties nor
use such information to further his or her personal
interests or the interests of another person.

(f) Prohibited representation. — With the exception of
legislators and legislative staff, no present or former
elected or appointed public official or public employee
shall during or after his or her public employment or
service represent a client or act in a representative
capacity with or without compensation on behalf of any
person in a contested case, rate-making proceeding,
license or permit application, regulation filing or other
specific matter which arose during his or her period of
public service or employment and in which he or she
personally participated in a decision-making, advisory
or staff support capacity. The provisions of this subsec-
tion shall apply to legislators who were in office and
legislative staff who were employed at the time it
originally became effective on the first day of July, one
thousand nine hundred eighty-nine, and those who have
since become legislators or legislative staff and those
who shall serve hereafter as legislators or legislative
staff.

(g) Limitation on practice before a board, agency,
commission or department. — (1) No elected or ap-
pointed public official and no full-time staff attorney or
accountant shall, during his or her public service or
public employment or for a period of six months after
the termination of his or her public service or public
employment with a governmental entity authorized to
hear contested cases or promulgate regulations, appear
in a representative capacity before the governmental
entity in which he or she serves or served or is or was
employed in the following matters:

(A) A contested case involving an administrative
sanction, action or refusal to act;

(B) To support or oppose a proposed regulation;

(C) To support or contest the issuance or denial of a
license or permit;
(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist, or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within six months after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmen-
(h) **Seeking employment with regulated person prohibited.** — (1) No full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by, any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

(2) No person regulated by a governmental agency shall offer employment to a full-time public official or full-time public employee of the regulating governmental agency during the period of time the public official or employee works or serves in such agency.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the prohibition against seeking employment with a person who is or may be regulated. When the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide upon each application on a case-by-case basis.

(i) **Members of the Legislature required to vote.** — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presid-
Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to articles three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be
reported, or actually paid by any other person.

(1) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employee’s department supervisor or the president of the institution by which the faculty or staff member is employed.

(m) The commission by legislative rule promulgated in accordance with chapter twenty-nine-a of this code may define further exemptions from this section as necessary or appropriate.

CHAPTER 80
(H. B. 4361—By Delegates Brown and Grubb)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting elected or appointed public official or public employee from representing clients in certain matters in which he or she participated while in government.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section. — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection (b), relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employ-

* Clerk's Note: This section was also amended by S. B. 58 (Chapter 79), which passed prior to this act.
ment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family. Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee. Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially
and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The acceptance of an honorarium by an elected public official is prohibited. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials.
and public employees other than elected public officials.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The governor or his designee may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the division of culture and history.

(d) Interests in public contracts. — (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A
limited interest for the purposes of this subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a business; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract.

(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information. — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation. — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate
government agency, after consultation, consents to such representation. A staff attorney, accountant, or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: Provided, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which such professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on the first day of July, one thousand nine hundred eighty-nine, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) Limitation on practice before a board, agency, commission or department. — (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed regulation;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes
any formal or informal appearance before, or any
written or oral communication with, any public agency
on behalf of any person: Provided, That nothing
contained in this subsection shall prohibit, during any
period, a former public official or employee from being
retained by or employed to represent, assist, or act in
a representative capacity on behalf of the public agency
by which he or she was employed or in which he or she
served. Nothing in this subsection shall be construed to
prevent a former public official or employee from
representing another state, county, municipal or other
governmental entity before the governmental entity in
which he or she served or was employed within six
months after the termination of his or her employment
or service in the entity.

(3) A present or former public official or employee
may appear at any time in a representative capacity
before the Legislature, a county commission, city or
town council or county school board in relation to the
consideration of a statute, budget, ordinance, rule,
resolution or enactment.

(4) Members and former members of the Legislature
and professional employees and former professional
employees of the Legislature shall be permitted to
appear in a representative capacity on behalf of clients
before any governmental agency of the state, or of
county or municipal governments including county
school boards.

(5) An elected or appointed public official, full-time
staff attorney or accountant who would be adversely
affected by the provisions of this subsection may apply
to the ethics commission for an exemption from the six
months prohibition against appearing in a representa-
tive capacity, when the person's education and experi-
ence is such that the prohibition would, for all practical
purposes, deprive the person of the ability to earn a
livelihood in this state outside of the governmental
agency. The ethics commission shall by legislative rule
establish general guidelines or standards for granting
an exemption or reducing the time period, but shall
decide each application on a case-by-case basis.
Seeking employment with regulated person prohibited. — (1) No full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by, any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

(2) No person regulated by a governmental agency shall offer employment to a full-time public official or full-time public employee of the regulating governmental agency during the period of time the public official or employee works or serves in such agency.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the prohibition against seeking employment with a person who is or may be regulated, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide upon each application on a case-by-case basis.

Members of the Legislature required to vote. — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

Limitations on participation in licensing and rate-
making proceedings. — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to articles three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(k) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(l) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of
expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employees’ department supervisor or the president of the institution by which the faculty or staff member is employed.

(m) The commission by legislative rule promulgated in accordance with chapter twenty-nine-a of this code may define further exemptions from this section as necessary or appropriate.

CHAPTER 81
(Com. Sub. for S. B. 162—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and nine, article eleven, chapter five 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 eleven-a, all relating to enactment of a state analog to the federal fair housing act to ensure continued funding from the federal government and primary enforcement authority at the state rather than federal level; definitions; unlawful discriminatory practices; prohibiting discrimination in housing based on race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin; prohibiting discrimination in residential real estate transactions; prohibiting discrimination in brokerage services; exempting certain religious organizations and private clubs; providing for the administration of the West Virginia fair housing act by the human rights commission; providing for administrative and civil enforcement of the anti-discrimination provisions;
providing for subpoena and investigative authority to
the human rights commission; enforcement of subpo­
enas; election of remedies; administrative hearings;
enforcement by private persons through civil actions;
protection of bona fide purchasers; intervention and
enforcement by attorney general in civil cases; enforce­
ment by civil action against interference, coercion or
intimidation; cooperation with local agencies; effect on
state laws; and rules to implement the West Virginia
fair housing act.

Be it enacted by the Legislature of West Virginia:

That sections three and nine, article eleven, chapter five 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 eleven-a, all to read as follows:

Article
  11A. West Virginia Fair Housing Act.

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-3. Definitions.

§5-11-3. Definitions.

  1 When used in this article:
  2   (a) The term “person” means one or more individuals,
  3   partnerships, associations, organizations, corporations,
  4   labor organizations, cooperatives, legal representatives,
  5   trustees, trustees in bankruptcy, receivers and other
  6   organized groups of persons;
  7   (b) The term “commission” means the West Virginia
  8   human rights commission;
  9   (c) The term “director” means the executive director
 10   of the commission;
 11   (d) The term “employer” means the state, or any
 12   political subdivision thereof, and any person employing
 13   twelve or more persons within the state: Provided, That
 14   such terms shall not be taken, understood or construed
to include a private club;

(e) The term "employee" shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap or familial status and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in section nine of this article;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private;

(k) The term "age" means the age of forty or above;

(l) For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed twenty/two hundred in the better eye with correcting lenses, or if his visual acuity is greater than twenty/two hundred but is occasioned by a limitation in the fields of vision such that the widest
diameter of the visual field subtends an angle no greater than twenty degrees; and

(m) The term "handicap" means a person who:

(1) Has a mental or physical impairment which substantially limits one or more of such person's major life activities; the term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(2) Has a record of such impairment; or

(3) Is regarded as having such an impairment.

For the purposes of this article, this term does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.


It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the state of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or handicapped: Provided, That it shall not be unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision;

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or
keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership; (B) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex or age; or (C) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap;

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

(4) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(A) Select individuals for an apprentice training program registered with the state of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(B) Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program or other occupational training or retraining program;

(C) Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication,
or to use any form of application for such programs or
to make any inquiry in connection with such program
which expresses, directly or indirectly, discrimination
or any intent to discriminate unless based upon a bona
fide occupational qualification;

(5) For any employment agency to fail or refuse to
classify properly, refer for employment or otherwise to
discriminate against any individual because of his race,
religion, color, national origin, ancestry, sex, age,
blindness or handicap;

(6) For any person being the owner, lessee, proprietor,
manager, superintendent, agent or employee of any
place of public accommodations to:

(A) Refuse, withhold from or deny to any individual
because of his race, religion, color, national origin,
ancestry, sex, age, blindness or handicap, either directly
or indirectly, any of the accommodations, advantages,
facilities, privileges or services of such place of public
accommodations;

(B) Publish, circulate, issue, display, post or mail,
either directly or indirectly, any written or printed
communication, notice or advertisement to the effect
that any of the accommodations, advantages, facilities,
privileges or services of any such place shall be refused,
withheld from or denied to any individual on account of
race, religion, color, national origin, ancestry, sex, age,
blindness or handicap, or that the patronage or custom
thereof of any individual, belonging to or purporting to
be of any particular race, religion, color, national origin,
ancestry, sex or age or who is blind or handicapped, is
unwelcome, objectionable, not acceptable, undesired or
not solicited; or

(7) For any person, employer, employment agency,
labor organization, owner, real estate broker, real estate
salesman or financial institution to:

(A) Engage in any form of threats or reprisal, or to
engage in, or hire, or conspire with others to commit
acts or activities of any nature, the purpose of which is
to harass, degrade, embarrass or cause physical harm
or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-2. Declaration of policy.
§5-11A-4. Application of article.
§5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.
§5-11A-6. Discrimination in residential real estate-related transactions.
§5-11A-7. Discrimination in provision of brokerage services.
§5-11A-8. Religious organization or private club exemption.
§5-11A-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.
§5-11A-10. Education and conciliation; conferences and consultations; reports.
§5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.
§5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.
§5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.
§5-11A-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by attorney general.
§5-11A-15. Enforcement by attorney general; pattern or practice cases; subpoena enforcement; remedies; intervention.
§5-11A-16. Interference, coercion or intimidation; enforcement by civil action.
§5-11A-17. Cooperation with local agencies administering fair housing laws: utilization of services and personnel; reimbursement; written agreements; publication in state register.

§5-11A-18. Effect on other laws.


§5-11A-20. Rules to implement article.


1 This article may be cited as the "West Virginia Fair Housing Act".

§5-11A-2. Declaration of policy.

1 It is the policy of the state of West Virginia to provide, within constitutional limitations, for fair housing throughout the state.


1 As used in this article:

2 (a) "Commission" means the West Virginia human rights commission;

3 (b) "Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence or sleeping place by one or more persons or families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof;

4 (c) "Family" includes a single individual;

5 (d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries;

6 (e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant;

7 (f) "Discriminatory housing practice" means an act that is unlawful under section five, six, seven or nineteen of this article;
(g) "Handicap" means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802;

(h) "Aggrieved person" includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that such person will be injured by a discriminatory housing practice that is about to occur;

(i) "Complainant" means the person, including the commission, who files a complaint under section eleven of this article;

(j) "Familial status" means:

(1) One or more individuals who have not attained the age of eighteen years being domiciled with:

(A) A parent or another person having legal custody of such individual or individuals; or

(B) The designee of such parent or other person having such custody with the written permission of such parent or other person; or

(2) Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(k) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of such complaint through informal negotiations involving the aggrieved person, the respondent and the commission;

(l) "Conciliation agreement" means a written agree-
ment setting forth the resolution of the issues in conciliation;

(m) "Respondent" means:

(1) The person or other entity accused in a complaint of an unfair housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under subsection (a), section eleven of this article; and

(n) The term "rooming house" means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.

§5-11A-4. Application of article.

(a) The prohibitions against discrimination in the sale or rental of housing set forth in section five of this article shall apply to all dwellings except as hereinafter exempted. Nothing in section five of this article, other than subsection (b) of this section, shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms or rooms to be rented. Solely for the purposes of familial status, nothing in section five shall apply to:

(1) Any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time: Provided, however, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such
single-family houses at any one time: And provided further, That the sale or rental of any such single-family house shall be excepted from the application of this article only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman or person; and

(B) Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (c), section five of this article; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title; or

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of subsection (a) of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has within the preceding twelve months participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He has within the preceding twelve months participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling designed or intended for occupancy by or occupied by five or more families.
§5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.

1 As made applicable by section four of this article and except as exempted by sections four and eight of this article, it shall be unlawful:

2 (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin;

3 (b) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin;

4 (c) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin, or an intention to make any such preference, limitation or discrimination;

5 (d) To represent to any person because of race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available;

6 (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin; or

7 (f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of: (A) That buyer or renter; (B) a person residing in or intending to reside in such dwelling who is a family member or close relative of such buyer or renter; (C) a person residing in such dwelling who is associated with or on behalf of such buyer or renter; (D) a person residing in such dwelling who is a friend or acquaintance of such buyer or renter; (E) a person residing in such dwelling who is a family member or close relative of a friend or acquaintance of such buyer or renter; (F) a person residing in such dwelling who is associated with or on behalf of a friend or acquaintance of such buyer or renter.
in that dwelling after it is so sold, rented or made available; or (C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of: (A) That person; (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that person.

(3) For purposes of this subdivision, discrimination includes:

(A) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the West Virginia fair housing act, a failure to design and construct those dwellings in such a manner that:

(i) The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
(iii) All premises within such dwellings contain the following features of adaptive design: (I) An accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1, suffices to satisfy the requirements of subparagraph (3) (C) (iii) of this subdivision.

(5) (A) If a unit of general local government has incorporated into its laws the requirements set forth in subparagraph (3) (C) of this subdivision, compliance with such laws shall be deemed to satisfy the requirements of that subparagraph.

(B) The commission or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of subparagraph (3) (C) of this subdivision are met.

(C) The commission shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with subparagraph (3) (C) of this subdivision, and may provide technical assistance to units of local government and other persons to implement the requirements of such subparagraph.

(D) Nothing in this article shall be construed to require the commission to review or approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of such dwellings are consistent with the
requirements of subparagraph (3) (C) of this subdivision.  

(6) (A) Nothing in paragraph (5) of this subdivision shall be construed to affect the authority and responsibility of the commission or a local public agency to receive and process complaints or otherwise engage in enforcement activities under this article.  

(B) Determinations by a unit of general local government under subparagraphs (5) (A) and (B) of this subdivision shall not be conclusive in enforcement proceedings under this article.  

(7) As used in this section, the term “covered multifamily dwellings” means: (A) Buildings consisting of four or more units if such buildings have one or more elevators; and (B) ground floor units in other buildings consisting of four or more units.  

(8) Nothing in this article shall be construed to invalidate or limit any law of this state or any political subdivision hereof that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this article.  

(9) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. The burden of proving such threat to health or safety or the likelihood of such damage shall be upon the respondent.  

§5-11A-6. Discrimination in residential real estate-related transactions.  

(a) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin.  

(b) As used in this section, the term “residential real
estate-related transaction” means any of the following:

(1) The making or purchasing of loans or providing other financial assistance: (A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or (B) secured by residential real estate; or

(2) The selling, brokering or appraising of residential real property.

(c) Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, ancestry, sex, blindness, handicap or familial status.

§5-11A-7. Discrimination in provision of brokerage services.

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin.

§5-11A-8. Religious organization or private club exemption.

(a) Nothing in this article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose,
from limiting the rental or occupancy of such lodgings
to its members or from giving preference to its
members.

(b) (1) Nothing in this article limits the applicability
of any reasonable local, state or federal restrictions
regarding the maximum number of occupants permit-
ted to occupy a dwelling. Nor does any provision in this
article regarding familial status apply with respect to
housing for older persons.

(2) As used in this section, “housing for older persons”
means housing:

(A) Provided under any state or federal program that
the secretary of the United States department of
housing and urban development determines is specifi-
cally designed and operated to assist elderly persons, as
defined in the state or federal program; or

(B) Intended for, and solely occupied by, persons
sixty-two years of age or older; or

(C) Intended and operated for occupancy by at least
one person fifty-five years of age or older per unit. In
determining whether housing qualifies as housing for
older persons under this subsection, the commission
shall develop regulations which require at least the
following factors: (i) The existence of significant
facilities and services specifically designed to meet the
physical or social needs of older persons, or if the
provision of such facilities and services is not practica-le, that such housing is necessary to provide important
housing opportunities for older persons; (ii) that at least
eighty percent of the units are occupied by at least one
person fifty-five years of age or older per unit; and (iii)
the publication of, and adherence to, policies and
procedures which demonstrate an intent by the owner
or manager to provide housing for persons fifty-five
years of age or older.

(3) Housing shall not fail to meet the requirements for
housing for older persons by reason of: (A) Persons
residing in such housing as of the date of enactment of
this article who do not meet the age requirements of
subdivision (2) (B) or (C) of this subsection: Provided, That new occupants of such housing meet the age requirements of such subdivisions; or (B) unoccupied units: Provided, however, That such units are reserved for occupancy by persons who meet the age requirements of subdivision (2) (B) or (C) of this subsection.

(4) Nothing in this article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802.

§5-11A-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.

The authority and responsibility for administering this article shall be in the West Virginia human rights commission.

The commission may delegate any of its functions, duties and powers to employees of the human rights commission, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this article. The person to whom such delegations are made with respect to hearing functions, duties and powers shall be a licensed attorney. Insofar as possible, conciliation meetings shall be held in the county where the discriminatory housing practices allegedly occurred. The commission shall by rule prescribe such rights of appeal from the decisions of its administrative law judges to other administrative law judges or to other officers in the commission, to boards of officers or to itself, as shall be appropriate and in accordance with law.

All executive departments and agencies shall admin-
ister their programs and activities relating to housing, including any agency having regulatory or supervisory authority over financial institutions, in a manner affirmatively to further the purposes of this article and shall cooperate with the commission to further such purposes.

The commission may:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban and rural, throughout the state;

(2) Publish and disseminate reports, recommendations and information derived from such studies, including reports to the Legislature specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of this article, obstacles remaining to achieving equal housing opportunity and recommendations for further legislative or executive action;

(3) Cooperate with and execute such cooperative agreements with federal agencies as are necessary to carry out the provisions of this article; and

(4) Administer the programs and activities relating to fair housing in a manner affirmatively to further the policies of this article.

§5-11A-10. Education and conciliation; conferences and consultations; reports.

Immediately upon the effective date of this article, the commission shall commence such educational and conciliatory activities as in its judgment will further the purposes of this article. It may call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this article and its suggested means of implementing it, and may endeavor with their advice to work out programs of voluntary compliance and of enforcement. It may pay per diem, travel and transportation expenses for persons attending such conferences as permitted by law. It may consult with local officials and other interested parties
to learn the extent, if any, to which housing discrimination exists in their locality, and whether and how local enforcement programs might be utilized to combat such discrimination in connection with the commission's enforcement of this article. The commission shall issue reports on such conferences and consultations as it deems appropriate.

§5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

(a) (1) (A) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging a discriminatory housing practice. The commission, on the commission's own initiative, may also file such a complaint. Such complaint shall be in writing and shall contain such information and be in such form as the commission requires. The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such complaint: (i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article; (ii) the commission shall, not later than ten days after such filing or the identification of an additional respondent under paragraph (2) of this subsection, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint; (iii) each respondent may file, not later than ten days after receipt of notice from the commission, an answer to such complaint; and (iv) unless it is impracticable to do so, the commission shall make an investigation of the alleged discriminatory housing practice and complete such investigation within one hundred days after the filing of the complaint.
(C) If the commission is unable to complete the investigation within one hundred days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

(2) (A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1) of this subsection, to such person, from the commission.

(B) Such notice, in addition to meeting the requirements of paragraph (1) of this subsection, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the commission.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.

(5) (A) At the end of each investigation under this
section, the commission shall prepare a final investiga-
tive report containing: (i) The names and dates of
contacts with witnesses; (ii) a summary and the dates
of correspondence and other contacts with the aggrieved
person and the respondent; (iii) a summary description
of other pertinent records; (iv) a summary of witness
statements; and (v) answers to interrogatories.

(B) A final report under this paragraph may be
amended if additional evidence is later discovered.

(c) Whenever the commission has reasonable cause to
believe that a respondent has breached a conciliation
agreement, the commission shall refer the matter to the
attorney general with a recommendation that a civil
action be filed under section fifteen of this article for
the enforcement of such agreement.

(d) Nothing said or done in the course of conciliation
under this article may be made public or used as
evidence in a subsequent proceeding under this article
without the written consent of the persons concerned,
except the commission shall make available to the
aggrieved person and the respondent, at any time, upon
request following completion of the commission's
investigation, information derived from an investigation
and any final investigative report relating to that
investigation.

(e) (1) If the commission concludes at any time
following the filing of a complaint that prompt judicial
action is necessary to carry out the purposes of this
article, the commission may authorize a civil action for
appropriate temporary or preliminary relief pending
final disposition of the complaint under this section.

Upon receipt of such authorization, the attorney general
shall promptly commence and maintain such an action.

Any temporary injunction or other order granting
preliminary or temporary relief shall be issued in
accordance with the West Virginia rules of civil
procedure. The commencement of a civil action under
this subsection does not affect the initiation or continua-
tion of administrative proceedings under this section
and section thirteen of this article.
Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsections (a) and (b), section fifteen of this article or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which such belief is based to the attorney general, or to such authorities, as the case may be.

(f) (1) The commission shall within one hundred days after the filing of the complaint determine, based on the facts, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the commission has approved a conciliation agreement with respect to the complaint. If the commission is unable to make the determination within one hundred days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(2) (A) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section thirteen of this article.

(B) Such charge: (i) Shall consist of a short and plain statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; (ii) shall be based on the final investigative report; and (iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the commission determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the commission shall immediately refer the matter to the attorney general for appropriate action under section fifteen of this article, instead of issuing such charge.

(3) If the commission determines that no reasonable
cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each such dismissal.

(4) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(g) After the commission issues a charge under this section, the commission shall cause a copy thereof, together with information as to how to make an election under subsection (a), section thirteen of this article and the effect of such an election, to be served: (1) On each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and (2) on each aggrieved person on whose behalf the complaint was filed.

§5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

The commission may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this article. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the circuit courts of this state.

Witnesses summoned by a subpoena under this article shall be entitled to the same witness and mileage fees as witnesses in proceedings in the circuit courts of this state. Fees payable to a witness summoned by a subpoena shall be paid by the commission, the complainant or the respondent in accordance with section one, article five, chapter twenty-nine-a of this code.

Enforcement of subpoenas may be had in the circuit courts of this state as set out in section one, article five, chapter twenty-nine-a of this code.
§5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

(a) When a charge is filed under section eleven of this article, a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than twenty days after the receipt by the electing person of service under section eleven of this article or, in the case of the commission, not later than twenty days after such service. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.

(b) If an election is not made under subsection (a) of this section with respect to a charge filed under section eleven of this article, the commission shall provide an opportunity for a hearing on the record with respect to a charge issued under said section. The commission shall delegate the conduct of a hearing under this section to an administrative law judge who shall be a licensed attorney. The administrative law judge shall conduct the hearing at a place in the county in which the discriminatory housing practice is alleged to have occurred or is about to occur.

(c) At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under section twelve of this article. Any aggrieved person may intervene as a party in the proceeding. The rules of evidence apply to the presentation of evidence in such hearing as they would in a civil action in the circuit courts of this state. The case in support of the complaint shall be presented before the administrative law judge by the attorney general.
(d) (1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The commission shall, not later than one hundred eighty days after the date of enactment of this subsection, issue rules to implement this subsection.

(e) Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(g) (1) The administrative law judge shall commence the hearing under this section no later than one hundred twenty days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within one hundred twenty days after the issuance of the charge, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within sixty days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding sixty-day period thereafter, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the
(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent: (A) In an amount not exceeding ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice; (B) in an amount not exceeding twenty-five thousand dollars if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of this charge; and (C) in an amount not exceeding fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that are the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the charge filed under this article.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty days after the date of the issuance of such
order or, if such order is judicially reviewed, thirty days
after such order is in substance affirmed upon such
review: (A) Send copies of the findings of fact, conclu-
sions of law and the order to that governmental agency;
and (B) recommend to that governmental agency
appropriate disciplinary action, including, where
appropriate, the suspension or revocation of the license
of the respondent.

(6) In the case of an order against a respondent
against whom another order was issued within the
preceeding five years under this section, the commission
shall send a copy of each such order to the attorney
general.

(7) If the administrative law judge finds that the
respondent has not engaged or is not about to engage
in a discriminatory housing practice, as the case may
be, such administrative law judge shall enter an order
dismissing the charge. The commission shall make
public disclosure of each such dismissal.

(h) (1) The commission may review any finding,
conclusion or order issued under subsection (g) of this
section. Such review shall be completed not later than
thirty days after the finding, conclusion or order is so
issued; otherwise the finding, conclusion or order
becomes final.

(2) The commission shall cause the findings of fact
and conclusions of law made with respect to any final
order for relief under this section, together with a copy
of such order, to be served on each aggrieved person and
each respondent in the proceeding.

(i) (1) Any party aggrieved by a final order for relief
under this section granting or denying, in whole or in
part, the relief sought may obtain a review of such order
under section four, article five, chapter twenty-nine-a of
this code.

(2) Notwithstanding chapter twenty-nine-a of this
code, venue of the proceeding shall be in the judicial
circuit in which the discriminatory housing practice is
alleged to have occurred and filing of the petition for
review shall be not later than thirty days after the order is entered.

(j) (1) The commission may petition the circuit court in the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or injunctive relief by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or injunctive relief.

(2) The commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) (1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may:

(A) Grant to the petitioner, or any other party, such temporary relief, injunction or other order as the court deems just and proper;

(B) Affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the parties have been prejudiced because the administrative findings, inferences, conclusions, decision or order are: (i) In violation of constitutional or statutory provisions; or (ii) in excess of the statutory authority or jurisdiction of the commission; or (iii) made upon unlawful procedures; or (iv) affected by other error of law; or (v) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; and

(C) Enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the adminis-
tative law judge may intervene in the circuit court.

(3) No objection not made before the administrative
law judge shall be considered by the court, unless the
failure or neglect to urge such objection is excused
because of extraordinary circumstances.

(4) The judgment of the circuit court shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals of this state in accordance with
the provisions of section one, article six, chapter twenty-
nine-a of this code.

(l) If no petition for review is filed under subsection
(i) of this section before the expiration of forty-five days
after the date the administrative law judge's order is
entered, the administrative law judge's findings of fact
and order shall be conclusive in connection with any
petition for enforcement: (1) Which is filed by the
commission under subsection (j) of this section after the
end of such day; or (2) under subsection (m) of this
section.

(m) If before the expiration of sixty days after the
date the administrative law judge's order is entered, no
petition for review has been filed under subsection (i)
of this section, and the commission has not sought
enforcement of the order under subsection (j) of this
section, any person entitled to relief under the order
may petition for a decree enforcing the order in the
circuit court for the circuit in which the discriminatory
housing practice is alleged to have occurred.

(n) The judge of the circuit court in which a petition
for enforcement is filed under subsection (l) or (m) of
this section shall forthwith enter a decree enforcing the
order and shall transmit a copy of such decree to the
commission, the respondent named in the petition and
to any other parties to the proceeding before the
administrative law judge. The judgment of the circuit
court shall be final unless reversed, vacated or modified
on appeal to the supreme court of appeals pursuant to
section one, article six, chapter twenty-nine-a of this
code.
(o) (1) If an election is made under subsection (a) of this section, the commission shall authorize, and not later than thirty days after the election is made the attorney general shall commence and maintain, a civil action on behalf of the aggrieved person in the appropriate circuit court seeking relief under this subsection. Venue for such civil action shall be in the circuit court in the county in which the alleged discriminatory housing practice occurred.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section fourteen of this article. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under said section shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section fourteen of this article, the administrative law judge or the court, as the case may be, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

§5-11A-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by attorney general.

(a) (1) (A) An aggrieved person may commence a civil action in an appropriate circuit court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach
of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such two-year period shall not include any time during which an administrative proceeding under this article was pending with respect to a complaint or charge under this article based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under subsection (a), section eleven of this article and without regard to the status of any such complaint, but if the commission has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if an administrative law judge has commenced a hearing on the record under this article with respect to such charge.

(b) Upon application by a person alleging a discriminatory housing practice, the court may: (1) Appoint an attorney for such person; or (2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) (1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the complainant actual and punitive damages, and subject to subsection (d) of this section, may grant
as relief, as the court deems appropriate, any permanent
or temporary injunction or other order, including an
order enjoining the respondent from engaging in such
practice or ordering such affirmative action as may be
appropriate.

(2) In a civil action under subsection (a) of this section,
the court, in its discretion, may allow a prevailing
complainant a reasonable attorney’s fee and costs.

(d) Relief granted under this section shall not affect
any contract, sale, encumbrance or lease consummated
before the granting of such relief and involving a bona
fide purchaser, encumbrancer or tenant without actual
notice of the filing of a complaint with the commission
or civil action under this section.

(e) Upon timely application, the attorney general may
intervene in such civil action, if the attorney general
certifies that the case is of general public importance.
Upon such intervention the attorney general may obtain
such relief as would be available to the attorney general
under subsection (d), section fifteen of this article in a
civil action to which such section applies.

§5-11A-15. Enforcement by attorney general; pattern or
practice cases; subpoena enforcement; remedies; intervention.

(a) Whenever the attorney general has reasonable
cause to believe that any person or group of persons is
engaged in a pattern or practice of resistance to the full
enjoyment of any of the rights granted by this article,
or that any group of persons has been denied any of the
rights granted by this article and such denial raises an
issue of general public importance, the attorney general
may commence a civil action in any appropriate circuit
court.

(b) (1) The attorney general may commence a civil
action in any appropriate circuit court for appropriate
relief with respect to a discriminatory housing practice
referred to the attorney general by the commission
under subsection (f), section eleven of this article. A civil
action under this paragraph may be commenced not
(2) The attorney general may commence a civil action in any appropriate circuit court for appropriate relief with respect to breach of a conciliation agreement referred to the attorney general by the commission under subsection (c), section eleven of this article. A civil action may be commenced under this paragraph not later than the expiration of ninety days after the referral of the alleged breach under subsection (c), section eleven of this article.

(c) The attorney general, on behalf of the commission or other party at whose request a subpoena is issued under this article, may enforce such subpoena in appropriate proceedings in the circuit court for the circuit in which the person to whom the subpoena was addressed resides, was served or transacts business.

(d) (1) In a civil action under subsection (a) or (b) of this section, the court:

(A) May award such preventive relief, including a permanent or temporary injunction or other order against the person responsible for a violation of this article as is necessary to assure the full enjoyment of the rights granted by this article;

(B) May award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) May, to vindicate the public interest, assess a civil penalty against the respondent: (i) In an amount not exceeding fifty thousand dollars for a first violation; and (ii) in an amount not exceeding one hundred thousand dollars for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow a prevailing complainant a reasonable attorney’s fee and costs.

(e) Upon timely application, any person may intervene in a civil action commenced by the attorney general.
under subsection (a) or (b) of this section which involves
an alleged discriminatory housing practice with respect
to which such person is an aggrieved person or a
conciliation agreement to which such person is a party.
The court may grant such appropriate relief to any such
intervening party as is authorized to be granted to a
complainant in a civil action under section fourteen of
this article.

§5-11A-16. Interference, coercion or intimidation; en-
fforcement by civil action.

It shall be unlawful to coerce, intimidate, threaten or
interfere with any person in the exercise or enjoyment
of, or on account of his having exercised or enjoyed, or
on account of his having aided or encouraged any other
person in the exercise or enjoyment of, any right
granted or protected by section four, five, six or seven
of this article.

§5-11A-17. Cooperation with local agencies adminis-
tering fair housing laws; utilization of servi-
ces and personnel; reimbursement; written
agreements; publication in state register.

The commission may cooperate with local agencies
charged with the administration of local fair housing
laws and, with the consent of such agencies, utilize the
services of such agencies and their employees and, to the
extent permitted by law, may reimburse such agencies
and their employees for services rendered to assist it in
carrying out this article. In furtherance of such
cooperative efforts, the commission may enter into
written agreements with such local agencies. All
agreements and terminations thereof shall be published
in the state register.

§5-11A-18. Effect on other laws.

Nothing in this article shall be construed to invalidate
or limit any law of this state or of any political
subdivision of this state, that grants, guarantees or
protects the same rights as are granted by this article;
but any law of this state or any political subdivision
hereof that purports to require or permit any action that

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

§5-11A-20. Rules to implement article.

In consultation with other appropriate agencies, the commission shall, not later than the one hundred eightieth day after the date of the enactment of this article, issue rules to implement it. Such rules may include provision for the collection, maintenance and analysis of appropriate data to carry out this article. The commission shall comply with article three, chapter twenty-nine-a of this code when promulgating rules.

CHAPTER 82

(Com. Sub. for H. B. 4169—By Delegates J. Martin and Mezzatesta)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

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 accounting procedures involving service of process fees by sheriffs.

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.

The county commission shall determine the amount
which the sheriff may charge, which charges shall not exceed the following:

For serving on any person 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

For taking any bond 1.00

When a jury is sworn in court, for summoning and impaneling such jury 1.00

For serving a writ of possession 20.00

For issuing receipt to purchaser at delinquent tax sale 1.00

The county commission, giving due regard to the cost thereof, may from time to time prescribe the amount which the sheriff may charge for keeping any property or in removing any property. When, after distraining or levying, he neither sells nor receives payment, and either takes no bond or takes one which is not forfeited, he shall, if guilty of no default, have (in addition to the one dollar for a bond, if one was taken) a fee of three dollars, unless this be more than half of what his commission would have amounted to if he had received payment; in which case he shall (whether a bond was taken or not) have a fee of one dollar at the least, and so much more as is necessary to make the said half of his commission. The commission to be included in a forthcoming bond (when one is taken) shall be five percent on the first three hundred dollars of the money for which the distress or levy is made, and two percent
on the residue of such money; but such commission shall
not be received, in whole or in part, except as herein-
before provided, unless the bond be forfeited, or the
amount (including the commission) be paid to the
plaintiff. An officer receiving payment in money, or
selling property, shall have the like commission of five
percent on the first three hundred dollars of the money
paid or proceeds from such sale, and two percent on the
residue, except that when such payment or sale is on an
execution on a forthcoming bond, his commission shall
be only half what it would be if the execution were not
on such bond. Any amounts collected by the sheriff
pursuant to this section shall be deposited in a separate
account of the county general fund and used by the
sheriff for the expenses of providing the services herein
described. Any surplus funds that remain in this
separate account on the last day of the fiscal year, and
have not been expended for the purposes herein
described, shall revert to the county general fund.

CHAPTER 83

(H. B. 4598—By Delegates Murensky and M. Miller)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty-nine of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section thirty-seven, relating to the discretionary deposit
in interest bearing accounts of moneys held by county
officers; payment of interest to county general fund;
annual report of deposits and interest payments.

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifty-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 thirty-seven, to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.
§59-1-37. Deposits by county officers in interest bearing accounts; payment to county general fund; annual report.

Except as to any tax receipts, which shall be deposited in accordance with section four, article six, chapter seven of this code, when any fee, cost, percentage, penalty, commission, allowance, bond, deposit, surety or other cash payment or sum is to be held by the sheriff, prosecuting attorney, county commission, clerk of the county commission, clerk of the circuit court, or assessor of any county under any provision of law or proper order of the circuit court, said officer may, at his or her sole discretion, deposit same in an interest bearing account or accounts in secure and properly insured banks. Any interest earned on such accounts, and not otherwise included in any refund, return or reimbursement of said fees, costs, penalties, commissions, allowances, bonds, deposits, sureties or other cash payments or sums, as directed by law or proper order of the circuit court, shall be paid into the county's general fund on a regular basis, but in no event less often than yearly.

All county officers shall report to the county commission by the first day of July each year concerning his or her election to use interest bearing accounts, amounts currently on deposit and interest actually earned on such accounts.

CHAPTER 84
(Com. Sub. for S. B. 128—By Senator Helmick)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact sections eight-a and eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article seven-a, chapter eighteen of said code by adding thereto three new sections, designated sections twenty-six-j, twenty-six-k and twenty-six-l; and to amend article three, chapter thirty-three of said
code by adding thereto a new section, designated section thirty-three, relating to fire and casualty insurance; volunteer fire department fees; imposing a fire protection surcharge on fire insurance and casualty insurance policies to provide additional revenue to volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.
33. Insurance.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8a. Eligibility for allocation from municipal pensions and protection fund and the fire protection fund.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

§8-15-8a. Eligibility for allocation from municipal pensions and protection fund and the fire protection fund.

1 In order to be eligible to receive revenues allocated from the municipal pensions and protection fund or the fire protection fund, each volunteer or part volunteer fire company or department must meet the requirements listed in subdivisions (a) through (c) of this section.

7 Each volunteer or part volunteer fire company or
department must:

(a) Submit and maintain current submission of fire loss data to the state fire marshal, including verification, by notarized statement, if no fire loss has occurred;

(b) Complete or be in the process of receiving firefighters training, including section one of the West Virginia university fire service extension or its equivalent. Such fire company or department must have at least ten members certified as having completed such training or if a volunteer fire company or department has twenty or fewer members, fifty percent of the active volunteer members must have completed such training;

and

(c) Comply with all applicable federal and state laws.

§8-15-Bb. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

Revenues allocated to volunteer and part volunteer fire companies and departments may be expended only for the items listed in subdivisions (a) through (g) of this section. Such expenditures may be made for the following:

(a) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;

(b) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(c) Compliance with insurance service office recommendations relating to fire departments;

(d) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;

(e) Capital improvements reasonably required for
effective and efficient fire protection service and
maintenance thereof;
(f) Retirement of debts; and
(g) Payment of utility bills.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26j. Supplemental benefits for certain teachers who retired prior to
July 1, 1981.

§18-7A-26k. Supplemental benefits for certain teachers who retired between
July 1, 1981, and July 1, 1982.

§18-7A-26l. Supplemental benefits for certain teachers who retired prior to
July 1, 1982.

§18-7A-26j. Supplemental benefits for certain teachers who retired prior
to July 1, 1981.

As an additional supplement to other retirement
allowances provided, each annuitant whose annuity was
approved by the retirement board prior to the first day
of July, one thousand nine hundred eighty-one, and such
annuitant is not receiving supplemental benefits pursuant
to section twenty-six-i of this article, shall receive
a monthly amount equal to one dollar and twenty-five
cents multiplied by his or her total service credit.

§18-7A-26k. Supplemental benefits for certain teachers who retired between
July 1, 1981, and
July 1, 1982.

As an additional supplement to other retirement
allowances provided, each annuitant who retired
between the first day of July, one thousand nine hundred
eighty-one, and the first day of July, one thousand nine
hundred eighty-two, shall receive a monthly amount
equal to two dollars multiplied by his or her total service
credit.

§18-7A-26l. Supplemental benefits for certain teachers who retired prior to
July 1, 1982.

As an additional supplement to other retirement
allowances provided, each annuitant whose annuity was
approved by the retirement board prior to the first day
of July, one thousand nine hundred eighty-two, and
whose benefits were increased in the year one thousand
nine hundred ninety, pursuant to the provisions of
section twenty-six-i of this article, shall receive a
monthly amount equal to fifty cents multiplied by his
or her total service credit.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance
policies to benefit volunteer and part volun­
teer fire departments; special fund created;
allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue
for volunteer and part volunteer fire departments,
certain retired teachers and the teachers retirement
reserve fund, there is hereby authorized and imposed on
and after the first day of July, one thousand nine
hundred ninety-two, on the policyholder of any fire and
casualty insurance policy, a policy surcharge equal to
one percent of gross direct premium paid by the
policyholder for each such policy. For purposes of this
section, casualty insurance shall not include insurance
on the life of a debtor pursuant to or in connection with
a specific loan or other credit transaction or insurance
on a debtor to provide indemnity for payments becoming
due on a specific loan or other credit transaction while
the debtor is disabled as defined in the policy. The policy
surcharge shall not be subject to premium taxes, agent
commissions or any other assessment against premiums.

The policy surcharge shall be collected and remitted
by the insurer to the commissioner on forms prescribed
by the commissioner on a quarterly basis and are due
on the twenty-fifth day of the month succeeding the end
of the quarter in which they are collected except for the
fourth quarter for which the surcharge shall be due and
payable on or before the first day of March of the
succeeding year. All forms required by the commis­
sioner shall be submitted under the oath of the president
and secretary of the insurer.
Any insurer failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to one hundred dollars for each day of delinquency, to be assessed by the commissioner. The commissioner may suspend the insurer until all surcharge payments and penalties, should any penalty be imposed, are remitted in full to the commissioner.

All money from the policy surcharge shall be collected by the commissioner and he or she shall disburse the money received from the surcharge as follows:

(1) Fifty percent of the moneys collected shall be paid into a special account in the state treasury, designated the fire protection fund. The net proceeds of this portion of the tax after appropriation by the Legislature shall be distributed in accordance with the provisions of subsection (c) of this section.

(2) The remaining fifty percent of the moneys collected shall be transferred to the teachers retirement system to be disbursed according to the provisions of sections twenty-six-j, twenty-six-k and twenty-six-l, article seven-a, chapter eighteen of this code. Any balance remaining after the disbursements authorized by this subdivision have been paid shall be paid by the teachers retirement system into the teachers retirement system reserve fund.

(b) Before the first day of September, one thousand nine hundred ninety-three, and before the first day of September of each calendar year thereafter, the state treasurer shall allocate and authorize for distribution the revenues in the fire protection fund that were collected during the preceding calendar year, and the interest earned thereon.

(c) Each volunteer fire company or department shall receive on an equal share basis the revenues allocated for volunteer and part volunteer fire companies and departments under subdivision (1), subsection (a) of this section.
67 (d) The allocation, distribution and use of revenues
68 provided in the fire protection fund are subject to the
69 provisions of sections eight-a and eight-b, article fifteen,
70 chapter eight of this code.

CHAPTER 85
(H. B. 4433—By Delegates Damron and P. White)
[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, relating to the freedom of information act; establishing requirements for fulfilling requests for records existing in magnetic, electronic or computer form; and authorizing recovery of attorney fees and costs by any person who prevails in a suit brought under the act for denial of access to public records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC RECORDS.

§29B-1-3. Inspection and copying.

§29B-1-7. Attorney fees and costs.

§29B-1-3. Inspection and copying.

1 (1) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

2 (2) A request to inspect or copy any public record of
a public body shall be made directly to the custodian of
such public record.

(3) The custodian of any public records, unless
otherwise expressly provided by statute, shall furnish
proper and reasonable opportunities for inspection and
examination of the records in his or her office and
reasonable facilities for making memoranda or ab-
stracts therefrom, during the usual business hours, to all
persons having occasion to make examination of them.
The custodian of the records may make reasonable rules
and regulations necessary for the protection of the
records and to prevent interference with the regular
discharge of his or her duties. If the records requested
exist in magnetic, electronic or computer form, the
custodian of the records shall make such copies available
on magnetic or electronic media, if so requested.

(4) All requests for information must state with
reasonable specificity the information sought. The
custodian, upon demand for records made under this
statute, shall as soon as is practicable but within a
maximum of five days not including Saturdays, Sundays
or legal holidays:

(a) Furnish copies of the requested information;

(b) Advise the person making the request of the time
and place at which he or she may inspect and copy the
materials; or

(c) Deny the request stating in writing the reasons for
such denial.

Such a denial shall indicate that the responsibility of
the custodian of any public records or public body to
produce the requested records or documents is at an
end, and shall afford the person requesting them the
opportunity to institute proceedings for injunctive or
declaratory relief in the circuit court in the county
where the public record is kept.

(5) The public body may establish fees reasonably
calculated to reimburse it for its actual cost in making
reproductions of such records.
§29B-1-7. Attorney fees and costs.

1 Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to section five of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.

CHAPTER 86
(Com. Sub. for H. B. 4224—By Delegates Grubb and Manuel)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to referendum prior to the siting of any commercial hazardous waste management facility or of any hazardous waste management facility which disposes of greater than ten thousand tons of hazardous waste per annum on site within this state.

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 ten-a, to read as follows:

ARTICLE 10A. HAZARDOUS WASTE FACILITY SITING APPROVAL.

§20-10A-1. Legislative purpose.


§20-10A-1. Legislative purpose.

1 The purpose of this article is to provide the opportunity for public participation in the decision to locate commercial hazardous waste management facilities and to locate any hazardous waste management facility which disposes of greater than ten thousand tons of
hazardous waste per annum in West Virginia.


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

(a) "Board" means the commercial hazardous waste management facility siting board established pursuant to section three, article ten of this chapter;

(b) "Commercial hazardous waste management facility" means any hazardous waste treatment, storage or disposal facility which accepts hazardous waste, as identified or listed by the director of the division of natural resources under article five-e of this chapter, generated by sources other than the owner or operator of the facility and shall not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis;

(c) "Hazardous waste management facility" means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) Facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; or (ii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works. A facility may consist of one or more treatment, storage or disposal operational units.

(d) "On site" means the location for disposal of hazardous waste including the hazardous waste generated at the location of disposal or generated at some location other than the location of disposal.


(a) From and after the effective date of this article, in order to obtain approval to locate either a commercial
hazardous waste management facility or a hazardous waste management facility which disposes of greater than ten thousand tons per annum on site in this state, an applicant shall:

(1) File a pre-siting notice with the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the commercial hazardous waste management facility siting board;

(2) File a pre-siting notice with the commercial hazardous waste management facility siting board; and

(3) File a pre-siting notice with the division of natural resources.

(b) If a pre-siting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the hazardous waste management facility is to be located. Upon an affirmative vote of the majority of the county commission or upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot: Provided, That such a referendum shall not be required for a hazardous waste management facility for which at least ninety percent of the capacity is designated for hazardous waste generated at the site of disposal. Any referendum conducted pursuant to this section shall be held at the next primary, general or other countywide election.

(1) Such referendum will be to determine whether it is the will of the voters of the county that a commercial
hazardous waste management facility be located in the county or that a hazardous waste management facility disposing of greater than ten thousand tons of hazardous waste per annum on site be located in the county. Any election at which such question of locating a hazardous waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located with the county:

“Shall a commercial hazardous waste management facility be located within ____________ County, West Virginia?

☐ For the facility
☐ Against the facility

(Place a cross mark in the square opposite your choice.)” or,

“Shall a hazardous waste management facility disposing of greater than ten thousand tons per annum on site be located within ____________ County, West Virginia?

☐ For the facility
☐ Against the facility

(Place a cross mark in the square opposite your choice.)”

(3) If a majority of the legal votes cast upon the question be against the facility, then the county commission shall notify the division of natural resources and the commercial hazardous waste management
facility siting board, in the case of a commercial facility, of the result and the commercial hazardous waste management facility siting board or division of natural resources, as the case may be, shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in article five-e of this chapter and article ten of this chapter, in the case of a commercial hazardous waste management facility, may proceed: Provided, That such vote shall not be binding on nor require the commercial hazardous waste management facility siting board to grant a certificate of site approval or the division of natural resources to issue the permit, as the case may be. If the majority of the legal votes cast be against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

CHAPTER 87
(Com. Sub. for H. B. 4123—By Delegates Roop and Reed)
[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the secretary of the department of health and human resources to promulgate rules regulating the health and sanitary conditions of bed and breakfast inns and exempting certain bed and breakfast inns from certain food service requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE BUREAU OF PUBLIC 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 beauticians, 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
39 camps, all other places open to the general public and
40 inviting public patronage or public assembly, or
41 tendering to the public any item for human consump-
42 tion, and places where trades or industries are
43 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
and occupations in the state which must have emergency
medical service attendants and mobile intensive care
paramedics employed, and the availability, communica-
tions, and equipment requirements with respect thereto;

(5) The collection of data on health status, the health
system and the costs of health care;

(6) Other health-related matters which the depart-
ment of health is authorized to supervise, and for which
the rule-making authority has not been otherwise
assigned;

(7) The health and sanitary conditions of establish-
ments commonly referred to as bed and breakfast inns.
For purposes of this section, “bed and breakfast inn”
means an establishment providing sleeping accommoda-
tions and, at a minimum, a breakfast for a fee: Provided,
That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant style or commercial food service facility: Provided, however, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year.

Notwithstanding any other provision of this code to the contrary, whenever in this code there is a reference to the state board of health, it shall be construed to mean and shall be a reference to the secretary of the state department of health and human resources.

CHAPTER 88
(Com. Sub. for H. B. 4048—By Delegates Mezzatesta and D. Miller)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement for the securing of performance bonds for the installation, operation and maintenance of certain septic systems, sewage treatment plants, or other sewage disposal systems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-9. Supervision over local sanitation.

No person, firm, company, corporation, institution or association, whether public or private, county or municipal, shall install or establish any system or
method of drainage, water supply, or sewage or excreta disposal without first obtaining a written permit to install or establish such system or method from the commissioner of the bureau of public health or his or her authorized representative. All such systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the commissioner or which have been approved in writing by the commissioner or his or her authorized representative.

Whenever the commissioner of the bureau of public health or his or her authorized representative finds upon investigation that any system or method of drainage, water supply, or sewage or excreta disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the commissioner approved in writing by the commissioner or his or her duly authorized representative, the commissioner or his or her duly authorized representative may issue an order requiring the owner of such system or method to make alterations as may be necessary to correct the improper condition. Such alterations shall be made within a reasonable time which shall not exceed thirty days, unless a time extension is authorized by the commissioner or his or her duly authorized representative.

The presence of sewage or excreta being disposed of in a manner not approved by the commissioner of the bureau of public health or his or her authorized representative shall constitute prima facie evidence of the existence of a condition endangering public health.

The personnel of the bureau of public health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any such system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or
municipal, who shall violate any provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. The continued failure or refusal of such convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner of the bureau of public health or his or her duly authorized representative shall constitute a separate, distinct and additional offense for each twenty-four hour period of such failure or refusal, and, upon conviction thereof, the violator shall be fined not less than twenty-five dollars nor more than five hundred dollars for each such conviction: Provided, That none of the provisions contained in this section shall apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia division of natural resources or the West Virginia air pollution control commission.

Magistrates shall have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section.

CHAPTER 89

(S. B. 88—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed February 29, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-f of said chapter, relating to encouraging the creation of primary care services by exempting certain primary care services and low-risk birthing centers from certificate of need review; allowing hospitals designated as rural primary care hospitals to be exempted from certificate
of need review for license restoration upon rejection of such designation within two years; and defining finan-
cial disclosure requirements for primary care centers.

Be it enacted by the Legislature of West Virginia:

That section four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article five-f of said chapter be amended and reenacted, all to read as follows:

Article
2D. Certificate of Need.
5F. Health Care Financial Disclosure.

ARTICLE 2D. CERTIFICATE OF NEED.

§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 boardinghouses, which provide medical, nursing personnel and health related services;

(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;

(5) The creation of new primary care services located in communities that are underserved with respect to primary care services: Provided, That to qualify for this exemption, an applicant must be a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay: Provided, however, That the exemption from certificate of need review of new primary care services provided by this subdivision shall not include the acquisition, offering or development of major medical equipment otherwise subject to review under the provisions of this article or to include the acquisition, offering or development of CT scanners, ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation therapy. The office of community and rural health services shall define which services constitute primary care services for purposes of this subdivision, and shall, to prevent duplication of primary care services, determine whether a community is underserved with respect to certain primary care services within the meaning of this subdivision. Any organization planning to qualify for an exemption pursuant to this subdivision shall submit to the state agency a letter of intent describing the proposed new services and area of service; and

(6) The creation of birthing centers by nonprofit primary care centers that have a community board and
provide primary care services to people in their community without regard to ability to pay, or by nonprofit hospitals with less than one hundred licensed acute care beds: Provided, That to qualify for this exemption, an applicant must be located in an area that is underserved with respect to low-risk obstetrical services: Provided, however, That if a primary care center attempting to qualify for this exemption is located in the same county as a hospital that is also eligible for this exemption, or if a hospital attempting to qualify for this exemption is located in the same county as a primary care center that is also eligible for this exemption, then at least one primary care center and at least one hospital from said county shall be required to collaborate for the provision of services at a birthing center in order to qualify for this exemption: Provided further, That for purposes of this subdivision, a "birthing center" is a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy. Any primary care center or hospital planning to qualify for an exemption pursuant to this subdivision shall submit to the state agency a letter of intent describing the proposed birthing center and area of service.

(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) of this subsection, granted an exemption to:

(A) A health maintenance organization or a combination of health maintenance organizations if: (i) The organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals; (ii) the facility in which the service will be provided is or will be geographically located so that the service will be
reasonably accessible to such enrolled individuals; and
(iii) at least seventy-five percent of the patients who can
reasonably be expected to receive the institutional
health service will be individuals enrolled with such
organization or organizations in the combination;

(B) A health care facility if: (i) The facility primarily
provides or will provide inpatient health services; (ii) the
facility is or will be controlled, directly or indirectly, by
a health maintenance organization or a combination of
health maintenance organizations which has, in the
service area of the organization or service areas of the
organizations in the combination, an enrollment of at
least fifty thousand individuals; (iii) the facility is or will
be geographically located so that the service will be
reasonably accessible to such enrolled individuals; and
(iv) at least seventy-five percent of the patients who can
reasonably be expected to receive the institutional
health service will be individuals enrolled with such
organization or organizations in the combination; or

(C) A health care facility, or portion thereof, if: (i) The
facility is or will be leased by a health maintenance
organization or combination of health maintenance
organizations which has, in the service area of the
organization or the service areas of the organizations in
the combination, an enrollment of at least fifty thousand
individuals and on the date the application is submitted
under subdivision (2) of this subsection, 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 institu-
tional 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) of this
subsection 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 respecting 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) of this subsection or the facility meets or will meet such requirements; and

(iii) The state agency approves such application.

The state agency shall approve an application submitted under paragraph (A) of this subdivision, if it determines that the applicable requirements of subdivision (1) of this subsection 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) of this subsection, 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) of said subdivision, which was granted an exemption under said subdivision, may not be used by any person other than the lessee described in paragraph (C) of said subdivision, unless:

(A) The state agency issues a certificate of need approving the sale, lease, acquisition or use; or

(B) The state agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or to use the facility is:

(i) A health maintenance organization or a combination of health maintenance organizations which meets the enrollment requirements of subparagraph (i), paragraph (A), subdivision (1) of this subsection, and with respect to such facility or equipment, the entity meets the accessibility and patient enrollment requirements of subparagraphs (ii) and (iii) of said paragraph; or
(ii) A health care facility which meets the inpatient, enrollment and accessibility requirements of subparagraphs (i), (ii) and (iii), paragraph (B), subdivision (1) of this subsection and with respect to its patients meets the enrollment requirements of subparagraph (iv) of said paragraph (B).

(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) of this subsection.

(5) The state agency shall establish the period within which approval or disapproval by the state agency of applications for exemptions under subdivision (1) of this subsection 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) of this subsection, and the state agency does not find, within sixty days after it receives such notice, that the acquisition, offering or obligation will, or will have the effect to:

(A) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(B) Result in a substantial change to the bed capacity of the facility; or

(C) Result in a substantial change to the health services of the facility.
(2) Before a health care facility acquires major medical equipment to be used solely for research, offers a health service solely for research or obligates a capital expenditure solely for research, such health care facility shall notify in writing the state agency of such facility's intent and the use to be made of such medical equipment, health service or capital expenditure.

(3) If major medical equipment is acquired, a health service is offered or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering or obligation as provided in subdivision (1) of this subsection, 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) of said subdivision unless the state agency issues a certificate of need approving such use.

(4) For purposes of this subsection, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

(d) (1) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility: Provided, That a certificate of need shall be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility if:

(A) The notice required by subdivision (2) of this subsection 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) of this subsection, 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 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 regulations and under what circumstances mobile MRI and mobile lithotripsy may be so exempted from review. In no case, however, will mobile cardiac catheterization be exempted from certificate of need review. In addition, if the shared services mobile unit proves less
cost effective than a fixed unit, the acute care facility will not be exempted from certificate of need review.

On a yearly basis, the state agency shall review existing technologies to determine if other shared services should be included under this exemption.

(g) This subsection applies only to hospitals designated as rural primary care hospitals by West Virginia office of rural health policy in conformance with requirements of the health care financing administration of the federal department of health and human services under Section 1920 of Public Law 101-239, Section 6000(g) of the federal Omnibus Budget Reconciliation Act of 1989.

A hospital, designated as a rural primary care hospital, in accordance with final rules issued by the health care financing administration, shall undergo a reduction in its number of licensed acute care beds as determined by the office of rural health policy.

The office of rural health policy shall notify the health care cost review authority of such designation including the number of staffed and operated beds immediately prior to designation and the number of acute care beds certified by the health care financing administration.

A rural primary care hospital may reject this designation any time within twenty-four calendar months, beginning from the date of designation by the office of rural health policy. If a hospital chooses to reject this designation, it may do so upon written notification to the office of rural health policy and the health care cost review authority. If such designation is rejected by a rural primary care hospital, license restoration, not to exceed the number of acute care beds staffed and operated by the hospital immediately prior to receiving designation as a rural primary care hospital, shall be exempt from the certificate of need program review.

Within twenty-five months from designating rural primary care hospitals, the office of rural health policy shall notify the health care cost review authority of the
status of the designated hospitals including the number of licensed beds.

The state agency shall promulgate rules within ninety days of the effective date of this amendment in order to carry out the purpose of this subsection.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-2. Definitions.

1 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; intermediate 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: Provided, That nonprofit, community-based primary care centers providing primary care services without regard to ability to pay who provide the board with a year-end audited financial statement prepared in accordance with generally accepted auditing standards and with governmental auditing standards issued by the comptroller general of the United States shall be deemed to have complied with the disclosure requirements of this section.

(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 subdivision “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, contracts, documents, files, maps, papers, profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or stored.

CHAPTER 90
(H. B. 4736—By Delegates J. Martin and Taylor)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rural primary care hospitals and conversion of acute care beds to skilled nursing and intermediate care beds; requirements of a previously constructed unit and affiliation with college or university to provide clinical training; correcting reference; moratorium exemption for certain ICF/MR beds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state health planning and development agency.

1 (a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.
(b) The state agency shall cooperate with the health care planning commission in developing rules and regulations for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such reviews.

(c) The state agency may seek advice and assistance of other persons, organizations, and other state agencies in the performance of the state agency’s responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of such services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved, or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.
(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: Provided, however, That a hospital designated or provisionally designated as a rural primary care hospital may convert not to exceed sixty acute care beds, licensed immediately prior to designation as a rural primary care hospital, to a distinct part nursing facility including skilled nursing beds and intermediate care beds, on a one-for-one basis, if said rural primary care hospital also meets the following criteria: (1) The hospital has previously constructed a unit that can be used as a distinct part nursing facility; and (2) the hospital has an affiliation agreement with a college or university to provide clinical training to mid-level practitioners: Provided further, That said rural primary care hospital applies for conversion on or before the thirtieth day of September, one thousand nine hundred ninety-two.

(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,

(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
(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 project;

(5) The retirement center must offer personal care, home health services and other lower levels of care to its residents; and
(6) 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.

(k) The provisions of this article are severable and if any provision, section or part thereby shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.

CHAPTER 91

(H. B. 4576—By Delegates P. White and Pettit)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; and to amend article twenty-nine-b of said chapter by adding thereto a new section, designated section twenty-one-a, all relating to requiring health care facilities and providers filing applications for certificate of need or change in rate schedules to submit a copy of said applications to the office of consumer advocacy.

Be it enacted by the Legislature of West Virginia:

That article two-d, 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 seven-a; and that article twenty-nine-b of said chapter be amended by adding thereto a new section, designated section twenty-one-a, all to read as follows:
ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-7a. Coordination and filing with consumer advocate.

1 Each health care facility or health care provider filing a certificate of need application with the state agency pursuant to section seven of this article shall notify the director of the office of consumer advocacy established pursuant to section sixteen, article two, chapter thirty-three of this code of said application by submitting a copy of the same to the office of the consumer advocate on or before the date of such filing.

ARTICLE 29B. HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-21a. Coordination and filing with consumer advocate.

1 Each hospital filing an application or request for a change in rate schedules or other changes with the board pursuant to section twenty-one of this article shall notify the director of the office of consumer advocacy established pursuant to section sixteen, article two, chapter thirty-three of this code of said application by submitting a copy of the same to the office of consumer advocacy. Each request shall include any proposed increase or decrease of the rates and shall be filed on or before the date the rate request or application is filed with the board.

CHAPTER 92

(Com. Sub. for S. B. 332—By Senators Holliday, Tomblin and Felton)

[Passed March 6, 1992; 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 two-h, relating to the creation of the primary care support program; providing for various funds; setting forth qualifications for receiving funds; defining preventive care services; and creating an advisory board.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-h, to read as follows:

ARTICLE 2H. PRIMARY CARE SUPPORT PROGRAM.

§16-2H-1. Short title.

§16-2H-2. Primary care support program; primary care revolving loan fund; primary care uncompensated care fund; seed money and technical assistance.

§16-2H-3. Preventive services and health education.

§16-2H-4. Advisory board.

§16-2H-1. Short title.

1 This article shall be known and may be cited as the “Primary Care Support Program Act”.

§16-2H-2. Primary care support program; primary care revolving loan fund; primary care uncompensated care fund; seed money and technical assistance.

1 (a) There is hereby created the “Primary Care Support Program” within the division of health within the department of health and human resources. The program shall provide technical and organizational assistance to community-based primary care services throughout the state.

1 (b) The primary care support program shall create and administer a primary care revolving loan fund to lend money to primary care centers in need of immediate financial assistance. In order to qualify for the loans, a primary care center must be a nonprofit corporation, have a community board, provide services to the public regardless of ability to pay (such as on a
sliding fee scale basis) and present proof of designation as a federally qualified health center or rural health center, of steps taken to qualify as a federally qualified health center or rural health center or of why status as a federally qualified or rural health center would not result in improved revenues to the center.

There is hereby created a special revenue fund in the state treasury to be known as the primary care loan fund into which all appropriations, payments and interest to the revolving loan fund created herein shall be deposited, to be held and disbursed according to law.

(c) The primary care support program shall create and administer a "Primary Care Uncompensated Care Fund". All revenues contained in the fund shall be distributed to primary care centers in the form of grants designed to offset the primary care centers' costs of providing uncompensated health care services. In order to qualify for the grants, a primary care center must be a nonprofit corporation, have a community board, provide services to the public regardless of ability to pay (such as on a sliding fee scale basis) and present proof of designation as a federally qualified health center or rural health center, of steps taken to qualify as a federally qualified health center or rural health center, or of why status as a federally qualified or rural health center would not result in improved revenues to the center.

(d) The primary care support program shall provide seed money grants and technical assistance to help nonprofit, community-based organizations create new primary care services for people in their community. Under no circumstances will a specific project be entitled to receive the grants for more than three years. In order to qualify for the grants, applicants must provide the following:

(1) A description of an unmet need for certain primary care services in their community;

(2) A detailed account, including a budget, of how the applicant's project will use technical and financial
assistance from the program and other sources to
develop the primary care services within one year that
will be available to the public regardless of ability to
pay;

(3) A detailed account, including a budget, showing
how the services will continue to be funded once
established and showing how potential federal and
charitable funds will be maximized;

(4) An account of the extent of community involve-
ment and support for the project;

(5) A description of how the project will be coordi-
nated with local activities of the division of health,
regional health advisory councils, the health care
planning commission, medical schools, local health
departments, primary care clinics or other public health
agencies.

(e) The director of health shall promulgate rules in
accordance with article three, chapter twenty-nine-a of
this code to implement the provisions of this article, and
shall approve all loans, grants and disbursements of
money authorized by this article.

§16-2H-3. Preventive services and health education.

As used in subsection (d), section two of this article,
the term "primary care services" includes preventive
services and health education. Ten percent of the seed
money grants awarded by the program to local projects
under said subsection shall support the development of
community-based preventive services and health educa-
tion, which shall not be required to be self-supporting
at the conclusion of the grant period.

§16-2H-4. Advisory board.

The division of health shall convene a fifteen-person
advisory board consisting of persons familiar with
community-based primary care services and public
health planning efforts to assist in the implementation
of this program.
AN ACT to amend article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a; and to further amend said chapter by adding thereto a new article, designated article thirty-three, relating to establishment of a cancer registry; requiring all physicians, hospitals, laboratories and clinics to report newly diagnosed or treated cancers; providing for confidentiality of records; appointing an advisory committee panel; providing administrative implementation through rule making; authorizing and maintaining a program to provide and promote screening and detection of breast and cervical cancer among unserved and underserved populations; educating the public on benefits of early detection; providing counseling and referral services; establishing a breast and cervical cancer coalition to collaborate on program development; education and early detection projects; authorizing the director of the division of health to make grants for programs that provide early detection of breast and cervical cancer through clinical examinations, mammography and pap testing for cervical cancer and breast self-examinations; and requiring grant recipients to provide referral services for cancer treatment and counseling and public and professional education on early detection for breast and cervical cancer prevention and control.

Be it enacted by the Legislature of West Virginia:

That article five-a, 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 two-a; and that said chapter be further amended by adding thereto a new article, designated article thirty-three, all to read as follows:
ARTICLE 5A. CANCER CONTROL.


(a) Purpose. — To the extent funds are available, the director of the division of health shall establish a cancer registry for the purpose of collecting information concerning the incidence of cancer, which shall be analyzed to prepare reports and perform studies as necessary when such data identifies hazards to public health. Pending appropriate funding, a statewide system shall be phased in and be fully operational by the first day of July, one thousand nine hundred ninety-five.

(b) Reporting. — All reporting sources, i.e., hospitals, physicians, laboratories, clinics or other similar units diagnosing or providing treatment for cancer, shall provide a report of each cancer case to the cancer registry in a format specified by the director. The reporting sources shall grant the director or an authorized representative of the cancer registry access to all records which would identify cases of cancer or would establish characteristics of the cancer.

(c) Confidentiality; disclosure. — All information reported pursuant to this section is confidential and shall be used for the purpose of determining the sources of malignant neoplasms and evaluating measures designed to eliminate, alleviate or ameliorate their effect. A report provided to the cancer registry disclosing the identity of an individual who was reported as having cancer shall only be released to reporting sources and persons demonstrating a need which is essential to health related research, except that the release shall be conditioned upon the reporting source and personal identities remaining confidential. No liability of any kind or character for damages or other relief shall arise or be enforced against any reporting source by reason of having provided the information or material to the cancer registry.
(d) **Advisory committee.** — The director of the division of health shall appoint an advisory committee on cancer with membership consisting of representatives of appropriate agencies, including the West Virginia hospital association; the American cancer society, West Virginia division; the American lung association of West Virginia; the West Virginia medical association; the association of osteopathic medicine; the West Virginia nurses association; the Mary Babb Randolph cancer center; and, at the discretion of the director, any other individuals directly involved. The advisory committee shall provide technical guidance regarding the operation of the cancer registry and shall provide such advice and assistance as needed to carry out effective cancer prevention and control activities. The members of the advisory committee shall serve four-year terms. Vacancies shall be filled in a like manner for the unexpired term.

(e) **Rule making.** — The director shall promulgate rules related to: (1) The content and design of all forms and reports required by this section; (2) the procedures for disclosure of information gathered by the cancer registry by monitoring and evaluating health data and from completed risk assessments; and (3) any other matter necessary to the administration of this section.

ARTICLE 33. BREAST AND CERVICAL CANCER PREVENTION AND CONTROL ACT.

§16-33-1. Short title.

§16-33-2. Definitions.

§16-33-3. Establishment of breast and cervical cancer detection and education program.

§16-33-4. Grants to approved organizations.

§16-33-5. Breast and cervical cancer detection and education program coalition.

§16-33-6. Annual report.

§16-33-1. **Short title.**

1 This article may be cited as the "Breast and Cervical Cancer Prevention and Control Act".

§16-33-2. **Definitions.**

1 As used in this article:
(a) "Approved organization" means an organization approved by the director to provide medical services under section four of this article.

(b) "Department" means the department of health and human resources.

(c) "Director" means the director of the division of health.

(d) "Unserved or underserved populations" means persons having inadequate access and financial resources to obtain breast and cervical cancer screening and detection services, including persons who lack health insurance or whose health insurance coverage is inadequate.

§16-33-3. Establishment of breast and cervical cancer detection and education program.

(a) There is hereby created within the department the breast and cervical cancer detection and education program. This program is established to promote screening and detection of breast and cervical cancer among unserved or underserved populations, to educate the public regarding breast and cervical cancer and the benefits of early detection, and to provide counseling and referral services.

(b) The program shall include:

(1) Establishment of a public education and outreach campaign to publicize breast and cervical cancer detection and education services, including the extent of coverage for such services by health insurance, the medical assistance program and other public and private programs;

(2) Provision of grants to approved organizations under section four of this article;

(3) Compilation of data concerning the breast and cervical cancer detection and education program and dissemination of the data to the public; and

(4) Development of professional education programs including the benefits of early detection of breast and
§16-33-4. Grants to approved organizations.

(a) The director shall make grants, within the amounts appropriated, to approved organizations for the provision of services relating to the screening and detection of breast and cervical cancer as part of this program. Such services shall include, but not be limited to:

(1) Promotion and provision of early detection of breast and cervical cancer, clinical examinations, including pap testing and mammography and breast self-examination;

(2) Provision of counseling and information on treatment alternatives and referral for appropriate medical treatment;

(3) Dissemination of information to unserved and underserved populations, to the general public and to health care professionals concerning breast and cervical cancer, the benefits of early detection and treatment and the availability of breast and cervical cancer screening services;

(4) Identification of local breast and cervical cancer screening services within the approved organization's region; and

(5) Provision of information, counseling and referral services to individuals diagnosed with breast or cervical cancer.

(b) (1) The director shall give notice and provide opportunity for organizations to submit applications to provide breast and cervical cancer detection and education programs. In order to be considered for a grant to provide breast and cervical cancer detection and education programs, applicants must show evidence of the following:

(A) Ability to provide and to ensure consistent and quality breast and cervical cancer detection services;
(B) Expertise in breast and cervical cancer detection and treatment;

(C) Capacity to collaborate and coordinate services with physicians, hospitals and other appropriate local institutions or agencies;

(D) Ability to provide breast and cervical cancer detection and education services to unserved or underserved populations; and

(E) Ability to implement a breast and cervical cancer detection and education program in accordance with national organization standards of high quality, as described in subsection (c) of this section.

(2) Applications shall be made on forms provided by the director for approval of grants to provide breast and cervical cancer detection and education programs by organizations, including, but not limited to:

(A) Local boards of health organized under articles two and two-a of this chapter;

(B) Licensed health care facilities, including the public and private sector;

(C) Any combination of the above; and

(D) Organizations with program expertise in cancer related issues.

(c) In evaluating applications the director shall consult the most recent medical practice and procedures in breast and cervical cancer detection and education standards for breast and cervical cancer detection and education programs of organizations with national recognition for expertise in breast and cervical cancer detection and treatment with the objective to ensure the following:

(1) Integration linkage and consultation with approved organizations, health care facilities and providers;

(2) Maximization of third-party reimbursement; and

(3) Provision of services to unserved or underserved populations.
§16-33-5. Breast and cervical cancer detection and education program coalition.

(a) There is hereby established the breast and cervical cancer detection and education program coalition. The members of the coalition shall be appointed by the director and shall be representative of consumers including persons with breast or cervical cancer, local health departments, health care providers and recognized experts in the provision of health services to women, cancer research or environmental health.

(b) The breast and cervical cancer coalition shall be responsible for advising the director with respect to the implementation of this article and shall make recommendations as to the selection of approved organizations and the standards to be established by the director pursuant to subsection (c), section four of this article. The director shall consult with the coalition on standards for approved organizations, selecting approved organizations, making grants to such organizations and implementing the breast and cervical cancer detection and education program.

(c) The director shall perform an evaluation of the state's system for early detection and treatment of breast and cervical cancer and shall submit to the Legislature and the governor a report detailing his findings and recommendations concerning the state's response to the high incidence of breast and cervical cancer. Such report shall be submitted no later than the first day of December, one thousand nine hundred ninety-three, and shall reflect the evaluation of the at-risk population screened for breast and cervical cancer detection for the previous twelve months.

(d) The breast and cervical cancer coalition shall meet at least three times a year to receive information and provide interaction, consultation and advice.

(e) The members of the coalition shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in performance of their duties.
§16-33-6. Annual report.

1 The director shall submit an annual report to the governor and the Legislature concerning the operation of the breast and cervical cancer detection and education program including available data and assessment. Such report shall also include any recommendations for additional action to respond to the high incidence of breast and cervical cancer in this state.

CHAPTER 94

(Com. Sub. for S. B. 559—By Senator Holliday)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to substituted consent for health care services provided by extended care facilities operated in connection with hospitals.

Be it enacted by the Legislature of West Virginia:

That article five-b, 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 eight-a, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-8a. Substituted consent for health care services in extended care facilities operated in connection with hospitals.

1 (a) For purposes of this section, "physical or mental incapacity", or like words, means the inability, because of physical or mental impairment, of a patient or prospective patient of an extended care facility operated in connection with a hospital 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.

(b) Where there has been no adjudication of incom-
petence of a patient or prospective patient, or appoint-
ment of a guardian for such patient or prospective
patient, and where there is no applicable durable power
of attorney for such patient or prospective patient, but
where such patient or prospective patient is unable to
grant informed consent for health care services of an
extended care facility operated in connection with a
hospital or to acknowledge notification by such a facility
of his or her rights, responsibilities and any applicable
rules of such a facility due to physical or mental
incapacity, as documented in such patient's or prospec-
tive patient's health care records by two physicians
licensed to practice medicine in this state under the
provisions of article three or fourteen, chapter thirty of
this code or one such physician and one licensed
psychologist, the following persons are deemed the
patient's or prospective patient's representative autho-
rized to consent to health care services by such a facility
for such patient or prospective patient to acknowledge
notification by such a facility of such patient's or
prospective patient's rights, responsibilities and any
applicable rules of such a facility in the order of class
priority set forth below:

(1) The patient's or prospective patient's spouse;

(2) An adult child of the patient or prospective
patient;

(3) A parent of the patient or prospective patient;

(4) An adult sibling of the patient or prospective
patient;

(5) The nearest living relative of the patient or
prospective patient; or

(6) Such other persons or classes of persons, including.
but not limited to, such public agencies, public
guardians, other public officials, public and private
corporations, protective service agencies and other
representatives as the department of health and human
resources may from time to time designate in its rules
promulgated pursuant to chapter twenty-nine-a of this
code: Provided, That there is no reason to believe that
such health care services are contrary to the patient's
or prospective patient's religious beliefs and there is no
actual notice of opposition by a member of the same or
a prior class.

(c) An extended care facility operated in connection
with a hospital, as applicable, shall document its good
faith efforts to contact permitted representatives in the
order of class priority and its efforts to contact all
members of a class before the next class is contacted but
shall suffer no liability or deficiency for any failure to
apprise the proper persons of the requirements of this
section, so long as it has acted reasonably and in good
faith. An extended care facility operated in connection
with hospitals, as applicable, may rely on the apparent
authority of one member of a class to speak for that
class.

(d) The determination of incapacity hereunder expires
after six months or upon the patient's earlier discharge
from the extended care facility operated in connection
with a hospital. At the end of every such six-month
period, if the patient remains admitted to such a facility,
the patient shall be reexamined by two physicians
licensed to practice medicine in this state as set forth
in subsection (b) or by one such physician and one
licensed psychologist who shall render a determination
whether or not the patient remains physically or
mentally incapacitated, and such determination shall be
documented in the patient's health care records. The
authority of the representatives provided in said
subsection shall terminate unless upon such reevaluation
the examining physicians, or the physician and the
psychologist as the case may be, certifies that the patient
remains physically or mentally incapacitated.

(e) In addition to the reevaluations required by subsection (d) above, an extended care facility operated in connection with a hospital, as applicable, upon request of any interested person, or upon its own initiative if it has reason to believe that the patient has regained his or her capacity, shall permit or obtain a reevaluation at any time by one or more physicians licensed to practice medicine in this state as set forth in subsection (b), of a prior determination of capacity or incapacity: Provided, That no patient shall be required to be reevaluated within three months of a prior evaluation except for good cause shown. A physician's determination of capacity upon such reevaluation shall terminate any authority of a patient's representative under this section.

(f) The department of health and human resources shall adopt rules pursuant to the provisions of chapter twenty-nine-a of this code setting forth a procedure by which any interested person may obtain an administrative review of any determination of capacity or incapacity made pursuant to this section. Nothing contained in this section shall preclude an interested person from seeking a determination of competency or incompetency under the provisions of article eleven, chapter twenty-seven of this code in an appropriate case or from seeking any form of judicial review.

(g) At least one of the physicians, or the psychologist, who certifies the incapacity under subsections (b) and (d) of this section shall not be employed by the hospital-connected extended care facility. The two persons performing the certification shall not be associated in the same medical practice.

Nothing in this section shall be construed to preclude common membership on a facility medical staff.

Nothing in this section shall be interpreted to mean that the consent of a patient's representative is required in an emergency to save life or prevent serious injury.
CHAPTER 95
(H. B. 4129—By Delegates Roop and Kiss)

[Passed February 18, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sewage works of municipal corporations and sanitary districts; providing that the governing body of a sanitary board shall establish the organization of such a board; and authorizing the governing body to appoint up to four persons to serve on such a board, in addition to the mayor or city manager of the municipality served by the board, in the event of an acquisition or merger of an existing system.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article thirteen, 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 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

1 The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided. Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing sewage works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of
the municipality served by the board. During the
construction period one of the members must be a
registered professional engineer. The engineer member
of the board need not be a resident of said municipality.
After the construction of the plant has been completed,
the engineer member may be succeeded by a person not
an engineer. No officer or employee of the municipality,
whether holding a paid or unpaid office, shall be eligible
to appointment on said sanitary board until at least one
year after the expiration of the term of his public office.
Said appointees shall originally be appointed for terms
of two and three years respectively, and upon the
expiration of each such term and each succeeding term,
an appointment of a successor shall be made in like
manner for a term of three years. Vacancies shall be
filled for an unexpired term in the same manner as the
original appointment. Each member shall give such
bond, if any, as may be required by ordinance. Such
mayor or city manager shall act as chairman of the
sanitary board, which shall elect a vice chairman from
its members and shall designate a secretary and
treasurer (but the secretary and the treasurer may be
one and the same), who need not be a member or
members of the sanitary board. The vice chairman,
secretary and treasurer shall hold office as such at the
will of the sanitary board. The members of the sanitary
board shall receive such compensation for their services,
either as a salary or as payments for meetings attended,
as the governing body may determine, and shall be
entitled to payment for their reasonable expenses
incurred in the performance of their duties. The
governing body shall fix the reasonable compensation of
the secretary and treasurer in its discretion, and shall
fix the amounts of bond to be given by the treasurer.
All compensation, together with the expenses in this
section referred to, shall be paid solely from funds
provided under the authority of this article. The
sanitary board shall have power to establish bylaws,
rules and regulations for its own government.
AN ACT to amend and reenact sections one and two, article twenty-nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to health care records; and establishing a maximum ten dollar search fee for such records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. HEALTH CARE RECORDS.

 §16-29-1. Copies of health care records to be furnished to patients.
 §16-29-2. Reasonable expenses to be reimbursed.

§16-29-1. Copies of health care records to be furnished to patients.

Any licensed, certified or registered health care provider so licensed, certified or registered under the laws of this state shall, upon the written request of a patient, his authorized agent or authorized representative, within a reasonable time, furnish a copy, as requested, of all or a portion of the patient's record to the patient, his authorized agent or authorized representative subject to the following exceptions:

(a) In the case of a patient receiving treatment for psychiatric or psychological problems, a summary of the record shall be made available to the patient, his authorized agent or authorized representative following termination of the treatment program.

(b) Nothing in this article shall be construed to require a health care provider responsible for diagnosis, treatment or administering health care services in the case of minors for birth control, prenatal care, drug
rehabilitation or related services or venereal disease
according to any provision of this code, to release patient
records of such diagnosis, treatment or provision of
health care as aforesaid to a parent or guardian, without
prior written consent therefor from the patient, nor
shall anything in this article be construed to apply to
persons regulated under the provisions of chapter
eighteen of this code or the rules and regulations
established thereunder.

(c) The furnishing of a copy, as requested, of the
reports of X-ray examinations, electrocardiograms and
other diagnostic procedures shall be deemed to comply
with the provisions of this article: Provided, That
original radiological study film from a radiological
exam conducted pursuant to a request from a patient
or patient's representative shall be provided to the
patient or patient's representative upon written request
and payment for the exam. The health care provider
shall not be required to interpret or retain copies of the
film and shall be immune from liability resulting from
any action relating to the absence of the original
radiological film from the patient's record.

(d) This article shall not apply to records subpoenaed
or otherwise requested through court process.

(e) The provisions of this article may be enforced by
a patient, authorized agent or authorized representative,
and any health care provider found to be in violation of
this article shall pay any attorney fees and costs,
including court costs incurred in the course of such
enforcement.

(f) Nothing in this article shall be construed to apply
to health care records maintained by health care
providers governed by the AIDS-related medical testing
and records confidentiality act under the provisions of
article three-c of this chapter.

§16-29-2. Reasonable expenses to be reimbursed.
The provider shall be reimbursed by the person
requesting in writing a copy of such records at the time
of delivery for all reasonable expenses incurred in
complying with this article. However, such cost shall not exceed seventy-five cents per page for the copying of any such record or records which have already been reduced to written form and a search fee not to exceed ten dollars.

CHAPTER 97
(Com. Sub. for H. B. 4480—By Delegates Conley and Faircloth)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-four, relating to public health; legislative findings; definitions; licensure of radon mitigators, radon testers, radon contractors, radon laboratories and exemptions from licensure; special licensure requirements; powers and duties of the director of the division of health, including licensing, setting and collecting fees, accrediting and approving training courses, conducting investigations and collecting information; rule-making authority; complaints of consumers; the confidentiality of records; a special revenue account; reciprocity; access to radon industry records by director; suspension or revocation of licenses and reprimands; orders and hearings; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-four, to read as follows:

ARTICLE 34. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS AND LABORATORIES.

§16-34-1. Legislative finding.
§16-34-2. Definitions.
§16-34-3. License required and exemptions.
§16-34-4. Special licensure requirements.
§16-34-5. Powers and duties of the director of the division of health.
§16-34-1. Legislative finding.

The Legislature hereby finds and declares that radon is a dangerous toxic substance and harmful to the citizens of this state. Therefore, to help ensure the protection of the citizens of this state, persons who come into contact with radon through remediation or testing should be trained and licensed professionals who know how to deal with radon.

It is the intent of the Legislature that this article shall be in addition to all other statutes and rules relating to radon.

§16-34-2. Definitions.

(a) “Building” means a publicly or privately owned structure consisting of any combination of foundations, walls, columns, girders, beams, floors and roofs, with or without other elements of appurtenances.

(b) “Business entity” means a corporation, partnership, association, firm, sole proprietorship or other entity engaged in business.

(c) “Director” means the director of the division of health.

(d) “Mitigate” means to repair or alter an existing building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(e) “Radon” means the radioactive noble gas radon-222 and the short-lived radionuclides which are products of radon-222 decay, including polonium-218, lead-214, bismuth-214 and polonium-214.

(f) “Radon laboratory” means a business entity that
offers its laboratory services for the purpose of studying air, soil samples or passive radon detection devices to determine the concentration of radon.

(g) "Radon mitigation contractor" means a business entity having at least one person licensed as a radon mitigation specialist.

(h) "Radon mitigation specialist" means a person holding a license to install or apply methods or materials to reduce airborne radon concentrations in a building or to prevent the entry of radon into the indoor atmosphere.

(i) "Radon testers" means a business entity or person licensed to examine a building, air, soil or water for the presence of radon, including taking air, soil or water samples, or the act of diagnosing the cause of radon contamination in a building.

(j) "Secretary" means the secretary of the department of health and human resources.

(k) "Test" means the act of examining a building, soil or air for the presence of radon, including taking air or soil samples, or the act of diagnosing the cause of radon contamination in a building.

§16-34-3. License required and exemptions.

(a) Except as otherwise provided in subsection (b) of this section:

(1) No individual may perform radon testing or hold himself or herself out as performing radon testing without a valid radon tester or mitigation specialist license;

(2) No individual may provide professional or expert advice on radon testing, radon exposure or the health risks related to radon exposure or hold himself or herself out as providing such advice without a valid radon tester or mitigation specialist license;

(3) No individual may provide on-site supervision of radon mitigation or hold himself or herself out as providing such supervision without a valid radon mitigation specialist license;
(4) No individual may provide professional or expert advice on radon mitigation or radon entry routes or hold himself or herself out as providing such advice without a valid radon mitigation specialist license;

(5) No business or government entity may perform or authorize any individual employed by it to perform radon mitigation or hold itself out as performing radon mitigation without a valid radon mitigation contractor license; and

(6) No laboratory shall perform analyses of radon air and soil samples or radon detection devices for the purpose of assessing radon content without a valid radon laboratory license.

(b) Subsection (a) of this section does not apply to any of the following:

(1) An individual, business entity or government entity performing its own radon tests or mitigation on a building or real property that the individual, business entity or government entity owns or leases;

(2) An individual, business entity or government entity conducting research regarding radon testing or mitigation in accordance with section four of this article; or

(3) Employees of the department of health and human resources' radiological health program.

§16-34-4. Special licensure requirements.

(a) No licensed radon mitigation contractor may do any of the following:

(1) Perform radon mitigation without the direct on-site supervision of a licensed radon mitigation specialist;

(2) Provide radon testing other than through the employment of a licensed radon tester or mitigation specialist;

(3) Provide advice regarding radon testing, radon exposure or the health risks associated with radon exposure other than through the employment of a licensed radon tester or mitigation specialist; or
(4) Provide advice regarding radon mitigation or radon entry routes other than through the employment of a licensed radon mitigation specialist.

(b) (1) No licensed radon tester, licensed radon mitigation specialist or licensed radon mitigation contractor involved in the testing of a particular building, or in the provision of advice with respect to a particular building, may be involved in the performance of mitigation on that building unless the contract for mitigation is in writing and clearly and conspicuously states both of the following in language approved by the director:

(A) That the radon tester, mitigation specialist or mitigation contractor was involved in the testing or provision of advice that led to the mitigation contract; and

(B) The advantage of long-term testing and the value of a second opinion as ways to verify testing results and to assure that the proposed mitigation is appropriate, especially when the mitigation is to be performed by the tester, mitigation specialist or mitigation contractor that was involved in the testing or provision of advice that led to the mitigation contract.

(2) For purposes of this subsection, a radon tester, mitigation specialist or mitigation contractor involved in testing or providing advice with respect to a particular building will be considered to be "involved in the performance of mitigation on that building" if he or she has any ownership interest in, or has any contractual or employment relationship with, the individual or entity providing the mitigation.

(c) No licensed radon tester, licensed radon mitigation specialist or licensed radon mitigation contractor may perform radon testing or mitigation or provide any advice related to radon, radon testing or radon mitigation unless it is performed in accordance with the requirements of this article and the rules adopted under this article.

(d) No licensed radon tester, licensed radon mitiga-
§16-34-5. Powers and duties of the director of the division of health.

(a) The director shall license radon testers, mitigation specialists, mitigation contractors and radon laboratories located within the state. Each applicant for a license shall submit a completed application to the director on a form prescribed and furnished by the director.

(b) The director shall issue the appropriate license to each applicant who pays the license fee, meets the licensing criteria and complies with any other licensing and training requirements established by the director. An individual business entity or government entity may hold more than one license issued under this section, but a separate application is required for each license.

(c) Notwithstanding subdivision (1), subsection (a), section three of this article, the director shall issue a radon mitigation contractor license on request to the holder of a radon mitigation specialist license if the license holder is the owner or chief stockholder of a business entity for which he or she is the only individual who will work as a radon mitigation specialist. The licensing criteria and any other licensing and training requirements that the individual was required to meet to qualify for the radon mitigation specialist license are hereby considered to satisfy any and all criteria and requirements for a radon mitigation contractor license. A license issued under this section expires at the same time as the individual’s radon mitigation specialist license.

(d) A license issued under this section expires annually and may be renewed by the director in accordance with criteria and procedures established by the director under section six of this article and upon payment of the prescribed license renewal fee.

(e) The director may:

(1) Refuse to issue a license to an individual, business
entity or government entity that does not meet the
requirements of this article or the rules adopted under
this article or that has violated the provisions of this
article or of any rules promulgated under this article; or

(2) Suspend, revoke or refuse to renew the license of
an individual, business entity or government entity that
is or has been in violation of the requirements of this
article or the rules adopted under this article.

(f) The director shall approve and assess fees for all
of the following:

(1) Licenses for radon testers, mitigation specialists,
mitigation contractors and radon laboratories;

(2) Accredited training courses for radon testers and
mitigation specialists; and

(3) Training courses for employees of mitigation
contractors.

(g) Each applicant for approval shall submit a
completed application to the director on a form the
director shall prescribe and furnish.

(h) In accordance with rules adopted under section
six of this article, the director shall issue the approp-
riate approval to each applicant that pays the approval
fee and meets the criteria for approval.

(i) The director may refuse to issue an approval and
may revoke or suspend an approval issued under this
section if the operator of the course or laboratory fails
to meet the established criteria.

(j) The director shall do all of the following:

(1) Administer the radon licensing program estab-
lished by this article and enforce the requirements of
this article and the rules adopted under this article;

(2) Examine the records of radon testers, mitigation
specialists, mitigation contractors and radon laborato-
ries and training courses approved under section seven
of this article as he or she considers necessary to
determine whether they are in compliance with the
requirements of this article and the rules adopted under
this article;

(3) Coordinate the radon licensing program with any
radon programs in schools;

(4) Collect and disseminate information relating to
radon in this state; and

(5) Conduct research on indoor radon contamination,
which may include a statewide survey on radon
contamination.

(k) The director may do any of the following:

(1) Conduct inspections as he considers necessary to
determine whether the requirements of this article and
the rules adopted under this article have been met;

(2) Conduct training programs and establish and
collect fees to cover the cost of conducting them;

(3) Advise, consult, cooperate with and, with the
consent of the secretary, enter into contracts or grant
agreements with any individual business entity, govern­
ment entity, interstate agency or the federal government
as he or she considers appropriate to fulfill the require­
ments of this article and the rules adopted under this
article; and

(4) Collect the information required to be reported to
him or her under any rules adopted under section six
of this article.

(l) Nothing in this article shall be construed to allow
the director to:

(1) Require the performance of a test for radon;

(2) Regulate construction practices; or

(3) Regulate the retail sales of radon test kits for use
by individuals to do their own radon testing in buildings
owned by them.

§16-34-6. Rules.

(a) To protect the health of individuals inhabiting,
occupying or frequenting buildings, the department of
health and human resources shall adopt rules to implement the requirements of this article. All rules adopted under this section shall be adopted in accordance with article three, chapter twenty-nine-a of this code.

(b) The secretary shall adopt rules:

(1) Establishing criteria and procedures to be followed in issuing and renewing licenses to radon testers, mitigation specialists or mitigation contractors, as well as the fees for the licenses. The rules may require that all applicants for licensure as a radon tester or mitigation specialist pass an examination. If an examination is required, the rules may require applicants to pass an examination conducted by the division of health or by a training center accredited by the director;

(2) Establishing criteria and procedures to be followed in approving and accrediting training courses under section five of this article. The rules shall require the participants in training courses to pass an examination conducted by the operator of the course;

(3) Establishing criteria and procedures in approving and licensing radon laboratories;

(4) Establishing standards to be followed by licensed radon testers, mitigation specialists, mitigation contractors and radon laboratories for the prevention of hazards to the public health, including standards for worker protection, record keeping and the training of employees or radon testers and mitigation contractors;

(5) Establishing procedures to be followed by an individual business entity or government entity licensed by another state to practice as a radon tester, mitigation specialist, mitigation contractor or radon laboratory in providing notice to the director prior to commencing practice in this state pursuant to section three of this article; and

(6) That require licensed radon testers and mitigation specialists to report to the director, by street address, radon test results. The rules shall require the reporting of the identity of the radon laboratory involved,
42 screening measurements, follow-up measurements, postmitigation measurements and, if it is known that mitigation was performed, the methods of mitigation that were used. Any information required to be reported to the director under the rules is not a public record and shall not be released except in aggregate statistical form.

§16-34-7. Complaints.

(a) Any individual, business entity or government entity may file a complaint with the director concerning any radon tester, mitigation specialist, mitigation contractor or a radon laboratory or a training course approved under section six of this article. The complainant's name shall be confidential and shall not be released without his or her written consent. The director shall investigate complaints and take action under this article.

(b) If a radon tester, mitigation specialist, mitigation contractor or radon laboratory violates any rules promulgated pursuant to this article and as a result of the violation harms or injures in any manner an individual or business entity, that radon tester, mitigation specialist, mitigation contractor or radon laboratory shall be considered to have committed an unfair act or practice within the meaning of section one hundred four, article six, chapter forty-six-a of this code.

§16-34-8. Licensed tester, mitigator and contractor list.

The director shall maintain a list of all licensed radon testers, mitigation specialists, mitigation contractors and radon laboratories located in the state. On request, the director shall provide a copy of all or part of the list to any individual, business entity or government entity. The director shall not impose a charge for providing the copy that exceeds the actual and necessary expense of copying it.

§16-34-9. Record keeping and confidentiality.

(a) The director, any employee of the department of health and human resources, or any individual, business entity or government entity with which the director
enters into an agreement under subdivision (3), subsection (k), section five of this article, shall not release information collected pursuant to this article concerning a specific building used as a private residence or the real property upon which it is located to anyone other than the owner or occupant of the building or real property without his or her consent: Provided, That the director may release information if he or she determines that the release is necessary for use in conducting legitimate scientific studies or the information is released in summary statistical or other form that does not reasonably tend to disclose the address of the building or real property or the identity of the owner or occupant.

(b) The division of health shall maintain information pursuant to this article and the rules adopted under this article for at least three years. The division may destroy any information that it has maintained for three years.

§16-34-10. Special revenue account.

The funds collected from the fees applicable in this article shall be deposited in a special revenue account in the state treasury to be used by the secretary and dedicated to the purposes of this article which include, but are not limited to, licensing, training, enforcement and program development for radon.

§16-34-11. Reciprocity.

The director may set standards for accepting licenses issued by other states. The director may grant licenses to individuals from other states if that other state has licensing requirements which are as stringent as the licensing requirements in this state.

§16-34-12. Records review.

If the director requests to examine records, no licensed radon tester, mitigation specialist, mitigation contractor or operator of a radon laboratory or a training course approved under section six of this article shall fail to make available to the director any records pertinent to the activities regulated by this article and rules adopted under it.
§16-34-13. Reprimands; suspension or revocation of license; orders; hearings.

(a) The director shall suspend or revoke the license of or reprimand a radon tester, mitigator, contractor or laboratory if the licensee:

1. Fraudulently or deceptively obtains or attempts to obtain a license;
2. Fails at any time to meet the qualifications for a license or to comply with the requirements of this article or any applicable rules adopted by the secretary;
3. Fails to meet applicable federal or state standards for radon testing or radon mitigation; or
4. Employs or permits an individual without a radon tester's license or a radon mitigator's license to supervise work on a radon project.

(b) The director shall investigate all alleged violations reported to the division of health. Upon the finding of a violation in connection with any project involving radon testing or mitigation, the director shall issue a cease and desist order directing that all work be halted immediately. Where practicable, the director shall deliver a copy of the order by certified mail, return receipt requested, to the radon tester and radon mitigator.

(c) Hearings regarding violations of this article shall be conducted in accordance with the administrative procedures act of chapter twenty-nine-a of this code.

§16-34-14. Penalties.

Any person violating any of the provisions of this article, or any of the rules or orders issued pursuant to this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred fifty dollars for each violation.
CHAPTER 98

(Com. Sub. for S. B. 389—By Senator Lucht)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, nine, eleven, twelve-b, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; defining the term pari-mutuel clerk; powers and authority of racing commission; requiring the racing commission to mediate certain disputes involving pari-mutuel clerks; relating to commissions from pari-mutuel pools; removing certain provisions relating to commissions to be paid for certain breeder's awards and other expenses; deleting obsolete revenue language; reorganizing special fund and transferring excess to general revenue; requiring audits; relating to the thoroughbred development fund; limiting the distribution of awards and purses; prioritizing the distribution of funds; limiting certain bonuses for certain breeders and raisers; specifying the time in which revenues must be remitted; relating to televised racing days for horse and dog racing; defining new terms; removing restrictions on telecasts at certain tracks; increasing the threshold for pari-mutuel pools for which a tax may be imposed; restructuring the disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; requiring publication of notice; relating to funding stake races; restricting the use of the money for certain purposes; requiring quarterly reports and separate accounting; and requiring and authorizing the promulgation of separate rules on pari-mutuel racing.

Be it enacted by the Legislature of West Virginia:

That sections three, six, nine, eleven, twelve-b, thirteen and 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, all to read as follows:
ARTICLE 23. HORSE AND DOG RACING.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—ORGANIZATION AND OPERATION.


§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

§19-23-11. Revenues from horse racing and dog racing to be paid into a special account to fund commission expenses and salaries for professional educators.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.


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

2 (1) “Horse racing” means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

3 (2) “Thoroughbred racing” means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

4 (3) “Harness racing” means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle and shall not include any form of horse racing in which the horses are mounted by jockeys;

5 (4) “Horse race meeting” means the whole period of time for which a license is required by the provisions of section one of this article;

6 (5) “Dog racing” means any type of dog racing, including, but not limited to, greyhound racing;

7 (6) “Purse” means any purse, stake or award for which a horse or dog race is run;

8 (7) “Racing association” or “person” means any
individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

(16) "Racing commission" means the West Virginia racing commission;

(17) "Stewards" means the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and the reasonable rules and regulations shall specify the
number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pari-mutuel clerk" means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

(20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in such enterprise;

(21) "Legitimate breakage" is the percentage left over in the division of a pool;

(22) "To the dime" means that wagers shall be figured and paid to the dime;

(23) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;

(24) "Accredited thoroughbred horse" means a thoroughbred horse that is either: (a) Foaled in West Virginia; or (b) sired by an accredited West Virginia sire; or (c) as a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days grace for the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. No thoroughbred horse qualifies under paragraph (c) of this subdivision after the first day of July, one thousand nine hundred ninety;

(25) "Accredited West Virginia sire" is a sire that is
permanently domiciled in West Virginia, stands a full
season in West Virginia and is registered with West
Virginia thoroughbred breeders association;

(26) "Breeder of an accredited West Virginia horse"
is the owner of the foal at the time it was born in West
Virginia;

(27) "Raiser of an accredited West Virginia horse" is
the owner of the yearling at the time it finished twelve
consecutive months of verifiable residence in the state.
During the period, the raiser will be granted one month
of grace for his or her horse to be shipped to and from
thoroughbred sales where the horse is officially entered
in the sales catalogue of a recognized thoroughbred sales
company. Prior to the horse being shipped out of the
state for sales, the raiser must notify the racing
commission of his or her intentions;

(28) The "owner of an accredited West Virginia sire"
is the owner of record at the time the offspring is
conceived;

(29) The "owner of an accredited West Virginia horse"
means the owner at the time the horse earned design-
nated purses to qualify for restricted purse supplements
provided for in section thirteen-b of this article; and

(30) "Fund" means the West Virginia thoroughbred
development fund established in section thirteen-b of
this article.

PART IV. POWERS AND AUTHORITY OF
RACING COMMISSION.

§19-23-6. POWERS AND AUTHORITY OF
RACING COMMISSION.

The racing commission has full jurisdiction over and
shall supervise all horse race meetings, all dog race
meetings and all persons involved in the holding or
conducting of horse or dog race meetings and, in this
regard, it has plenary power and authority:

(1) To investigate applicants and determine the
eligibility of the applicants for a license or permit or
construction permit under the provisions of this article;
(2) To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two of this article;

(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That in accordance with article three, chapter twenty-nine-a, the racing commission shall promulgate separate rules pertaining to the kinds of legal combination wagers which may be placed in connection with the pari-mutuel system of wagering authorized by this article;

(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

(5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

(6) To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;

(7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse racetrack, dog racetrack, kennel, facilities and other places of business;

(8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate
disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;

(9) By reasonable rules and regulations, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon any person connected with or involved in any horse or dog racing or any horse or dog race meeting; and to authorize stewards to rule off the grounds of any horse or dog racetrack any tout, bookmaker or other undesirable individual determined inimical to the best interests of horse and dog racing or the pari-mutuel system of wagering in connection therewith;

(10) To require at any time the removal of any racing official or racing employee of any licensee, for the violation of any provision of this article, any reasonable rule and regulation of the racing commission or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or to provide by contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of conducting saliva, urine and other tests on the horse or dog or horses or dogs run or to be run in any horse or dog race meeting, and to purchase all equipment and supplies considered necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any testing laboratory and related facilities and all such tests;

(12) To hold up, in any disputed horse or dog race, the payment of any purse, pending a final determination of the results thereof;

(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's horse or dog racing activities in this state, together with a list of each licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of the licensee;
(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents, and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the racing commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate;

(16) To take any other action that may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations;

(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b of this article; and

(18) To mediate on site, upon request of a party, all disputes existing between the racetrack licensees located in this state and representatives of a majority of the horse owners and trainers licensed at the track which threaten to disrupt any scheduled racing event or events. The racing commission shall, upon the request of a party, mediate on site, all disputes existing between racetrack licensees and representatives of pari-mutuel clerks which threaten to disrupt any scheduled racing event or events. When a request for mediation is made, the commission shall designate from among its members one person to act as mediator in each dispute that arises. Each opposing party involved in any dispute shall negotiate in good faith with the goal of reaching a fair and mutual resolution. The mediator may issue recommendations designed to assist each side toward reaching a fair compromise: Provided, That no owner or operator or any horse owner or trainer or any pari-mutuel clerk licensed at the track may be required to abide by any recommendation made by any mediator acting pursuant to this subsection.

The racing commission shall not interfere in the internal business or internal affairs of any licensee.
PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED; COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of break-age; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by the licensee within the confines of the licensee's horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming, shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee's racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day. Out of the commission, as is mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee,
which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and three hundred seventy-five one-thousandths percent of the pari-mutuel pools and which, out of pari-mutuel pools for each day during all other months, shall be six and eight hundred seventy-five one-thousandths percent of the pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety; (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders, awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of the pools; and (iv) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund. The remainder of the commission shall be retained by the licensee.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of the commission, as is mentioned in this paragraph, the licensee: (i) Shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by
the licensee and to be used for the payment of regular
purses offered for thoroughbred racing by the licensee,
which deposits out of pari-mutuel pools for each day
during the months of January, February, March,
October, November and December for pools involving a
combination of two winning horses shall be eight and
twenty-five one-hundredths percent and out of pari-
mutuel pools for each day during all other months shall
be seven and seventy-five one-hundredths percent of the
pari-mutuel pools; and involving a combination of three
or more winning horses for the months of January,
February, March, October, November and December
the deposits out of the fund shall be eleven and twenty-
five one-hundredths percent of the pari-mutuel pools;
and which, out of pari-mutuel pools for each day during
all other months, shall be ten and seventy-five one-
hundredths percent of the pari-mutuel pools; (iii) shall,
after allowance for the exclusion given by subsection (b),
section ten of this article, make a deposit into a special
fund to be established by the racing commission and to
be used for the payment of breeders' awards and capital
improvements as authorized by section thirteen-b of this
article, which deposits out of pari-mutuel pools shall
from the effective date of this section and for fiscal year
one thousand nine hundred eighty-five, be four-tenths
percent; for fiscal year one thousand nine hundred
eighty-six, be seven-tenths percent; for fiscal year one
thousand nine hundred eighty-seven, be one percent; for
fiscal year one thousand nine hundred eighty-eight, be
one and one-half percent; and for fiscal year one
thousand nine hundred eighty-nine, and each year
thereafter, be two percent of the pools; and (iv) shall pay
one tenth of one percent of the pari-mutuel pools into
the general fund of the county commission of the county
in which the racetrack is located, except if within a
municipality, then to the municipal general fund. The
remainder of the commission shall be retained by the
licensee.

The commission deducted by the licensee under this
subdivision may be reduced only by mutual agreement
between the licensee and a majority of the trainers and
horse owners licensed by subsection (a), section two of
this article or their designated representative. The
reduction in licensee commissions may be for a partic-
ular race, racing day or days or for a horse race
meeting. Fifty percent of the reduction shall be retained
by the licensee from the amounts required to be paid
into the special fund established by the licensee under
the provisions of this subdivision. The racing commis-
sion shall promulgate any reasonable rules and regula-
tions that are necessary to implement the foregoing
provisions.

(2) The commission deducted by any licensee from the
pari-mutuel pools on harness racing shall not exceed
seventeen and one-half percent of the total of the pari-
mutuel pools for the day. Out of the commission the
licensee shall pay the pari-mutuel pools tax provided for
in subsection (c), section ten of this article, and shall pay
one tenth of one percent into the general fund of the
county commission of the county in which the racetrack
is located, except if within a municipality, then to the
municipal general fund. The remainder of the commis-

sion shall be retained by the licensee.

(3) The commission deducted by any licensee from the
pari-mutuel pools on dog racing, except from dog racing
pari-mutuel pools involving what is known as multiple
betting in which the winning pari-mutuel ticket or
tickets are determined by a combination of two or more
winning dogs, shall not exceed sixteen and thirty one-
hundredths percent of the total of all pari-mutuel pools
for the day. The commission deducted by any licensee
from the pari-mutuel pools on dog racing involving what
is known as multiple betting in which the winning pari-
mutuel ticket or tickets are determined by a combina-
tion of two winning dogs shall not exceed nineteen
percent, by a combination of three winning dogs shall
not exceed twenty percent, and by a combination of four
or more winning dogs shall not exceed twenty-one
percent of the total of such pari-mutuel pools for the day.
The foregoing commissions are in effect for the fiscal
years one thousand nine hundred ninety and one
thousand nine hundred ninety-one. Thereafter, the
commission shall be at the percentages in effect prior
to the effective date of this article unless the Legislature,
after review, determines otherwise. Out of the commis-
sions, the licensee shall pay the pari-mutuel pools tax
provided for in subsection (d), section ten of this article,
and one tenth of one percent of such pari-mutuel pools
into the general fund of the county commission of the
county in which the racetrack is located. In addition, out
of the commissions, if the racetrack is located within a
municipality, then the licensee shall also pay three
tenths of one percent of the pari-mutuel pools into the
general fund of the municipality; or, if the racetrack is
located outside of a municipality, then the licensee shall
also pay three tenths of one percent of the pari-mutuel
pools into the state road fund for use by the division of
highways in accordance with the provisions of this
subdivision. The remainder of the commission shall be
retained by the licensee.

For the purposes of this section, "municipality" means
and includes any Class I, Class II and Class III city and
any Class IV town or village incorporated as a munic-
ipal corporation under the laws of this state prior to the
first day of January, one thousand nine hundred eighty-
seven.

Each dog racing licensee, when required by the
provisions of this subdivision to pay a percentage of its
commissions to the state road fund for use by the
division of highways, shall transmit the required funds,
in such manner and at such times as the racing
commission shall by procedural rule direct, to the state
treasurer for deposit in the state treasury to the credit
of the division of highways state road fund. All funds
collected and received in the state road fund pursuant
to the provisions of this subdivision shall be used by the
division of highways in accordance with the provisions
of article seventeen-a, chapter seventeen of this code for
the acquisition of right-of-way for, the construction of,
the reconstruction of and the improvement or repair of
any interstate or other highway, secondary road, bridge
and toll road in the state. If on the first day of July, one
thousand nine hundred eighty-nine, any area encom-
passing a dog racetrack has incorporated as a Class I,
Class II or Class III city or as a Class IV town or village, whereas such city, town or village was not incorporated as such on the first day of January, one thousand nine hundred eighty-seven, then on and after the first day of July, one thousand nine hundred eighty-nine, any balances in the state road fund existing as a result of payments made under the provisions of this subdivision may be used by the state road fund for any purpose for which other moneys in the fund may lawfully be used, and in lieu of further payments to the state road fund, the licensee of a racetrack which is located in the municipality shall thereafter pay three tenths of one percent of the pari-mutuel pools into the general fund of the municipality. If no incorporation occurs before the first day of July, one thousand nine hundred eighty-nine, then payments to the state road fund shall thereafter continue as provided for under the provisions of this subdivision.

A dog racing licensee, before deducting the commissions authorized by this subdivision, shall give written notification to the racing commission not less than thirty days prior to any change in the percentage rates for the commissions. The racing commission shall prescribe blank forms for filing the notification. The notification shall disclose the following: (A) The revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple betting; (B) the dates to be included in the revised betting; (C) such other information as may be required by the racing commission.

The licensee shall establish a special fund to be used only for capital improvements or long-term debt amortization or both: Provided, That any licensee, heretofore licensed for a period of eight years prior to the effective date of the amendment made to this section during the regular session of the Legislature held in the year one thousand nine hundred eighty-seven, shall establish the special fund to be used only for capital improvements or physical plant maintenance, or both, at the licensee's licensed facility or at the licensee's commonly owned racing facility located within this
state. Deposits made into the funds shall be in an amount equal to twenty-five percent of the increased rate total over and above the applicable rate in effect as of the first day of January, one thousand nine hundred eighty-seven, of the pari-mutuel pools for the day. Any amount deposited into the funds must be expended or liability therefor incurred within a period of two years from the date of deposit. Any funds not expended shall be transferred immediately into the state general fund after expiration of the two-year period.

The licensee shall make a deposit into a special fund established by the licensee and used for payment of regular purses offered for dog racing, which deposits out of the licensee's commissions for each day shall be three and seventy-five one-hundredths percent of the pari-mutuel pools.

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; the funds shall be in an amount equal to five percent over and above the applicable rates in effect as of the first day of January, one thousand nine hundred eighty-seven, of the total pari-mutuel pools for the day.

The racing commission shall prepare and transmit annually to the governor and the Legislature a report of the activities of the racing commission under this subdivision. The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the division of highways dog racing fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization, and a certified statement of the financial condition of any licensee depositing into the fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the racing commission may consider appropriate for review.

The racing commission shall report to the governor,
(c) In addition to any commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from the breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of the breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section for the payment of regular purses.

(d) The director of audit, and any other auditors employed by the racing commission who are also certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to the pari-mutuel system of wagering, and shall report to the racing commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that the individual is under the age of eighteen years.
(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the licensee shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund; (iii) the licensee shall pay one half of the remainder of the commission into the special fund established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee; and (iv) the licensee shall retain the amount remaining after making the payments required in this subsection.

(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the commission a surety bond in an amount to be determined by the commission to secure the payment to the owners or lessees of the dogs the portion of any purse owed to the owner or lessee.

PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-11. Revenues from horse racing and dog racing to be paid into a special account to fund commission expenses.

All revenues collected pursuant to the provisions of this article as license taxes or pari-mutuel pools taxes on horse racing and dog racing shall be paid by the racing commission to the state treasurer who shall deposit the revenues in a special account to be designated by him or her. The revenues in the special account shall first be available to the commission to pay salaries and other budgeted expenses for the commission, not to exceed the amounts appropriated for such
purposes in the budget bill for each fiscal year. Revenues in excess of the budgeted expenses of the commission shall be accumulated and transferred to the general revenue fund. The racing commission shall remit all collected revenues to the state treasurer at least one time during each thirty-day period of each racing season, and a final remittance as to any particular horse race or dog race meeting shall be made within thirty days from and after the close of each horse race or dog race meeting.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

(a) For the purposes of this section:

(1) "Televised racing day" means a calendar day, assigned by the commission, at a licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at racetracks outside of the state which are broadcast by television at a licensed racetrack and which day or days have had the prior written approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article; and

(2) "Host racing association" means any person who, pursuant to a license or other permission granted by the host state, conducts the horse or dog race subject to the interstate wager.

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with the prior approval of the state racing commission, contract with any legal wagering entity in any other state to receive telecasts and accept wagers on races conducted by the legal wagering entity. The telecasts may be received and wagers accepted at any location authorized by the provisions of section twelve-a of this article. The contract must receive the approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article at the receiving racetrack.

(c) The commission may allow the licensee to commin-
gle its wagering pools with the wagering pools of the host racing association. If the pools are commingled, the wagering at the licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be electronically linked with the equipment at the sending racetrack. Subject to the approval of the commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules governing the sending racetrack and must be distributed in a manner agreed to between the licensee and the sending racetrack.

(d) The commission may assign televised racing days at any time. When a televised racing day is assigned, the commission shall assign either a steward or an auditor to preside over the televised races at the licensee racetrack.

(e) From the licensee commissions authorized by subsection (c) of this section, there is imposed and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds one hundred thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of one thousand two hundred fifty dollars. For each televised racing day on which the total pari-mutuel pool is one hundred thousand dollars or less, the licensee shall pay a daily license tax of five hundred dollars plus an additional license tax of one hundred dollars for each ten thousand dollars, or part thereof, that the pari-mutuel pool exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

(f) After deducting the tax required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the legal wagering entity of another state and the cost of transmission, the horse
racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (b) (1), section nine of this article.

(g) The provisions of the “Federal Interstate Horse-racing Act of 1978”, also known as Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, controls in determining the intent of this section.

(h) The handle from televised simulcast racing shall not be included in the calculation of “average daily handle” as it is calculated in section ten of this article to determine the alternative daily pari-mutuel pool tax.

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS; IRREDEEMABLE TICKETS; AWARDS.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period. and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such money shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets”. Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission.
within ninety days from the date of the publication of such notice. Such notice shall be published within fifteen days following the receipt of said moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such horse or dog race meeting was held and the county in which the televised racing day wagering conducted in this state.

(b) Any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such pari-mutuel tickets shall become the property of the racing commission and shall be expended as provided in this subsection. The racing commission shall maintain separate accounts for each licensee and shall record therein the moneys turned over by such licensee and the amount expended at such licensee's track for the purposes set forth in this subsection. The moneys in the "West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets" shall be expended as follows:

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the owner of such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he filed a personal income tax return in this state for the previous two years and that he owned real or personal property in this state and paid taxes in this state on said property for the previous two years, he shall be presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare foaled in this state, a sum equal to ten
percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare which foaled such winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by such horse; and

(4) To those horse racing licensees not participating in the thoroughbred development fund authorized in section thirteen-b of this article the unexpended balance of such licensee's account not expended as provided in subdivisions (1), (2) and (3) of this subsection: Provided, That all moneys distributed under this subdivision shall be expended solely for capital improvements at the licensee's track: Provided, however, That such capital improvements must be approved, in writing, by the West Virginia racing commission before funds are expended by the licensee for that capital improvement; and

(5) When the moneys in the special account, known as the "West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets" will more than satisfy the requirements of subdivisions (1), (2), (3) and (4) of this subsection, the West Virginia racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks: Provided, That beginning with the fiscal year one thousand nine hundred ninety, and subject to the availability of funds, the commission shall, after the requirements of subdivisions (1), (2), (3) and (4) of this subsection have been satisfied, transfer annually three hundred thousand dollars of such excess moneys into a separate account to be used for promotional activities and purses for stake races for the West Virginia thoroughbred breeders classic, which shall give equal consideration to all horses qualifying under the West
Virginia breeders program for each stake race, based solely on the horses' sex, age and earnings.

The commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures and unobligated balance in the special account created by this section known as the "West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets".

(c) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards or for awards under section thirteen-b of this article.

(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools' tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION AND FINES.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; non-restricted purse supplements.

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 the 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 the 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 immediately 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 the 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. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(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 the races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the 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. The bonus referred to in this subsection shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(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 the 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. The bonus referred to in this subsection shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(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 in this subsection.
Fifty percent of the 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 accor-
dance 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) From 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) From 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) From 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) From the first day of January, one thousand nine hundred eighty-seven, to the thirty-first day of December, one thousand nine hundred eighty-seven — one restricted race per five racing days;

(v) From the first day of January, one thousand nine hundred eighty-eight, to the thirty-first day of December, one thousand nine hundred eighty-eight — one restricted race per four racing days;

(vi) From 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: (A) The racing secretary; (B) a member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and (C) 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 is eligible for participation in any of the
provisions of this section.

CHAPTER 99

(Com. Sub. for H. B. 4459—By Delegates Johnson and Rowe)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter nineteen 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 horse and dog
racing; and requiring fingerprinting of all new appli­
cants for licenses; allowing the racing commission to
require applicants for the issuance or renewal of licenses
or permits to furnish fingerprints; providing for review
of fingerprints by division of public safety and federal
bureau of investigation.

Be it enacted by the Legislature of West Virginia:

That article twenty-three, chapter nineteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended by adding thereto a new section,
designated section seven-a, to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-7a. Applicants for licenses and permits to provide
fingerprints.

1 (a) All new applicants for licenses issued by the
racing commission, pursuant to section one of this
article, shall be required to furnish fingerprints for
examination by the criminal identification bureau of the
division of public safety and the federal bureau of
investigation. The fingerprints shall be furnished by all
persons required to be named in the application pursuant to subsection (a), section seven of this article and shall be accompanied by a signed authorization for the release of information by the criminal investigation bureau and the federal bureau of investigation.

(b) The racing commission may require any applicant seeking the renewal of a license or the issuance or renewal of a permit to furnish fingerprints for examination by the criminal identification bureau of the division of public safety and the federal bureau of investigation. The racing commission may require all or any part of the persons required to be named in an application pursuant to section seven of this article to provide fingerprints and the fingerprints shall be accompanied by a signed authorization for the release of information by the criminal investigation bureau and the federal bureau of investigation.

CHAPTER 100
(Com. Sub. for H. B. 4228—By Delegates Prunty and Stewart, By Request)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-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, relating to economic development and permitting the economic development authority to negotiate with the Marion County commission to establish a national horseshoe pitcher’s hall of fame.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a, to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

1 Not later than the first day of July, one thousand nine hundred ninety-two, the West Virginia economic development authority may enter into negotiations with the county commission of Marion County to develop, organize, construct and manage a national horseshoe pitcher's hall of fame shrine and multipurpose building project.

2 The authority may provide funds through a loan, staff support and technical assistance to the Marion County commission to target the project for completion within five years: Provided, That the Marion County commission has the commitment, support and assistance of the National Horseshoe Pitcher's Association to locate the hall of fame in Marion County.

CHAPTER 101
(S. B. 606—Originating in the Committee on Labor)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and nine, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to manufactured housing construction and safety standards; dealer defined; reducing per diem compensation for West Virginia manufactured housing construction and safety board members; and license fee for contractors.

Be it enacted by the Legislature of West Virginia:

That sections two, three and nine, article nine, 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 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-3. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

§21-9-9. License required; fees; form of license; display of license; denial; suspension or revocation.


(a) "Board" means the West Virginia manufactured housing construction and safety board created in this article.

(b) "Commissioner" means the commissioner of the West Virginia state department of labor.

(c) "Contractor" means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. This definition does not include persons who do work on a manufactured home which is owned or leased by such person doing the work. Such operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. Such operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia public service commission.

(d) "Dealer" means any person engaged in this state in the sale, leasing or distribution of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

(e) "Defect" includes any defect in the performance, construction, components or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended.

(f) "Distributor" means any person engaged in this state in the sale and distribution of manufactured homes for resale.

(g) "Federal standards" means the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401, et seq.), and federal manufac-
tured home construction and safety standards and
regulations promulgated by the secretary of HUD to
implement such act.

(h) "HUD" means the United States department of
housing and urban development.

(i) "Manufacturer" means any person engaged in
manufacturing or assembling manufactured homes,
including any person engaged in importing manufac-
tured homes for resale.

(j) "Manufactured home" means a structure, transpor-
table in one or more sections, which in the traveling
mode is eight body feet or more in width or forty body
feet or more in length or, when erected on site, is three
hundred twenty or more square feet, and which is built
on a permanent chassis and designed to be used as a
dwelling with or without a permanent foundation when
connected to the required utilities, and includes the
plumbing, heating, air-conditioning and electrical
systems contained therein; except that such term shall
include any structure which meets all the requirements
of this definition except the size requirements and with
respect to which the manufacturer voluntarily files a
certificate which complies with the applicable federal
standards. Calculations used to determine the number
of square feet in a structure will be based on the
structure's exterior dimensions measured at the largest
horizontal projections when erected on site.

(k) "Purchaser" means the first person purchasing a
manufactured home in good faith for purposes other
than resale.

§21-9-3. Board created; appointment, qualifications,
terms, oath, etc., of members; quorum; meet-
ings; when members disqualified from par-
ticipation; compensation; records; office space; personnel.

(a) There is hereby created the West Virginia board
of manufactured housing construction and safety, which
shall consist of six members and the commissioner, who
shall be chairman. At least two of the six members of
the said board shall represent and be consumers who are not related or employed in the manufactured housing and construction industry. The six members shall be appointed by the governor by and with the advice and consent of the Senate. No more than three of the members so appointed may be of the same political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section 5, article IV of the Constitution of the state of West Virginia, and shall certify that he is and during the term of his appointment shall remain free of any conflict of interest. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours’ notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself from participation in a proceeding for any other cause deemed by him to be sufficient. Each member shall receive fifty dollars for each day or
portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.

(a) No manufacturer, dealer, distributor or contractor shall engage in business in this state without first having applied for and received a license pursuant to this section. The license shall authorize the holder to engage in the business permitted by the license. All license applications shall be accompanied by the required fee and surety bond or other form of assurance as required by rule or regulation promulgated by the board.

(b) All licenses shall be granted or refused within thirty days after proper and complete application. All licenses shall expire on the thirtieth day of June of each year, unless sooner revoked or suspended. Applications shall be deemed valid for a period of thirty days.

(c) The annual license fees shall be in the amounts prescribed from time to time by rules and regulations promulgated by the board but in no event less than the following amounts:

(1) For manufacturers, three hundred dollars;
(2) For dealers, one hundred dollars;
(3) For distributors, one hundred dollars; and
(4) For contractors, fifty dollars: Provided, That if a contractor has met the licensing requirements of this article and the West Virginia contractor licensing act in article eleven of this chapter, has paid the annual license fee under section eight, article eleven of this chapter and has furnished bond or other assurance under section ten
of this article, he or she shall not be required to pay the
annual license fee set forth in this section.

(d) The board shall prescribe the form of license and
each license shall have affixed thereon the seal of the
state department of labor.

(e) Each licensee shall conspicuously display the
license in its established place of business.

(f) Pursuant to such rules and regulations as may be
promulgated by the board, the board may deny the
issuance of a license or revoke or suspend any license.

(g) The proceeds of such fees shall be deposited in a
special account in the state treasury to be used by the
department of labor for the administration of the
provisions of this article.

CHAPTER 102
(Com. Sub. for H. B. 4007—By Delegate Gallagher)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county humane officers and providing for the designation of the county dog warden as an alternative or additional humane officer.

Be it enacted by the Legislature of West Virginia:

That section one, article ten, 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 10. HUMANE OFFICERS.

§7-10-1. Deputy sheriffs as humane officers.

1 The sheriff of each county of this state shall annually
designate, by a record made in the office of the clerk
of the county commission, one of his or her deputies to
act as humane officer of the county; or, if the county
commission and sheriff agree, the county dog warden
may be designated to act as the humane officer or as
an additional humane officer; any person designated to
act as a humane officer and all peace officers designated
by law as a humane officer or an additional humane
officer shall investigate all complaints made to him or
her of cruel or inhumane treatment of animals within
the county and he or she shall personally see that the
law relating to the prevention of cruelty to animals is
enforced. The wilful failure of such designee to investi-
gate any complaint made to him or her and to take
proper measures in such case or to perform his or her
duty in any other respect may constitute good cause for
removal from employment.

CHAPTER 103
(Com. Sub. for H. B. 2121—By Delegates Love and Pethtel)

[Passed February 13, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two,
chapter twenty 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 nineteen-a, relating to
authorizing trappers checking traps on Sundays to
carry only a twenty-two caliber firearm for the purpose
of humanely dispatching trapped animals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.
§20-2-19a. Trappers authorized to possess only twenty-two caliber firearm on
Sundays.
§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful at any time for any person to:

2 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

3 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

4 (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal, or to attempt to do so, while having in his possession or subject to his control, or for any person accompanying him to have in his possession or subject to his control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it shall not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at such time he has in his possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless such artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

5 Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

6 (4) Hunt for, take, kill, wound or shoot at wild
animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Except as provided in section six of this article, carry an uncased or loaded gun after the hour of five o'clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trapshooting ground or range;

(10) Have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day follow-
ing, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals.

(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;
(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(19) Kill, take, catch or have in his possession, living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;
(21) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(24) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;

(25) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(26) Permit any dog owned by him or under his control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his bona fide tenant or tenants or upon the grounds or lands of another person with his written permission or on public lands, at any time: Provided, however, That notwithstanding any of the above provisions, no person may train a dog in any county, or portion thereof, in which a legal bear hunting season has been established prior to the first day of July, one thousand nine hundred eighty-eight, except that residents may train dogs in such counties after the twenty-fourth day of August through the end of the legal small game hunting season: Provided further, That nonresidents shall not train dogs in this state at any time except during the legal small game hunting season: And provided further, That the person training said dogs does not have firearms or other implements in his possession during the closed season on such wild animals and wild
birds, whereby wild animals or wild birds could be taken or killed;

(27) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request; and

(28) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by regulation of the director as authorized by subdivision six, section seven, article one of this chapter.

§20-2-19a. Trappers authorized to possess only twenty-two caliber firearm on Sundays.

Any person authorized by the provisions of this article to trap any game or fur-bearing animal is also authorized, if that person is checking his or her traps on Sunday, to carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals.

CHAPTER 104

(S. B. 515—By Senator Minard)

[Passed March 4, 1992; in effect from passage. Approved by the Governor.]
nineteen, twenty-four, twenty-six and twenty-seven of said article, all relating to industrial banks and industrial loan companies; redefining terms; eliminating industrial banks; organizational requirements of industrial loan companies; powers of industrial loan companies; eliminating the ability of industrial loan companies to issue certificates of indebtedness to the public or buy and sell bonds; restricting the practices of industrial loan companies; permitting industrial loan companies to hold real estate for ten years; requiring supervision of the banking commissioner; annual assessments by the commissioner; branch offices permitted; penalties for violations; annual meetings and reports; bonds for directors; personal liability of directors for manager's acts; rights of stockholders; advertising requirements and restrictions; and powers of the banking commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. INDUSTRIAL LOAN COMPANIES.

§31-7-1. Short title.
§31-7-2. Construction of article; general corporation laws applicable.
§31-7-3. Definitions.
§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.
§31-7-11. Powers of industrial loan companies; limitation of powers.
§31-7-13. Supervision and control.
§31-7-14. Branch industrial loan company permitted; penalties.
§31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.
§31-7-18. Chief executive and other officers to be bonded; personal liability of directors for manager's defalcation.
§31-7-19. List of stockholders; right of inspection.
§31-7-24. Advertising requirements and prohibitions.
§31-7-26. Rules and regulations.
§31-7-27. Additional powers and duties of the commissioner; fees; powers of the board; appeals and judicial review.

§31-7-1. Short title.

1 This article shall be known and may be cited as the "West Virginia Industrial Loan Company Act".

§31-7-2. Construction of article; general corporation laws applicable.

1 (a) Except as otherwise specified herein, the provisions of chapter thirty-one-a of this code, insofar as the same relates to the inspection, examination, supervision, regulation and control of banking institutions, including, but not limited to, all of the penalty provisions contained in said chapter, shall apply to industrial loan companies organized pursuant to this article to the extent that the provisions of this article and the provisions of said chapter are not inconsistent. To the extent of any inconsistencies between the provisions of this article and provisions of said chapter, the provisions of this article shall prevail to the extent of such inconsistencies.

14 (b) The general corporation laws of the state, including the provisions of article one of this chapter, shall govern industrial loan companies.

§31-7-3. Definitions.

1 As used in this article, unless the context otherwise requires a different meaning, the term:

3 (a) “Commissioner” or “commissioner of banking” means the commissioner of banking of West Virginia and includes the division of banking of West Virginia;

6 (b) “Deposit” or “deposits” means the unpaid balance of money or its equivalent received or held in the usual course of business and for which there is given or there is obligated to give credit, either conditionally or unconditionally, to a checking, savings, time or thrift account, or which is evidenced by a certificate of deposit;

13 (c) “Industrial loan company” means any corporation formed under the provisions of this article with the
§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.

Any number of persons may become an industrial loan company on the terms and conditions and subject to the liabilities prescribed in this article. The name of any industrial loan company formed under this article shall not contain the words "savings" or "savings and loan" and shall not be that of any other existing corporation of this state: Provided, That any such corporation heretofore organized which uses the words "savings and loan" as a part of its corporate name shall be authorized to continue to use such words. The capital stock of any such corporation shall not be less than twenty-five thousand dollars, and shall consist of shares of common stock. The voting power and control of the corporation during its life shall be vested in the common stock only if more than one class of stock is to be issued. Such common stock, with which it will commence business, shall be paid in before such corporation shall be authorized to engage in business, except such business as is incidental and necessarily preliminary to its organization.

§31-7-11. Powers of industrial loan companies; limitation of powers.

(a) In addition to the general powers conferred upon corporations by the laws of this state, each industrial loan company shall have power to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers as shall be necessary to:

(1) Lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation, or otherwise;

(2) Demand and receive for loans or for notes, bills or evidences of debt discounted or purchased, such rate of interest as may be agreed upon by the parties, not
exceeding the lawful rate of interest, and it shall be lawful to receive such interest in advance. This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of loan finance charge does not exceed that permitted by this section;

(3) Charge for a loan made pursuant to this section, one dollar for each fifty dollars, or fraction thereof, loaned, for expenses including any examination or investigation of the character and circumstances of the borrower, comaker or surety, and the drawing and taking the acknowledgment of necessary papers, or other expenses, incurred in making the loan. No additional charge shall be made except to reimburse the corporation for money actually expended for additional service actually rendered the borrower. No charge shall be collected unless a loan shall have been made as the result of such examination or investigation;

(4) Purchase, hold and convey real estate as follows:

(A) Such as shall be necessary for the convenient transaction of its business;

(B) Such as is mortgaged to it in good faith by way of security for loans made by or money due to such industrial loan company;

(C) Such as is conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(D) Such as is acquired by sale on execution or judgment or decree of any court in its favor.

(b) Industrial loan companies shall not purchase, hold or convey any real estate in any other case or for any other purpose whatever. Real estate shall be conveyed only by authority of the board of directors of any such industrial loan company. No real estate acquired in the cases contemplated in paragraphs (B), (C) and (D), subdivision (4), subsection (a) of this section shall be held for a longer time than ten years, unless such period shall be extended by the commissioner of banking.

(c) An industrial loan company shall not:
(1) Accept or receive deposits or sell or offer for sale its secured or unsecured evidences or certificates of indebtedness;

(2) Pay any fees, bonuses, commissions, rewards or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used.

§31-7-13. Supervision and control.

(a) Every industrial loan company shall be subject to the inspection, examination, supervision, jurisdiction and control of the commissioner. Where forty percent or more of the common stock of any industrial loan company is owned or is held in trust for the benefit of or by any other single firm, corporation, partnership or association, such other firm, corporation, partnership or association shall also be subject to the same jurisdiction and powers of inspection, examination, supervision and control of the commissioner, as if such other firm, corporation, partnership or association were an industrial loan company.

(b) The commissioner of banking shall charge and collect from each industrial loan company and pay into a special revenue account for the department of banking an annual assessment payable on the first day of July, computed upon the total assets of the industrial loan company shown on the report of condition of the industrial loan company as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code.

§31-7-14. Branch industrial loan company permitted; penalties.

(a) No industrial loan company shall install or maintain any branch industrial loan company, unless it has applied for and received a branch office certificate from the commissioner. Application for a branch office certificate shall be filed in duplicate with the commissioner, on forms prescribed by the commissioner.
accompanied by an examination and investigation fee of one thousand dollars payable to the commissioner. The provision of section five, article two, chapter thirty-one-a of this code, insofar as the same relates to financial institutions, other than banking institutions, shall apply to the application and issuance of a branch office certificate or license by the commissioner to an industrial loan company.

(b) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen, article eight, chapter thirty-one-a of this code.

§31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.

(a) The stockholders of each industrial loan company shall meet annually, a majority of the outstanding voting stock to constitute a quorum; and it shall be the duty of the secretary to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the year next preceding. At such meeting the stockholders shall elect a board of directors of not less than five nor more than twenty-five. Special meetings may be called by order of the board of directors or by request in writing of ten percent of the stockholders.

(b) In all elections of directors of the corporation, each stockholder shall have the right to cast one vote for each share of stock owned by him and entitled to vote, and he may cast the same in person or by proxy, for as many persons as there are directors to be elected, or he may cumulate such votes and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal; or he may distribute them on the same principle among as many candidates and in such manner as he may desire, and the directors shall not be elected in any other manner, and on any other question to be determined by a vote of shares at any meeting of stockholders each stockholder shall be entitled to one vote for each share
of stock owned by him and entitled to vote, and he may
exercise this right in person or by proxy, but if by
proxy, in no instance can it be voted in any meeting
other than which it was first intended.

§31-7-18. Chief executive and other officers to be bonded;
personal liability of directors for manager's
defalcation.

The directors of every industrial loan company shall
require the manager or other chief executive officer
appointed by them in lieu of a manager, before he
performs or enters upon any duties as such manager or
chief executive officer, to give a bond or bonds, with a
surety company authorized to transact business in this
state as surety thereon, the amount to be fixed by them,
but in no case shall the penalty be less than five
thousand dollars. Other officers and personnel are to be
bonded in amounts commensurate with their duties and
responsibilities, to be fixed by the board of directors,
and all bonds are to be approved by the commissioner
of banking and a copy filed with his department; and
it shall be the duty of the directors, as often as once in
every year, to pass upon the sufficiency of such bond or
bonds, and if insufficient, to require without delay new
and additional bonds and securities to be given. If the
directors shall fail to perform any or all of the require-
ments of this section, they shall be jointly and severally
liable to the industrial loan company, as the case may
be, to the extent of any defalcation of or deficiency in
the funds of such company created or caused by such
manager, not in excess of the penalty of his bond, the
same to be recovered by such industrial loan company
in any court of competent jurisdiction of this state.

§31-7-19. List of stockholders; right of inspection.

The president, manager or treasurer of every indus-
trial loan company shall at all times cause to be kept
a true and accurate list of the names of stockholders of
record, with the amount of stock held by each, which
list shall at all times during business hours be open to
the inspection of any stockholder or to the inspection of
the commissioner or his duly authorized representative
or to the authorized personnel or representatives of the federal deposit insurance corporation.

§31-7-24. Advertising requirements and prohibitions.
(a) An industrial loan company shall not advertise itself as a bank nor shall any of its advertisements, irrespective of the media used, contain the word or term "bank", "banker", "banking company", "banking association", "bankers association", "savings bank" or "trust company".

(b) An industrial loan company shall not use in any of its advertisements, signs, displays, stationery or documents nor in any other manner use any symbol, device, trademark or seal which is alike or deceptively similar to any device, symbol, trademark, or seal of the federal deposit insurance corporation or of any other federal agency or of any other corporation authorized to transact business in this state. Any such symbol, device, trademark or seal proposed to be adopted or used by any industrial loan company shall, prior to its adoption or use, be approved in writing by the commissioner.

§31-7-26. Rules and regulations.
The commissioner may, from time to time, adopt and promulgate such rules as are deemed necessary and appropriate to carry into effect the provisions of this article in accordance with the provisions of chapter thirty-one-a of this code. All such rules shall be adopted and promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

§31-7-27. Additional powers and duties of the commissioner; fees; powers of the board; appeals and judicial review.
Except as may be inconsistent with the provisions of this article, all of the duties, powers and authority vested in the commissioner of banking pursuant to the provisions of chapter thirty-one-a of this code shall apply to industrial loan companies. Appeals from any orders or actions of the commissioner or judicial review thereof shall be in the same manner as may be prescribed in chapter twenty-nine-a of this code.
AN ACT to amend and reenact sections five, ten, thirteen, fifteen, seventeen, eighteen, twenty-two and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article nine-a, chapter eighteen of said code by adding thereto a new section, designated section twenty-four, all relating to public employees insurance; costs to retired employees; transfer of certain funds to the medicaid program; providing that the finance board establish certain premium costs; removing pregnancy as a preexisting condition and providing for continuity of coverage for previously insured new employees with preexisting conditions; requiring county boards of education and other employers to fund premium costs in excess of general revenue appropriations, requiring notification of maximum amount of such costs, setting a maximum amount of such costs of five million dollars, and limiting use of school aid appropriations to employer premiums for employees whose positions are funded by state funds; requiring employers to pay contributions as determined by the finance board; providing for payment of premium contributions of retired employees; and authorizing use of school aid funds for employer premiums.

Be it enacted by the Legislature of West Virginia:

That sections five, ten, thirteen, fifteen, seventeen, eighteen, twenty-two 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 article nine-a, chapter eighteen of said code be amended by adding thereto a new section, designated section twenty-four, 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.

18. Education.

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.

§5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life and accidental death insurance for retired employees, their spouses and dependents.

§5-16-13. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.

§5-16-15. Optional dental, optical, disability and prepaid retirement plan, and audiology and hearing-aid service plan.

§5-16-17. Preexisting conditions not covered; defined.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

§5-16-22. Permissive participation; exemptions.

§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.

1 (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 claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the initial plan required by subsection (d) of this section shall allow for a target of forty-five days of accounts payable to be carried over into the next fiscal year. The actuary's opinion on the financial plan for fiscal year one thousand nine hundred ninety-two shall allow for between thirty and forty-five days of accounts payable to be carried over into the next fiscal year. The actuary's opinion on the financial plan for any succeeding fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.
(c) All financial plans required by this section shall include the design of a benefit plan or plans. All financial plans shall establish:

(1) Maximum levels of reimbursement which the public employees insurance agency makes to categories of health care providers;

(2) Any necessary cost containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay, or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d) Initial plan. — The director shall convene the first meeting of the finance board no later than the fifteenth day of September, one thousand nine hundred ninety. For presentation by the director at the first meeting, the governor shall prepare an estimate of the total amount of general and special revenues which the state has or 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 hundred ninety-one, excluding incurred but unreported claims. The finance board shall establish in the proposed financial plan a target of forty-five days of accounts payable which may be carried over into the next fiscal year.
The finance board shall request its actuary to review the proposed financial plan and to render a written professional opinion stating whether the 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 fiscal year. The actuary's report shall explain the basis of his or her 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 and making all necessary modifications to the proposed plan, the finance board shall conduct two or more public hearings to receive public comment on the proposed financial plan, shall review such comments, and shall finalize and approve the financial plan no later than the twentieth day of November, one thousand nine hundred ninety. Employees shall be notified of any changes in the types and levels of employee costs or benefits contained in the financial plan at least thirty days prior to the date of implementation of the financial plan.

The finance board shall submit to the governor and to the Legislature the final, approved financial plan no later than the first day of December, one thousand nine hundred ninety. The financial plan shall become effective and shall be implemented by the director on the first day of January, one thousand nine hundred ninety-one.

(e) Plan for fiscal year one thousand nine hundred ninety-two. — No later than the first day of December, one thousand nine hundred ninety, the governor shall prepare and provide to the finance board an estimate 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
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.

(f) 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 thereaf-
ter 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 or her 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.

(g) 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.

(h) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the public employees insurance agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The financial board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the governor's estimate of general and special revenues available to the agency, the finance board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(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.

§5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life and accidental death insurance for retired employees, their spouses and dependents.

Any contract or contracts entered into hereunder may provide for group hospital and surgical, group major medical, group prescription drug and group life and accidental death insurance for retired employees and their spouses and dependents as defined by rules and regulations of the public employees insurance agency, and on such terms as the director may deem appropriate.

In the event the public employees insurance agency provides the above benefits for retired employees, their spouses and dependents, the public employees insurance agency shall adopt rules and regulations prescribing the conditions under which retired employees may elect to participate in or withdraw from the plan or plans. Any contract or contracts herein provided for shall be secondary to any hospital, surgical, major medical, prescription drug or other health insurance plan administered by the United States department of health and human services to which the retired employee, spouse or dependent may be eligible under any law or regulation of the United States. If an employee, eligible to participate in the public employees insurance agency plans, is also eligible to participate in the state medicaid program, and chooses to do so, then the public employees insurance agency may transfer to the medicaid program
funds to pay the required state share of such employee's
participation in medicaid except that the amount
transferred may not exceed the amount that would be
allocated by the agency to subsidize the cost of coverage
for the retired employee if he or she were enrolled in
the public employee insurance agency's plans.

§5-16-13. Payment of costs by employer and employee;
coverage for employee's spouse and dependents generally; short term continuance of
coverage for involuntary employee termination; extended insurance coverage for re-
tired employees with accrued annual leave and sick leave; increased retirement benefits
for retired employees with accrued annual and sick leave; additional eligible retired
employees; option for health insurance coverage without life insurance coverage made
available to retirees; health insurance for surviving dependents of deceased em-
ployees.

(a) The director is hereby authorized to provide under
any contract or contracts entered into under the
provisions of this article that the costs of any such group
hospital and surgical insurance, group major medical
insurance, group prescription drug insurance, group life
and accidental death insurance benefit plan or plans
may be paid by the employer and employee. In addition,
each employee shall be entitled to have his or her spouse
and dependents, as defined by the rules and regulations
of the public employees insurance agency, included in
any group hospital and surgical insurance, group major
medical insurance or group prescription drug insurance
coverage: Provided, That such spouse and dependent
coverage shall be limited to excess or secondary
coverage for each spouse and dependent who has
primary coverage from any other source. For purposes
of this section, the term "primary coverage" means
individual or group hospital and surgical insurance
coverage or individual or group major medical insu-
rance coverage or group prescription drug coverage in
which the spouse or dependent is the named insured or
certificate holder. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules and regulations governing the nature, discontinuance and resumption of any employee's coverage for his or her spouse and dependents.

(b) Should a participating employee be terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee: Provided, That an employee discharged for misconduct shall not be eligible for extended benefits under this section: Provided, however, That coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued: Provided further, That should the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and shall not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(c) Except as otherwise provided in subsection (f) for higher education full-time faculty employed on an annual contract basis other than for twelve months, when a participating employee, who has elected to participate in the plan before the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: Such insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her
63 retirement. For a retired employee, his or her spouse
64 and dependents, such insurance coverage shall continue
65 one additional month for every three days of annual
66 leave or sick leave, or both, which the employee had
67 accrued as of the effective date of his or her retirement.
68
69 (d) Notwithstanding the preceding subsection, except
70 as otherwise provided in subsection (f) for higher
71 education full-time faculty employed on an annual
72 contract basis other than for twelve months, when a
73 participating employee who elects to participate in the
74 plan on and after the first day of July, one thousand nine
75 hundred eighty-eight, is compelled or required by law
76 to retire before reaching the age of sixty-five, or when
77 such a participating employee voluntarily retires as
78 provided by law, that employee's annual leave or sick
79 leave, if any, shall be credited toward one half of the
80 premium cost of the insurance provided by this article,
81 for periods and scope of coverage determined according
82 to the following formulae: (1) One additional month of
83 single retiree coverage for every two days of annual
84 leave or sick leave, or both, which the employee had
85 accrued as of the effective date of his or her retirement;
86 or (2) one additional month of coverage for a retiree, his
87 or her spouse and dependents for every three days of
88 annual leave or sick leave, or both, which the employee
89 had accrued as of the effective date of his or her
90 retirement. The remaining premium cost shall be borne
91 by such retired employee if he or she elects such
92 coverage. For purposes of this subsection, an employee
93 who has been a participant under spouse or dependent
94 coverage and who reenters the plan within twelve
95 months after termination of his or her prior coverage
96 shall be considered to have elected to participate in the
97 plan as of the date of commencement of the prior
98 coverage. For purposes of this subsection, an employee
99 shall not be considered a new employee after returning
100 from extended authorized leave on or after the first day
101 of July, one thousand nine hundred eighty-eight.
102
103 (e) In the alternative to the extension of insurance
104 coverage through premium payment provided in the two
105 preceding subsections, on and after the first day of July,
one thousand nine hundred eighty-eight, the participating employee’s accrued annual leave and sick leave may be applied, on the basis of two days retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee’s retirement benefits with such days constituting additional credited service in computation of such benefits under any state retirement system. However, such credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(f) When a participating employee, who is a higher education full-time faculty member employed on an annual contract basis other than for twelve months, is compelled or required by law to retire, on or after the first day of August, one thousand nine hundred eighty-eight, before reaching the age of sixty-five, or when such a participating employee voluntarily retires as provided by law, on or after the first day of August, one thousand nine hundred eighty-eight, that employee’s insurance coverage, as provided by this article, shall be extended according to the following formulae: Such insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for twelve months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the university of West Virginia board of trustees and the board of directors of the state college system, for individual coverage, or one additional year for each five years of teaching service for “family” coverage.

(g) Any employee who retired prior to the twenty-first day of April, one thousand nine hundred seventy-two, and who also otherwise meets the conditions of the “retired employee” definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee’s premium contribution for any such coverage shall be established by the finance board.
(h) All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to the twenty-first day of April, one thousand nine hundred seventy-two; and those hereafter retiring shall be eligible for and permitted to obtain health insurance coverage. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(i) A surviving spouse and dependents of a deceased employee, who was either an active or retired employee just prior to such decease, shall be entitled to be included in any group insurance coverage provided under this article, and such spouse and dependents shall bear the premium cost of such insurance coverage. The finance board shall establish the premium cost of any such coverage.

(j) In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of such positions preclude the arising or accumulation of such, so as to be thereafter usable as premium paying credits for which such officials may claim extended insurance benefits.

§5-16-15. Optional dental, optical, disability and prepaid retirement plan, and audiology and hearing-aid service plan.

1 On and after the first day of July, one thousand nine hundred eighty-nine, the director shall make available to participants in the public employees insurance system: (1) A dental insurance plan; (2) an optical insurance plan; (3) a disability insurance plan; (4) a prepaid retirement insurance plan; and (5) an audiology and hearing-aid services insurance plan. Public employees insurance participants may elect to participate
Notwithstanding anything in this article to the contrary, all actuarial and administrative costs of each plan shall be totally borne by the premium payments of the participants or local governing bodies electing to participate in that plan. The director is authorized to employ such administrative practices and procedures with respect to these optional plans as are authorized for the administration of other plans under this article. The director shall establish separate funds: (1) For deposit of dental insurance premiums and payment of dental insurance claims; (2) for deposit of optical insurance premium payments and payment of optical insurance claims; (3) for deposit of disability insurance premium payments and payment of disability insurance claims; and (4) for deposit of audiology and hearing-aid service insurance premiums and payment of audiology and hearing-aid insurance claims. Such funds shall not be supplemented by nor be used to supplement any other funds.

§5-16-17. Preexisting conditions not covered; defined.

A preexisting condition is an injury, or sickness, or any condition relating to that injury, or sickness, for which a participant is diagnosed, receives treatment, or incurs expenses within three months prior to the effective date of coverage: Provided, That a preexisting condition shall not include a condition which meets the definition of handicap as provided in section three, article eleven, chapter five of this code. In determining whether the preexisting condition limitation provision applies to an eligible employee or dependent, the public employees insurance agency shall credit the time such person was covered under any previous employer-based health benefit plan, any comparable individual health benefit plan, or any 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 an applicable waiting period under such plan.

For all participants enrolling in the plan after the effective date of this section, no payment shall be made
for expenses incurred for or in connection with a preexisting condition unless the expenses are incurred after the expiration of a one-year period during which the participant is continuously participating in the plan.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

All employers operating from state general revenue or special revenue funds or federal funds or any combination thereof shall budget the cost of insurance coverage provided by the public employees insurance agency to current and retired employees of the employer as a separate line item, titled “PEI”, in its respective annual budget and shall be responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge general revenue funds for insurance benefits for retirees under section thirteen of this article must provide documentation to the director that such benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with general revenue funds for twelve months prior to retirement.

Should the general revenue appropriation for any employer, including a county board of education, be insufficient to cover the cost of insurance coverage for such employer's participating employees, retired employees and surviving dependents, the employer shall pay the reminder of such cost from its “personal services” or “unclassified” line items or, in the case of a county board of education, from other funds: Provided, That local excess levy funds shall be used only for the purposes for which they were raised: Provided, however, That after approval of its annual financial plan but in no event later than the thirty-first day of December of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education will be required to pay for covered employees during the following fiscal year: Provided further, That
said amount shall not exceed five million dollars during fiscal year one thousand nine hundred ninety-three: And provided further, That the finance board and department of education shall determine the extent to which state school aid appropriations are being used by the county school boards to pay employer premiums for employees whose positions are not funded by state revenues and shall develop and implement a plan to minimize such expenditures.

All other employers not operating from the state general revenue fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish such employers' share of premium costs to reflect and pay the actual costs of such coverage including incurred but not reported claims.

The contribution of such other employers (namely: A county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of the code) for their employees shall be such percentage of the cost of the employees' insurance package as the employers deem reasonable and proper under their own particular circumstances.

The employee's proportionate share of the premium or cost shall be withheld or deducted by the employer from such employee's salary or wages as and when paid and such sums shall be forwarded to the director with such supporting data as the director may require.
All moneys received by the public employees insurance agency shall be deposited in a special fund or funds as are necessary in the state treasury and the treasurer of the state shall be custodian of such fund or funds and shall administer such fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The treasurer shall pay all warrants issued by the state auditor against such fund or funds as the director may direct in accordance with the provisions of this article. On and after the first day of July, one thousand nine hundred eighty-eight, all payments previously required to be made to the public employees insurance board shall be made to the public employees insurance agency.

§5-16-22. Permissive participation; exemptions.

The provisions of this article shall not be mandatory upon any employee or employer who is not an employee of or is not the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units or a county board of education, and nothing contained in this article shall be construed so as to compel any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of article two-b, chapter twenty-one-a of this code shall not be required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost thereof may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but any such employee or employer shall not remain enrolled in both such programs. The provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code,
relating to group life insurance, accident and sickness insurance, and group accident and sickness insurance, shall not be applicable to the provisions of this article whenever the provisions of said articles and chapter are in conflict with or contrary to any provision set forth herein or to any plan or plans established by the public employees insurance agency.

Employers, other than the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education shall be exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It shall be the duty of the clerk or secretary of the governing body of an employer who by such majority vote becomes a participant in the insurance program to notify the director not later than ten days after such vote.

Any employer, whether such employer participates in the public employees insurance agency insurance program as a group or not, which has retired employees, their dependents, or surviving dependents of deceased retired employees who participate in the public employees insurance agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents, or surviving dependents of deceased retired employees as the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education pay for their retired employees, their dependents, and surviving dependents of deceased retired employees, as determined by the finance board. Each employer is hereby authorized and required to budget for and make such payments.

§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 the premium contribution established by the finance board after any extended coverage to which he or she, his or her spouse and dependents may be entitled by virtue of his or her accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired. Any employee who voluntarily retires, as provided by law, shall be eligible to participate in the public employees' health insurance program at the premium contribution established by the finance board after any extended coverage to which he or she, his or her spouse and dependents may be entitled by virtue of his or her accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired. The dependents of any deceased retired employee shall be entitled to continue their participation and coverage upon payment of the premium contribution established by the finance board. In establishing the cost of health insurance coverage for retired employees and their spouses and dependents, the finance board, in its discretion, may cause the claims experience of 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 or her employer, shall, subject to the following provisions of this paragraph, be entitled to continue his or her coverage until he or she returns to his or her 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 or her own expense for the cost of coverage, based upon actuarial experience; and the director shall prepare, by rule and regulation, for such participation and coverages under declining term insurance and optional additional coverage for such retirees.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


Nothing in this article shall be construed to limit the ability of county boards of education to use funds appropriated to county boards of education pursuant to this article to pay employer premiums to the public employees insurance agency for employees whose positions are funded pursuant to this article. Funds appropriated to county boards of education pursuant to this article shall not be used to pay employer premiums for employees of such boards whose positions are not, or will not be within twenty months, funded by funds appropriated pursuant to this article.
CHAPTER 106
(H. B. 4752—By Delegates L. White and Farris)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fifteen, article fifteen, chapter thirty-three of said code; and to amend and reenact sections two, three and four, article sixteen-c of said chapter, all relating to accident and sickness insurance policies; requiring that coverage for mammograms, pap smears and prostate cancer checkups be included in the benefits for public employees; requiring basic policy benefits to be approved by the insurance commissioner; adding prostate checkups to the list of benefits which may be included in basic individual and group insurance policies; and requiring a twelve-month period without insurance as a prerequisite for qualifying for a basic individual or group accident and sickness insurance policy plan.

Be it enacted by the Legislature of West Virginia:

That sections seven and nine, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section fifteen, article fifteen, chapter thirty-three be amended and reenacted; and that sections two, three and four, article sixteen-c of said chapter 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.
33. Insurance.
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.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules and regulations for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts, reinsurance; certificates for covered employees; discontinuance of contracts.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules and regulations for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules and regulations for the administration of such plans, subject to the limitations contained in this article. Such plans shall include coverages and benefits for X-ray and laboratory services in connection with mammograms and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age fifty and over. Such plans may also include, among other things, medicines, medical equip-
ment, prosthetic appliances, and such other inpatient and outpatient services and expenses deemed appropriate and desirable by the agency.

(b) The agency shall make available to each employee herein made eligible, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance in an amount not to exceed fifty thousand dollars for life insurance and fifty thousand dollars for accidental death insurance as established under the rules and regulations of the agency. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the agency, included in such optional coverage, at full cost to the employee, in an amount not to exceed five thousand dollars for life insurance and five thousand dollars for accidental death insurance for the spouse and not to exceed two thousand dollars in life insurance and two thousand dollars in accidental death insurance for each eligible dependent; and with full authorization hereby to the agency to make the same available and provide such opportunity of purchase to each employee.

(c) The finance board may cause to be separately rated for claims experience purposes (1) all employees of the state of West Virginia, (2) all teaching and professional employees of the university of West Virginia board of trustees or the board of directors of the state college system and county boards of education, (3) all nonteaching employees of the university of West Virginia board of trustees or the board of directors of the state college system and county boards of education, or (4) any other categorization which would ensure the stability of the overall program.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.
(a) The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein provided for shall include coverages and benefits for X-ray and laboratory services in connection with mammograms and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age fifty and over. Such benefits shall include, but not be limited to, the following:

(1) Baseline or other recommended mammograms for women ages thirty-five to thirty-nine, inclusive;

(2) Mammograms recommended or required for women age forty to forty-nine, inclusive, every two years or as needed;

(3) A mammogram every year for women age fifty and over;

(4) A pap smear annually or more frequently based on the woman's physician's recommendation for women age eighteen and over; and

(5) A checkup for prostate cancer annually for men age fifty or over.

(c) The group life and accidental death insurance herein provided for shall be in the amount of ten thousand dollars for every employee. The amount of the group life and accidental death insurance to which an
employee would otherwise be entitled shall be reduced to five thousand dollars upon such employee attaining age sixty-five.

(d) All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

(e) The provisions of article three, chapter five-a of this code, relating to the division of purchases of the department of finance and administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as herein authorized, said director shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired. The director shall deal directly with insurers in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for such agent or agents may be paid by the underwriting company or companies: Provided, That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award such contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries
or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.

(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of such contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(g) Each employee who is covered under any such contract or contracts shall receive a statement of benefits to which such employee, his or her spouse and his or her dependents are entitled thereunder, setting forth such information as to whom such benefits shall be payable, to whom claims shall be submitted, and a summary of the provisions of any such contract or contracts as they affect the employee, his or her spouse and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

CHAPTER 33. INSURANCE

Article
15. Accident and Sickness Insurance.
16C. Employer Group Accident and Sickness Insurance Policies.

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; legislative rules; premiums; applicability.

(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;

(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.

(8) Medical and laboratory services in connection with annual checkups for prostate cancer in men age fifty and over.

(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.

(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: Provided, That any additional benefit or coverage must first be approved by the insurance commissioner.

(f) A basic policy issued pursuant to this section may
include deductibles, copayments and maximum benefits:

Provided, That any additional benefit must first be approved by the insurance commissioner.

(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.

(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.

(i) A basic policy provided by this section shall be issued only to individuals who have been without health insurance coverage for at least one year prior to application for the same.

ARTICLE 16C. EMPLOYER GROUP ACCIDENT AND SICKNESS INSURANCE POLICIES.

§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-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 which have been approved by the insurance commissioner.

(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.

(e) "Eligible employer" means a corporation, partner-
ship or proprietorship which has done business in this
state for at least one year and has not offered health
insurance to all of its employees within the twelve
months preceding its application for a basic policy as
defined by this section.

(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.

(g) "Insurer" means any of the following entities that
holds a valid certificate of authority from the commis-
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 pursu-
ant to article twenty-five-a of this chapter.

(h) "Premium" means the consideration for insurance,
by whatever name called.

§33-16C-3. Exemption from mandatory benefits and
coverages; optional benefits and cover-
ages; deductibles and copayments.

(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.

(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: Provided, That any
additional benefit or coverage must first be approved by the insurance commissioner.

(c) A basic policy issued pursuant to this article may include deductibles, copayments and maximum benefits: Provided, That any additional benefit must first be approved by the insurance commissioner.

§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.

(8) Medical and laboratory services in connection with annual checkups for prostate cancer in men age fifty and over.
AN ACT to amend article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; to amend and reenact sections one and two, article three of said chapter; to further amend said article by adding thereto fifteen new sections, designated sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two; and to amend and reenact section thirteen, article four of said chapter, all relating to insurance; defining "authorized insurer" and "unauthorized insurer"; requiring licenses; providing a criminal penalty for noncompliance with licensing requirements; designating certain provisions as the unauthorized insurers act; requiring insurer to be authorized in state or country of domicile; prohibiting transaction of kinds of insurance not defined in section ten, article one of said chapter; designating other unlawful insurance transactions; providing for injunctive relief; creating means of service of process on an unauthorized insurer; providing for enforcement of foreign decrees; establishing a penalty for transacting unauthorized acts of insurance; making persons providing specified coverage subject to regulation by the insurance commissioner; requiring proof of regulation by the federal government; insurers required to submit to examination by the insurance commissioner; setting forth information to be provided to agents, brokers and others; establishing requirements for the statement of charges; providing for notice of hearing and orders after hearings; administrative fines and modification and review of orders; authorizing administrative fines for violations; and providing for substitute service of
process on unlicensed insurers in proceedings before the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

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

Article 1. Definitions.

§33-1-20. Authorized and unauthorized insurers.

1. (a) An "authorized insurer" is one authorized to transact insurance or reinsurance in this state under a subsisting license issued by the commissioner;

2. (b) An "unauthorized insurer" is one not so authorized.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.
§33-3-2. Qualifications for license.
§33-3-18. Purpose of enactment of provisions regarding unauthorized insurers.
§33-3-19. Short title.
§33-3-20. Unlawful transaction of business: exceptions.
§33-3-21. Injunctive relief.
§33-3-22. Service of process on unauthorized insurer.
§33-3-23. Enforcement of foreign decrees.
§33-3-24. Penalty.
§33-3-25. Person providing specified coverage.
§33-3-26. Proof of regulation by a federal government agency.
§33-3-27. Submission to examination by commissioner.
§33-3-28. Information to be provided to agents, brokers and others.
§33-3-29. Statement of charges; notice of hearing.
§33-3-30. Order after hearing; administrative fines; modification of order.
§33-3-1. License required.

(a) No person may act as an insurer and no insurer may transact insurance in West Virginia except as authorized by a valid license issued by the commissioner, except as to such transactions as are expressly otherwise provided for in this chapter.

(b) No such license may be required for an insurer, formerly holding a valid license, to enable it to investigate and settle losses under its policies lawfully written in West Virginia while such license was in effect, or to liquidate such assets and liabilities of the insurer (other than the collection of new premiums) as may have resulted from its former authorized operations in West Virginia.

(c) An insurer not transacting new insurance business in West Virginia but continuing collection of premiums on and servicing of policies remaining in force as to residents of or risks located in West Virginia, is transacting insurance in West Virginia for the purpose of premium and annuity tax requirements but is not required to have a license therefor.

(d) A domestic insurer or a foreign insurer from offices or by personnel or facilities located in this state shall not solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting license granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this state.

(e) Any officer, director, agent, representative or employee of any insurer who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§33-3-2. Qualifications for license.

(a) To qualify for a license to transact insurance in
West Virginia an insurer must be otherwise in compliance with the provisions of this chapter and with its charter, and must be an incorporated stock insurer, or an incorporated mutual insurer or a reciprocal insurer.

(b) No license to transact insurance in this state may be issued, renewed or continued in effect to any domestic, foreign or alien insurer which is owned, or financially controlled, in whole or in part, by any state, or by a foreign government, or any political subdivision, instrumentality or agency of either, or which is an agency of any such state, government or subdivision, unless such insurer was so owned, controlled or constituted prior to the first day of January, one thousand nine hundred fifty-five, and licensed to transact insurance in this state prior to the first day of January, one thousand nine hundred fifty-five.

(c) No foreign insurer may be authorized to transact insurance in this state if it is domiciled in a state that does not have reserve requirements that are equal to or greater than those required by article seven of this chapter, as applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States of America, or which transacts business anywhere in the United States of America on the assessment plan, the stipulated premium plan or any similar plan.

(d) No insurer may be authorized to transact a kind of insurance in this state unless duly authorized or qualified to transact such insurance in the state or country of its domicile.

(e) No insurer may be authorized to transact in this state any kind of insurance which is not defined in section ten, article one of this chapter.

(f) No authority to transact such insurance may be granted or continued to any insurer that is in arrears to the state for fees, licenses, taxes, assessments, fines or penalties accrued on insurance previously transacted in this state.

§33-3-18. Purpose of enactment of provisions regarding unauthorized insurers.
The purpose of the enactment of this section and sections nineteen through thirty-two, inclusive, of this article in the regular session of the Legislature during the year one thousand nine hundred ninety-two, is to subject certain persons and insurers to the jurisdiction of the commissioner and the courts of this state in suits by or on behalf of the state. The Legislature declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to transact an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the Legislature provides methods in this article for substituted service of process upon such insurers in any proceeding, suit or action in any court and substituted service of any notice, order, pleading or process upon such insurers in any proceeding by the commissioner to enforce or effect full compliance with the insurance laws of this state.

§33-3-19. Short title.
Sections eighteen through thirty-two, inclusive, of this article constitute and may be cited as the "Unauthorized Insurers Act."

§33-3-20. Unlawful transaction of business; exceptions.
(a) As used in this section unless otherwise indicated, "insurer" includes:

(1) All corporations, associations, trusts, partnerships, natural persons and other legal entities engaged as principals in the business of insurance, including a fraternal benefit society, a nonprofit corporation offering dental, hospital and medical services, a health maintenance organization and an organization for dental care; and

(2) Interinsurance exchanges and mutual benefit societies.

(b) It is unlawful for any insurer to transact an
insurance business in this state as set forth in subsection (c) of this section, without a license from the commissioner. This section does not apply to:

(1) Any transaction for which a license is not required pursuant to section one of this article including, but not limited to, the lawful transaction of surplus lines insurance and reinsurance by insurers;

(2) Attorneys at law acting in the ordinary relation of attorney and client in the adjustment of claims or losses; and

(3) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on cargo vessels, their craft or hulls, their cargoes, marine builder's risk, commercial marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean marine forms of policy. Transactions in this state involving group life insurance, group accident and sickness insurance or group annuities providing coverage under policies that are recognized under articles fourteen and sixteen, respectively, of this chapter where (1) the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs, and (2) except for group annuities, the insurer complies with section thirty-five, article six of this chapter. The commissioner may require the insurer which has issued such master policy to submit such information as the commissioner requires in order to determine if probable cause exists to convene a hearing to determine whether the total charges for the insurance to the persons insured are reasonable in relation to the benefits provided under such policy.

(c) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer constitutes the transaction of an insurance business in this state:
(1) The making of or proposing to make, as an insurer, an insurance contract;

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

(3) The taking or receiving of any application for insurance;

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(6) The acting, directly or indirectly, as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, forwarding of applications, delivery of policies or contracts, inspection of risks, fixing of rates, investigating or adjusting of claims or losses, transacting of matters after effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance that are resident, located or to be performed in this state. The provisions of this paragraph do not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of such an insured;

(7) The transacting of any kind of insurance business specifically recognized as transacting an insurance business or transacting insurance within the meaning of provisions of this chapter;

(8) The transacting of or proposing to transact any insurance business in substance equivalent to any of the activities described in this subsection, in a manner designed to evade the provisions of this chapter.
(d) The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect, or in any action filed on behalf of the commissioner is at such point as above described or, at the election of the commissioner, in the circuit court of Kanawha County.

(e) The failure of an insurer transacting insurance business in this state to obtain a license does not impair the validity of any act or contract of the insurer and does not prevent the insurer from defending any action at law or suit in equity in any court of this state: Provided, That no insurer transacting insurance business in this state without a license may maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until the insurer has obtained a license. In the event of a failure by an unauthorized insurer to pay any claim or loss within the provisions of an insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract is liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of the insurance contract.

§33-3-21. Injunctive relief.

(a) Whenever the commissioner believes, from evidence satisfactory to him or her, that any insurer is violating or is about to violate the provisions of sections eighteen through thirty-two, inclusive, of this article, the commissioner may cause a complaint to be filed in any appropriate circuit court of this state seeking to enjoin and restrain such insurer from continuing such violation or engaging therein or doing any act in furtherance thereof.

(b) The circuit court shall have jurisdiction of the proceeding and have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper. The commissioner may elect to file such complaint in any circuit where transactions have occurred or in the circuit court of Kanawha County.
§33-3-22. Service of process on unauthorized insurer.

(a) Any act of transacting an insurance business as set forth in section twenty of this article by any unauthorized insurer is equivalent to and constitutes an irrevocable appointment by such an insurer, binding upon him or her, his or her executor or administrator, or successor in interest, of the secretary of state or his or her successor in office, to be the true and lawful attorney of such an insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of transacting an insurance business in this state by such an insurer. Any act of transacting an insurance business in this state by any unauthorized insurer is signification of its agreement that any such lawful process in such a court action, suit or proceeding any such notice, order, pleading or process in such an administrative proceeding before the commissioner so served is of the same legal force and validity as personal service or process in this state upon such an insurer.

(b) Service of process in such an action must be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his or her office, two copies thereof and by payment to the secretary of state the fees prescribed by law. Service upon the secretary of state as attorney is service upon the principal.

(c) Upon receipt by the secretary of state of two copies of the process to be served, as set forth in subsection (b) of this section and the payment of all relevant fees, the secretary of state shall cause such process to be served in the manner dictated by section thirteen, article four of this chapter, for service of process on unauthorized or unlicensed insurers.

(d) For the purposes of this section, "process" in an action in a court includes only a summons or the initial documents served in such an action. The secretary of state is not required to serve any documents in such an action after the initial service of process.
(e) Nothing in this section limits or affects the right to serve any process, notice, order or demand upon any person or insurer in any other manner permitted by law.

§33-3-23. Enforcement of foreign decrees.

(a) As used in this section:

(1) "Foreign decree" means any decree or order of a court located in a reciprocal state or other state including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

(2) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(3) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in such state or territory.

(b) The commissioner may proceed in the courts of this state, any reciprocal state, or any other state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

(c) The commissioner shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(d) A copy of any foreign decree authenticated in accordance with federal statutes may be filed in the office of the clerk of any circuit court of this state. The clerk of the circuit court, upon verifying with the commissioner that the decree or order qualified as a foreign decree, shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree, so filed, has the same effect and shall be deemed as a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceed-
ings for reopening, vacating or staying as a decree of
a circuit court of this state and may be enforced or
satisfied in like manner.

(e) At the time of the filing of the foreign decree,
counsel for the commissioner shall make and file with
the clerk of the circuit court an affidavit setting forth
the name and last known post office address of the
defendant. Promptly upon the filing of the foreign
decree and the affidavit, the clerk of the circuit court
shall mail notice of the filing of the foreign decree to
the defendant at the address given and to the commis-
sioner and shall make a note of the mailing in the
docket. In addition, counsel for the commissioner may
mail a notice of the filing of the foreign decree to the
defendant and to the commissioner and may file proof
of mailing with the clerk of the circuit court. Lack of
mailing notice of filing by the clerk of the circuit court
shall not affect the enforcement proceedings if proof of
mailing by the counsel for the commissioner has been
filed. No execution or other process for enforcement of
a foreign decree filing under this section may issue until
thirty days after the date the decree is filed.

(f) If the defendant shows the circuit court:

(1) That an appeal from the foreign decree is pending
or will be taken, or that a stay of execution has been
granted, the court shall stay enforcement of the foreign
decree until the appeal is concluded, the time for appeal
expires or the stay of execution expires or is vacated
upon proof that the defendant has furnished the security
for the satisfaction of the decree required by the state
in which it was rendered.

(2) Any ground upon which enforcement of a decree
of any circuit court of this state would be stayed, the
court may stay enforcement of the foreign decree which
is required in this state.

(g) Any person filing a foreign decree shall pay to the
clerk of the circuit court such fees as are otherwise
authorized by this code.

§33-3-24. Penalty.
Any unauthorized insurer who transacts any unauthorized act of an insurance business as set forth in sections eighteen through thirty-two of this article, inclusive, may be fined by the commissioner, after notice and hearing, pursuant to section thirteen, article two of this chapter, such fine not to exceed twenty thousand dollars.

§33-3-25. Person providing specified coverage.

Any person who transacts insurance, transacts an insurance business or provides insurance coverage in this state for the cost of:

(a) Medical care;
(b) Surgery;
(c) Chiropractic;
(d) Physical therapy;
(e) Speech pathology;
(f) Audiology;
(g) Professional care of mental health;
(h) Dental care;
(i) Hospital care; or
(j) Ophthalmic care, whether the coverage provides for direct payment, reimbursement or any other method of payment, is subject to regulation by the commissioner and to the provisions of this code unless he or she shows that while transacting insurance, or transacting an insurance business or providing such coverage he or she is subject to regulation by an agency of federal government.

§33-3-26. Proof of regulation by a federal government agency.

A person may show that he or she is subject to regulation by an agency of the federal government by providing the commissioner with the appropriate certificate or other document which permits the person to provide those services.
§33-3-27. Submission to examination by commissioner.

Any such person who is unable to show, upon request by the commissioner, that he or she is subject to regulation by an agency of the federal government shall submit to an examination by the commissioner to determine the organization and solvency of the person and to determine whether he or she is in compliance with the applicable provisions of this code.

§33-3-28. Information to be provided to agents, brokers and others.

An administrator who advertises or administers coverage in this state which is:

(a) Of a kind described in section twenty-five of this article; and

(b) Provided by a person described in section twenty-seven of this article shall inform each agent, broker or other person who advertises, procures, renews, continues, sells or negotiates or solicits the sale of such coverage, of the elements of the coverage, including the amount of excess insurance or reinsurance in effect.

§33-3-29. Statement of charges; notice of hearing.

(a) If the commissioner has reason to believe that a person described in section twenty-seven of this article is providing any type of coverage described in section twenty-five of this article, the commissioner may:

(1) Issue a statement of charges and a notice of a hearing to be held on those charges; and

(2) Serve the statement and notice upon the person so charged.

(b) The statement and notice must be:

(1) Issued pursuant to section thirteen, article two of this chapter; and

(2) Served personally, or by certified or registered mail at the last known address of such person, or in compliance with section twenty-two of this article.

§33-3-30. Order after hearing; administrative fines; modification of order.
(a) After the commissioner conducts a hearing pursuant to section twenty-nine of this article, he or she shall issue an order pursuant to section thirteen, article two of this chapter. If the commissioner determines that the person being charged has engaged in a practice prohibited by this chapter, the commissioner shall order him or her to cease and desist from that practice.

(b) If the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order him or her to pay an administrative fine of not more than one thousand dollars for each act or violation up to an aggregate penalty of twenty thousand dollars.

(c) The commissioner may modify or set aside, in whole or in part, any order issued by him or her pursuant to this section, but any such action must be made before the expiration of the period for appeal or before the official record in the proceeding has been filed with the court pursuant to section fourteen, article two of this chapter.

§33-3-31. Review of order.
An order issued pursuant to section thirty of this article may be reviewed pursuant to section fourteen, article two of this chapter.

§33-3-32. Administrative fine for violation.
If a person violates an order issued pursuant to section thirty of this article, the commissioner may impose an administrative fine after giving notice and a hearing pursuant to section thirteen, article two of this chapter. Such fine may not exceed five thousand dollars for each violation.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-13. Service of process on unlicensed insurers.
(a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain insurance contracts and to subject said insurers to the jurisdiction of the courts of this state in suits by
or on behalf of the insurance commissioner of West Virginia. The Legislature declares that it is a subject of concern that certain insurers, while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the insurance commissioner with the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers not licensed to transact insurance in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant fora for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its powers to protect its residents and to define, for the purpose of this section, what constitutes transacting insurance in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth Congress of the United States, chapter twenty, first session, Senate number three hundred forty, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unlicensed foreign or alien insurer: (i) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (ii) the solicitation of applications for such contracts, (iii) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (iv) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the secretary of state and his or her successor in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or benefi-
ciary arising out of any such contract of insurance, and in any action, suit or proceeding which may be instituted by the insurance commissioner in the name of any such insured or beneficiary or in the name of the state of West Virginia, and in any administrative proceeding before the commissioner, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process upon any such insurer or upon an insurer pursuant to section twenty-two, article three of this chapter in any such action or proceeding in any court of competent jurisdiction of this state, or in any administrative proceeding before the commissioner, may be made by serving the secretary of state or his or her chief clerk with two copies and an original thereof and the payment to him or her of a fee of five dollars. The secretary of state shall forward a copy of such process by registered or certified mail to the defendant at its last-known principal place of business and shall keep a record of all process so served upon him or her. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by or on behalf of the plaintiff or moving party to the defendant, or responding party, at its last-known principal place of business by registered or certified mail with return receipt requested. The plaintiff or moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of such court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused. Service of process
so made shall be deemed to have been made within the territorial jurisdiction of any court in this state.

(3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection (b) be valid if served upon any person within this state who, in this state on behalf of such insurer, is

(A) Soliciting insurance, or

(B) Making, issuing or delivering any contract of insurance, or

(C) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance: Provided, That notice of such service and a copy of such process are sent within ten days thereafter, by or on behalf of the plaintiff or moving party to the defendant or responding party at the last-known principal place of business of the defendant or responding party, by registered or certified mail with return receipt requested. The plaintiff or moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of such court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party, or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party, or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused.

(4) The papers referred to in subdivisions (2) and (3) of this subsection (b) shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the plaintiff or moving party. Service of process shall be complete ten days after such process and the accompanying papers are filed in accordance with this section.
(5) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(c) (1) Before any unauthorized or unlicensed foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, or any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against such insurer, such unauthorized or unlicensed insurer shall either (i) deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner in an administrative proceeding before the commissioner, cash or securities or file with such clerk or the commissioner a bond with good and sufficient sureties, to be approved by the court or the commissioner, in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding: \textit{Provided}, That the court or the commissioner may in its, his or her respective discretion make an order dispensing with such deposit or bond where the auditor of the state shall have certified to such court or commissioner that such insurer maintains within this state funds or securities in trust or otherwise sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding; or (ii) procure a license to transact insurance in this state.

(2) The court or the commissioner in any action, suit or proceeding in which service is made in the manner provided in subdivision (2) or (3), subsection (b) of this section may, in its, his or her respective discretion, order such postponement as may be necessary to afford the defendant or responding party reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (c) and to defend such action or proceeding.

(3) Nothing in subdivision (1) of this subsection (c) is to be construed to prevent an unauthorized or unlicensed foreign or alien insurer from filing a motion to set aside service thereof made in the manner provided in
subdivision (2) or (3), subsection (b) of this section on the
grounds that such insurer has not done any of the acts
enumerated in subdivision (1), subsection (b) of this
section, or in section twenty-two, article three of this
chapter.

(d) In any action against an unauthorized or unli-
censed foreign or alien insurer upon a contract of
insurance issued or delivered in this state to a resident
thereof or to a corporation authorized to do business
therein, if the insurer has failed for thirty days after
demand prior to the commencement of the action to
make payment in accordance with the terms of the
contract, and it appears to the court that such refusal
was vexatious and without reasonable cause, the court
may allow to the plaintiff a reasonable attorney's fee and
include such fee in any judgment that may be rendered
in such action. Such fee shall not exceed twelve and one-
half percent of the amount which the court finds the
plaintiff is entitled to recover against the insurer, but
in no event shall such fee be less than twenty-five
dollars. Failure of an insurer to defend any such action
shall be deemed prima facie evidence that its failure to
make payment was vexatious and without reasonable
cause.

CHAPTER 108
(Com. Sub. for H. B. 4666—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to repeal section twenty-seven, article five, chapter
thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; to amend and
reenact section three, article two of said chapter; to
amend and reenact sections fourteen and fifteen, article
four of said chapter; to further amend said article by
adding thereto two new sections, designated sections
fifteen-a and fifteen-b; to amend and reenact section
twenty-six, article five of said chapter; to amend and reenact section five, article ten of said chapter; to amend and reenact section three-d, article sixteen of said chapter; to amend and reenact sections two, thirteen and eighteen, article twenty-two of said chapter; to amend and reenact section two, article twenty-three of said chapter; to amend and reenact sections two, thirteen and eighteen, article twenty-four of said chapter; to amend and reenact sections six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; to amend and reenact sections two, three, four, five and nine, article twenty-seven of said chapter; to further amend said article by adding thereto two new sections, designated sections two-a and thirteen; to amend and reenact section five-b, article twenty-eight of said chapter; to amend and reenact section six, article thirty-one of said chapter; to amend and reenact sections one, two, three, four, five, eight, nine, fourteen, sixteen, seventeen, eighteen, nineteen and twenty-one, article thirty-two of said chapter; to further amend said article by adding thereto a new section, designated section twenty-four; and to further amend said chapter by adding thereto two new articles, designated articles thirty-six and thirty-seven, all relating to insurance; making technical and other changes in order to comply with federal insurance oversight requirements; insurance commissioner; duties of commissioner; general provisions; financial statement filings; reinsurance; credits allowed for reinsurance; life reinsurance agreements; reduction of liability; establishment of asset; organization and procedures of domestic stock and mutual insurance companies; reinsurance by domestic stock insurers and domestic mutual insurers; bulk reinsurance; rehabilitation and liquidation; grounds for rehabilitation of domestic insurers; medicare supplement insurance; removing references to eligibility for medicare by reason or reasons of age; farmers' mutual fire insurance companies; applicability of other provisions; reinsurance; joint policies; mergers and consolidations; fraternal benefit societies; applicability of other provisions; hospital service corporations, medical service
corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; grounds for rehabilitation of a corporation; health care corporations, exemption from insurance laws; health maintenance organization act, statutory construction and relationship to other laws; insurance holding company systems; definitions; kinds of subsidiaries; investment authority and limitations in subsidiaries; acquisition of control of or merger with domestic insurer; registration, member of insurance holding company system; standards for transactions; criminal proceedings; recovery of funds by receiver; captive insurers; corporate organization; risk retention act; purpose; definitions; charter and license requirements of domestic risk retention group; registration required of foreign risk retention group prior to conducting business in state; risk retention groups required to file financial condition report annually; registration and filing fees for risk retention groups; premium tax rate for risk retention groups; examinations regarding financial condition; notification to purchaser; compulsory associations, no coverage by state guaranty funds; registration of risk purchasing groups; restrictions on insurance purchased by risk purchasing groups; notification to purchaser; administrative and procedural authority regarding risk retention groups and risk purchasing groups; agents to obtain licenses; duties of groups operating prior to enactment; business transacted with producer-controlled property/casualty insurer; definitions; limitations on business placed with controlled insurer; liabilities of controlling producer in the event of insolvency, managing general agents; definitions; licensure requirements; required contract provisions; duties of insurers; examination authority; penalties and liabilities; fines; revocation or suspension of license; commissioner authorized to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Insurance Commissioner.
10. Rehabilitation and Liquidation.
16. Group Accident and Sickness Insurance.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
27. Insurance Holding Company Systems.
ARTICLE 2. INSURANCE COMMISSIONER.

*§33-2-3. Duties of the commissioner; employment of legal counsel.

(a) The commissioner shall enforce the provisions of this chapter and perform the duties required thereunder; shall affix the commissioner's official seal to all documents and papers required to be filed in other states by domestic insurers and to other papers when an official seal is required; and shall, on or before the tenth day of each month, pay into the state treasury all fees and moneys which he or she has received during the preceding calendar month.

(b) Notwithstanding any provisions of this code to the contrary, the commissioner may acquire such legal services as are deemed necessary, including representation of the commissioner before any court or administrative body. Such counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commissioner may call upon the attorney general for legal assistance and representation as provided by law.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

§33-4-15. Reinsurance.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

§33-4-15b. Life reinsurance agreements; reduction of liability; requirements.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

(a) Each licensed insurer shall annually on or before the first day of March, unless the time is extended by

*Clerk's Note: This section was also amended by H. B. 4759 (Chapter 54), which passed subsequent to this act.
the commissioner for good cause shown, file with the
commissioner a true statement of its financial condition,
transactions and affairs as of the preceding thirty-first
day of December. Such statement shall be on the appro-
propriate national association of insurance commissioners
annual statement blank; shall be prepared in accordance
with the national association of insurance commissioners
annual statement instructions handbook; and shall follow
the accounting practices and procedures prescribed by
the national association of insurance commissioners
accounting practices and procedures manual as
amended: Provided, That each licensed insurer shall also
file true statements of financial condition on a more fre-
quent basis if the commissioner so orders. The commis-
sioner shall establish the frequency, due date and form
acceptable to him or her for such filings: Provided,
however, That the statement of an alien insurer shall
relate only to its transactions and affairs in the United
States unless the commissioner requires otherwise.

(b) Each domestic insurer shall also file with the
commissioner a true quarterly statement of its financial
condition, transactions and affairs as of the thirty-first
day of March, the thirtieth day of June, and the thirtieth
day of September of each year. Quarterly statements
shall be due forty-five days after the end of each quarter.
All quarterly statements shall be submitted on the
appropriate national association of insurance commis-
sioners quarterly statement blank; shall be prepared in
accordance with the national association of insurance
commissioners quarterly statement instructions; and
shall follow the accounting practices and procedures
prescribed by the national association of insurance
commissioners accounting practices and procedures
manual, as amended. The commissioner may subject any
licensed insurer to the requirements of this section
whenever the commissioner deems it necessary.

(c) The commissioner may require that all or part of
the information contained in the annual statement blank
and the quarterly statement blanks be submitted to the
department in a computer-readable form compatible
with the electronic data processing system of the
department.

(d) Each domestic, foreign and alien insurer, organ-
ization or corporation who is subject to the requirements of this section shall annually, on or before the first day of March each year, and forty-five days after the end of the first, second and third calendar quarters, file with the national association of insurance commissioners a copy of its annual statement convention blank and the quarterly statement blanks, along with such additional filings as prescribed by the commissioner and shall pay the fee established by the national association of insurance commissioners for filing, review or processing of the information. 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 amendments and addenda to the annual statement filing and quarterly statement filings subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(e) 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.

(f) 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 and the quarterly statement 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.

(g) 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
(h) The commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement or the quarterly statement blanks, or any other statement of financial condition required by this section, when due or within any extension of time which the commissioner, for good cause, may have granted.

(i) Any variance to the requirements of this section shall require the express authorization of the commissioner.

(j) The commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code 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) Credit for reinsurance shall be governed by the provisions of sections fifteen-a and fifteen-b of this article.

(c) 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.

(d) An insurer may not 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.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

(a) For purposes of this section, an "accredited reinsurer" is one which:

(1) Has filed an application for accreditation and received a letter of accreditation from the commissioner;
(2) Is licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia;

(3) Has filed with the application a certified statement that the company submits to this state’s jurisdiction and that the company will comply with the laws, rules and regulations of the state of West Virginia;

(4) Has filed with the application a certified statement that the company submits to the examination authority granted the commissioner by section nine, article two of this chapter and will pay all examination costs and fees as required by that section;

(5) Has filed with the application a copy of its most recent annual statement in a form consistent with the requirements of subdivision (8) of this subsection and a copy of its last audited financial statement;

(6) Has filed any other information the commissioner requests to determine that the company qualifies for accreditation under this section;

(7) Has remitted the applicable processing fee with its application for accreditation;

(8) Files with the commissioner after initial accreditation on or before the first day of March of each year a true statement of its financial condition, transactions and affairs as of the preceding thirty-first day of December. Such statement shall be on the appropriate national association of insurance commissioners annual statement blank; shall be prepared in accordance with the national association of insurance commissioners annual statement instructions; and shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual as amended. Such statement shall be accompanied by the applicable annual statement filing fee. The commissioner may grant extensions of time for filing of this annual statement upon application by the accredited reinsurer; and
(9) Files with the commissioner after initial accreditation by the first day of June of each year a copy of its audited financial statement for the period ending the preceding thirty-first day of December.

(b) If the commissioner determines that the assuming insurer has failed to continue to meet any of these qualifications, he or she may upon written notice and hearing, as prescribed by section thirteen, article two of this chapter, revoke an assuming insurer's accreditation. Credit shall not be allowed to a ceding insurer if the assuming insurers' accreditation has been revoked by the commissioner after notice and hearing.

(c) Credit for reinsurance shall be allowed a domestic ceding insurer or any foreign or alien insurer transacting insurance in West Virginia that is domiciled in a jurisdiction that employs standards regarding credit for reinsurance that are not substantially similar to those applicable under this article as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets one of the following requirements:

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state prior to the thirty-first day of December of the year for which the ceding insurer is claiming a credit for reinsurance.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through one of the fifty states of the United States or the District of Columbia and which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute, and the ceding insurer provides evidence suitable to the commissioner that the assuming insurer:

(A) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars: Pro-
vided, That the requirements of this paragraph do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; and

(B) The ceding insurer provides the commissioner with a certified statement from the assuming insurer that the assuming insurer submits to the authority of this state to examine its books and records granted the commissioner by section nine, article two of this chapter and will pay all examination costs and fees as required by that section; and

(C) The reinsurer complies with the provisions of subdivision (6), subsection (c) herein.

(4) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund as required by subsection (d) herein in a qualified United States financial institution, as defined by this section, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest, and complies with the provisions of subdivision (6) herein.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1) through (4), subsection (c) of this section, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all
requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal; and

(B) To designate the secretary of state as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. Such process shall be served upon the secretary of state, or accepted by him or her, in the same manner as provided for service of process upon unlicensed insurers under section thirteen of this article: Provided, That this provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(d) Whenever an assuming insurer establishes a trust fund for the payment of claims pursuant to the provisions of this section, the following requirements shall apply:

(1) The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. Such group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's
domiciliary regulator and its independent public accountants.

(2) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph; which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation; which submits to this state's authority to examine its books and records and bears the expense of the examination; and which has aggregate policyholders' surplus of ten billion dollars, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group. The group shall also maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities. Each member of such group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(3) Any trust that is subject to the provisions of this section shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust described herein shall remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(4) No later than the twenty-eighth day of February of each year the trustees of the trust shall report to the
commissioner in writing setting forth the balance of the
trust and listing the trust's investments at the preceding
year's end. The trustees shall certify the date of
termination of the trust, if so planned, or certify that
the trust shall not expire prior to the next following
December thirty-first.

(e) A reduction from liability for the reinsurance
ceded by a ceding insurer subject to the requirements
of this article to an assuming insurer not meeting the
requirements of subsection (c) of this section shall be
allowed in an amount not exceeding the liabilities
carried by the ceding insurer. Such reduction shall be
in the amount of funds held by or on behalf of the ceding
insurer, including funds held in trust for the ceding
insurer, under a reinsurance contract with such assum-
ing insurer as security for the payment of obligations
thereunder: Provided, That such security is held in the
United States subject to withdrawal solely by, and
under the exclusive control of, the ceding insurer; or, in
the case of a trust, held in a qualified United States
financial institution, as defined by this section. Such
security may be in the form of:

(1) Cash;

(2) Securities listed by the securities valuation office
of the national association of insurance commissioners
and qualifying as admitted assets; or

(3) Clean, irrevocable, unconditional letters of credit,
issued or confirmed by a qualified United States
financial institution, as defined by this section, no later
than the thirty-first day of December of the year for
which filing is being made, and in the possession of the
ceding company on or before the filing date of its annual
statement: Provided, That letters of credit meeting
applicable standards of issuer acceptability as of the
dates of their issuance or confirmation shall, notwith-
standing the issuing or confirming institution's subse-
quently failure to meet applicable standards of issuer
acceptability, continue to be acceptable as security until
their expiration, extension, renewal, modification or
amendment, whichever first occurs.
(f) For purposes of this section, a "qualified United States financial institution" means an institution that:

(1) Is organized or licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(g) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(1) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(h) The provisions of this section shall apply to all cessions on or after the first day of January, one thousand nine hundred ninety-three.

§33-4-15b. Life reinsurance agreements; reduction of liability; requirements.

(a) This section applies to all domestic life insurers and to all other licensed life insurers who are not subject to a substantially similar law or regulation in their domiciliary state.

(b) A life insurer subject to this article shall not, for reinsurance ceded, reduce any liability or establish any
asset in any financial statement filed with the department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

1. The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: Mortality, morbidity, investment or surrender benefit;

2. The reserve credit taken by the ceding insurer is not in compliance with this chapter, including actuarial interpretations or standards adopted by the department;

3. The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding company supporting the policy obligations transferred under the reinsurance agreement;

4. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement: *Provided*, That neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;

5. The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer: *Provided*, That termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

6. The ceding insurer shall, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;

7. No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account." and no
funds in such account are available for the payment of
benefits; or

(8) The reinsurance agreement involves the possible
payment by the ceding insurer to the reinsurer of
amounts other than from income reasonably expected
from the reinsured policies.

(c) Notwithstanding the provisions of subsection (b) of
this section, a life insurer subject to this article may,
with the prior approval of the commissioner, take such
reserve credit as the commissioner may deem consistent
with this chapter, including actuarial interpretations or
standards adopted by the commissioner.

(d) A reinsurance agreement or amendment to any
agreement shall not be used to reduce any liability or
to establish any asset in any financial statement filed
with the commissioner, unless the agreement, amend-
ment or a letter of intent has been duly executed by both
parties no later than the “as of date” of the financial
statement.

(e) In the case of a letter of intent, a reinsurance
agreement or an amendment to a reinsurance agree-
ment shall be executed within a reasonable period of
time, not exceeding ninety days from the execution date
of the letter of intent, in order for credit to be granted
for the reinsurance ceded.

(f) Life insurers subject to this article may continue
to reduce liabilities or establish assets in financial
statements filed with the commissioner for reinsurance
ceded under types of reinsurance agreements described
in subsection (b) of this section: Provided, That:

(1) The agreements were executed and in force prior
to the effective date of this article;

(2) No new business is ceded under the agreements
after the effective date of this article;

(3) The reduction of the liability or the asset estab-
lished for the reinsurance ceded is reduced to zero by
the thirty-first day of December, one thousand nine
hundred ninety-four, or such later date approved by the
commissioner as a result of an application made by the ceding insurer prior to the thirty-first day of December, one thousand nine hundred ninety-two;

(4) The reduction of the liability or the establishment of the asset is otherwise permissible under all other applicable provisions of this chapter, including actuarial interpretations or standards adopted by the commissioner; and

(5) The department is notified, within ninety days after the effective date of this section, of the existence of such reinsurance agreements and all corresponding credits taken in the ceding insurer's annual statement for the year one thousand nine hundred ninety-one.

ARTICLE 5. ORGANIZATION AND PROCEDURES OF DOMESTIC STOCK AND MUTUAL INSURERS.


(a) A domestic stock or mutual insurer may accept reinsurance for the same kinds of insurance and within the same limits as it is authorized to transact direct insurance, unless such reinsurance is prohibited by its articles of incorporation.

(b) A domestic stock or mutual insurer may reinsure all or substantially all its business in force, or substantially all of a major class thereof, with another insurer by an agreement of bulk reinsurance; but such agreements shall not become effective unless filed in advance with and approved in writing by the commissioner.

(c) The commissioner shall approve such agreement within a reasonable time after such filing unless he or she finds that it is inequitable to the domestic insurer, its stockholders or members, or would substantially reduce the protection or service to its policyholders or members. If the commissioner does not approve the agreement, he or she shall so notify the insurer in writing specifying his or her reasons therefor.

(d) For the purposes of this section, "bulk reinsurance" means any quota share, surplus aid or portfolio reinsurance agreement which, of itself or in combination with other similar agreements, assumes fifty-one
percent or more of the liability of the reinsured company.

(e) Any contract of reinsurance whereby a domestic stock or mutual insurer cedes more than seventy-five percent of the total of its outstanding insurance liabilities shall be subject to the approval, in writing, by the commissioner.

(f) A filing shall not be made pursuant to this section unless the reinsurance agreement be certified under oath by responsible officers of the reinsurer and the reinsured to contain the entire agreement between the parties to the reinsurance agreement.

(g) Credit for reinsurance shall be subject to the provisions of section fifteen, article four of this chapter.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-5. Grounds for rehabilitation of domestic insurers.

The commissioner may apply to the court for an order appointing him or her as receiver of and directing him or her to rehabilitate a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, upon one or more of the following grounds.

That the insurer:

(a) Is impaired or insolvent.

(b) Has refused to submit to reasonable examination by the commissioner its property, books, records, accounts or affairs or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer as far as they pertain to the insurer.

(c) Has failed to comply with an order of the commissioner to make good an impairment of capital or surplus or both.

(d) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer or other legal entity without having first
obtained the written approval of the commissioner.

(e) Has willfully violated its charter, articles of incorporation, or bylaws, or any law of this state or any valid order of the commissioner.

(f) Has an officer, director or manager who has refused to be examined under oath concerning its affairs, for which purpose the commissioner is hereby authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(g) Has been the subject of an application for the appointment of a receiver, trustee, custodian or seques-trator of the insurer or its property otherwise than pursuant to the provisions of this chapter, but only if such appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder.

(h) Has consented to such an order through a majority of its directors, stockholders, members or subscribers.

(i) Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after the time for taking an appeal has expired or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(j) Has been deemed in hazardous financial condition pursuant to the provisions of article thirty-four-a of this chapter.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3d. Medicare supplement insurance.

(a) Definitions:

(1) "Applicant" means, in the case of a group medicare
supplement policy or subscriber contract, the proposed certificate holder.

(2) "Certificate" means, for the purposes of this section, any certificate issued under a group medicare supplement policy, which policy has been delivered or issued for delivery in this state.

(3) "Medicare supplement policy" means a group policy of accident and sickness insurance or a subscriber contract (of hospital and medical service associations) which is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare. Such term does not include:

(A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations, or

(B) A policy or contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation; has been maintained in good faith for purposes other than obtaining insurance; and has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members.

(C) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this section.

(4) "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(b) Standards for policy provisions:
The commissioner shall issue reasonable rules to establish specific standards for policy provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with the applicable laws of this state and may cover, but shall not be limited to:

(A) Terms of renewability;
(B) Initial and subsequent conditions of eligibility;
(C) Nonduplication of coverage;
(D) Probationary period;
(E) Benefit limitations, exceptions and reductions;
(F) Elimination period;
(G) Requirements for replacement;
(H) Recurrent conditions; and
(I) Definitions of terms.

(2) The commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(3) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(c) Minimum standards for benefits.

The commissioner shall issue reasonable rules to establish minimum standards for benefits under medicare supplement policies.

(d) Loss ratio standards.
Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charge. The commissioner shall issue reasonable rules to establish minimum standards for loss ratios and medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules issued pursuant to this paragraph, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(e) Disclosure standards:

1. In order to provide for full and fair disclosure in the sale of accident and sickness policies, to persons eligible for medicare, the commissioner may require by rule that no policy of accident and sickness insurance may be issued for delivery in this state and no certificate may be delivered pursuant to such a policy unless an outline of coverage is delivered to the applicant at the time application is made.

2. The commissioner shall prescribe the format and content of the outline of coverage required by paragraph (1) of this section. For purposes of this paragraph, "format" means style, arrangements and overall appearance, including such items as size, color and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

   (A) A description of the principal benefits and coverage provided in the policy;

   (B) A statement of the exceptions, reductions and limitations contained in the policy;

   (C) A statement of the renewal provisions including any reservation by the insurer of the right to change premiums;

   (D) A statement that the outline of coverage is a summary of the policy issued or applied for and that the
(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare, but in no event later than the time of policy delivery.

(4) The commissioner may further promulgate reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for medicare.

(f) Notice of free examination.

Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy of certificate within ten days from its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.
(g) Administrative procedures.

Rules promulgated pursuant to this section shall be subject to the provisions of chapter twenty-nine-a (West Virginia Administrative Procedures Act).

(h) Separability.

If any provision of this section or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

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 assessments shall not be levied against any former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued, article eleven (unfair trade practices), article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars, article twenty-six (West Virginia Insurance Guaranty Association Act), article twenty-seven (insurance holding company systems), article thirty (mine subsidence insurance) except that under the provisions of section six, 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
24 financial report), article thirty-four (administrative
25 supervision), article thirty-four-a, (standards and
26 commissioner's authority for companies deemed to be in
27 hazardous financial condition), article thirty-five,
28 (criminal sanctions for failure to report impairment),
29 article thirty-six (business transacted with producer-
30 controlled property/casualty insurer) and article thirty-
31 seven (managing general agents); but only to the extent
32 these provisions are not inconsistent with the provisions
33 of this article.

1 (a) Such company may procure reinsurance or issue
2 policies of reinsurance to other licensed insurers
3 transacting like kinds of insurance, subject to the
4 provisions of section fifteen, article four of this chapter.
5 (b) Two or more such companies may issue policies
6 jointly.

1 (a) A farmers' mutual fire insurance company shall
2 not merge or consolidate with any stock insurer.
3 (b) A farmers' mutual fire insurance company may
4 merge or consolidate with another farmers' mutual fire
5 insurance company or merge into a domestic mutual
6 insurer in the manner provided in section twenty-eight,
7 article five of this chapter for the merger or consolida-
8 tion of other types of domestic mutual insurers. In the
9 event of a merger between a farmers' mutual fire
10 insurance company and a domestic mutual insurer, the
11 domestic mutual insurer shall be the surviving entity.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

1 Every fraternal benefit society shall be governed and
2 be subject, to the same extent as other insurers
3 transacting like kinds of insurance, to the following
4 articles of this chapter: Article one (definitions), article
5 two (insurance commissioner), article four (general
6 provisions), article six, section thirty (fee for form and
7 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), article thirty-five (criminal sanctions for failure to report impairment), and article thirty-seven (managing general agents).

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.


*§33-24-4. Exemptions; applicability of insurance laws.

1 Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that under section nine of article two examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article six, section thirty-four (fee for form and rate filing), article six-c (guaranteed loss ratio), article seven (assets and liabilities), article eleven (unfair trade practices), article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars, section fourteen, article fifteen (individual accident and sickness insurance), article fifteen-a (long-term care

*Clerk's Note: This section was also amended by H. B. 4184 (Chapter 113), which passed prior to this act.
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 insurance), 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-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one, article twenty-seven (insurance holding company systems), article twenty-eight (individual accident and sickness insurance minimum standards), article thirty-three (annual audited financial report), article thirty-four (administrative supervision), article thirty-four-a, (standards and commissioner’s authority for companies deemed to be in hazardous financial condition), article thirty-five, (criminal sanctions for failure to report impairment) and article thirty seven (managing general agents); and no other provision of this chapter may apply to such corporations unless specifically made applicable by the provisions of this article. If, however, any such corporation is converted into a corporation organized for a pecuniary profit, or if it transacts business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.


The commissioner may apply to the court for an order appointing him or her as receiver of and directing him or her to rehabilitate a corporation upon one or more of the following grounds. That the corporation:

(a) Is impaired or insolvent.

(b) Has refused to submit to reasonable examination by the commissioner its property, books, records, accounts or affairs or those of any subsidiary or related company within the control of the corporation, or those of any person having executive authority in the corporation as far as they pertain to the corporation.
(c) Has failed to comply with an order of the commissioner to make good an impairment of surplus.

(d) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other corporation or other legal entity without having first obtained the written approval of the commissioner.

(e) Has willfully violated its charter, articles of incorporation, or bylaws, or any law of this state or any valid order of the commissioner.

(f) Has an officer, director or manager who has refused to be examined under oath concerning its affairs, for which purpose the commissioner is hereby authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(g) Has been the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the corporation or its property otherwise than pursuant to the provisions of this chapter, but only if such appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder.

(h) Has consented to such an order through a majority of its directors, stockholders, members or subscribers.

(i) Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after the time for taking an appeal has expired or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(j) Has been deemed in hazardous financial condition pursuant to the provisions of article thirty-four-a of this chapter.
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 of 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 four (general provisions) except that section sixteen of article four shall not be applicable thereto, article six-c (guaranteed loss ratio), article seven, (assets and liabilities), article eight (investments), article ten (rehabilitation and liquidation), section fourteen, article fifteen (individual accident and sickness insurance), article sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-six-a (West Virginia life and health insurance guaranty association act), article twenty-seven (insurance holding company systems), article thirty-three (annual audited financial report), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition), article thirty-five (criminal sanctions for failure to report impairment) and article thirty-seven (managing general agents); and no other provision of this chapter may apply to such corporations unless specifically made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance law and provisions of hospital or medical service corporation laws shall not be

* Clerk's Note: These sections were also amended by H. B. 4184 (Chapter 113), which passed prior to this act.
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.

(b) Factually accurate advertising or solicitation
regarding the range of services provided, the premiums
and copayments charged, the sites of services and hours
of operation, and any other quantifiable, nonprofessional
aspects of its operation by a health maintenance
organization granted a certificate of authority, or its
representative shall not be construed to violate any
provision of law relating to solicitation or advertising by
health professions: Provided, That nothing contained
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.

(c) 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.

(d) The provisions of section fifteen, article four
(general provisions), article six-c (guaranteed loss ratio),
article seven (assets and liabilities), article eight
(investments), section fourteen, article fifteen (individ-
ual accident and sickness insurance), section three-f,
article sixteen (treatment of temporomandibular dis-
order 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), article thirty-five (criminal sanc-
tions for failure to report impairment) and article
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30 thirty-seven (managing general agents) shall be applic-
31 cable to any health maintenance organization granted a
32 certificate of authority under this article.

36 (e) Any long-term care insurance policy delivered or
37 issued for delivery in this state by a health maintenance
38 organization shall comply with the provisions of article
39 fifteen-a of this chapter.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2a. Subsidiaries of insurers; authorization; investment authority;
exemptions; qualifications; cessation of controls.
§33-27-3. Acquisition of control of or merger with domestic insurer; filing
requirements; statements; alternative filing material; approval
by the commissioner; hearings; notice; mailings to share-
holders; expenses; exemptions; violations and jurisdiction.
§33-27-4. Registration of insurers; forms required; materiality;
amendments reporting of dividends; information of insurers; termi-
nation of registration; consolidated filing; violations.
§33-27-5. Standards; transactions with affiliates; adequacy of surplus;
dividends; domestic insurers.


1 As used in this article:

2 (a) An “affiliate” of, or person “affiliated” with, a
specific person, is a person that, directly or indirectly
through one or more intermediaries, controls, or is
controlled by, or is under common control with, the
person specified.

7 (b) “Commissioner” means the insurance commis-
sioner, his or her deputies, or the insurance department,
as appropriate.

10 (c) “Control” (including the terms “controlling,”
“controlled by” and “under common control with”) means the possession, direct or indirect, of the power to
direct or cause the direction of the management and
policies of a person, whether through the ownership of
voting securities, by contract other than a commercial
contract for goods or nonmanagement services, or
otherwise, unless the power is the result of an official
position with or corporate office held by the person.
Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person or controls or appoints a majority of the board of directors, voting members or similar governing body of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (b)(i), section four of this article that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) "Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(e) "Insurer" means any person or persons or corporation, partnership or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(f) A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any other legal entity or any combination of the foregoing acting in concert, but does not include any securities broker performing no more than the usual and customary broker's function and holding less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

(g) A "security holder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) A "subsidiary" of a specified person is an affiliate
controlled by such person directly or indirectly through
one or more intermediaries.

(i) “Voting security” includes any security convertible
into or evidencing a right to acquire a voting security.

§33-27-2a. Subsidiaries of insurers; authorization; investment
authority; exemptions; qualifications; cessation of controls.

(a) Any domestic insurer, either by itself or in
cooperation with one or more persons, may organize or
acquire one or more subsidiaries engaged in the
following kinds of business with the commissioner's
prior approval:

(1) Any kind of insurance business authorized by the
jurisdiction in which it is incorporated;

(2) Acting as an insurance agent for its parent or for
any of its parent's insurer subsidiaries;

(3) Investing, reinvesting or trading in securities for
its own account, that of its parent, any subsidiary of its
parent, or any affiliate or subsidiary;

(4) Management of any investment company subject
to or registered pursuant to the Investment Company
Act of 1940, as amended, including related sales and
services;

(5) Acting as a broker-dealer subject to or registered
pursuant to the Securities Exchange Act of 1934, as
amended;

(6) Rendering investment advice to governments,
government agencies, corporations or other organiza-
tions or groups;

(7) Rendering other services related to the operations
of an insurance business, including, but not limited to,
actuarial, loss prevention, safety engineering, data
processing, accounting, claims, appraisal and collection
services;

(8) Ownership and management of assets which the
parent corporation could itself own or manage;
(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) Financing of insurance premiums, agents and other forms of consumer financing;

(11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

(b) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under any other provision of this chapter, a domestic insurer may also with the commissioner's prior approval:

(1) Invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of such insurer's surplus as regards policyholders: Provided, That after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer: Provided, That each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subsection (b)(1) of this section or in article eight of this chapter applicable to the insurer. For the purpose of this subdivision, "the total investment of the insurer" includes:

(A) Any direct investment by the insurer in an asset; and

(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries: Provided, That after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers except section twenty-one, article eight of this chapter.

(d) Whether any investment pursuant to subsection (a) or (b) of this section meets the applicable requirements thereof is to be determined before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal
balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other provision of this chapter, and the insurer has notified the commissioner thereof.

§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

(a) Any person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and a person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and, to the extent permitted by applicable federal laws, rules and regulations, such insurer has sent to its shareholders a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.
(b) For purposes of this section, a "domestic insurer" includes any other person controlling a domestic insurer unless such other person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(c) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party").

(2) If such person is an individual, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

(3) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subdivision (2) of this subsection.

(4) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration: Provided, That where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.
(5) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

(6) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(7) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(8) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(9) A full description of any contracts, arrangements or understanding with respect to any security referred to in subsection (a) in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(10) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.
(11) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve calendar months preceding the filing of the statement, by an acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(12) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(13) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(14) Such additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.

(d) If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (14) of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by subdivisions (1) through (14) shall be given with respect to such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

(e) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment
setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(f) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(g) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he or she finds that any of the following conditions exists:

(1) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently authorized;

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with such acquiring party;

(4) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) are unfair and unreasonable to the security holders of the insurer;

(5) The plans or proposals which the acquiring party
has to liquidate the insurer, sell its assets or consolidate
or merge it with any person, or to make any other
material change in its business or corporate structure
or management, are unfair and unreasonable to policy-
holders of the insurer and not in the public interest;

(6) The competence, experience and integrity of those
persons who would control the operation of the insurer
are such that it would not be in the interest of
policyholders of the insurer and of the public to permit
the merger or other acquisition of control; or

(7) The acquisition is likely to be hazardous or
prejudicial to the insurance-buying public.

(h) The public hearing required by this section shall
be held within sixty days after the statement required
by subsection (a) is filed, and at least fifteen days' notice
thereof shall be given by the commissioner to the person
filing the statement. Not less than seven days' notice of
such public hearing shall be given by the person filing
the statement to the insurer and to such other persons
as may be designated by the commissioner. The insurer
shall give such notice to its security holders. The
commissioner shall make a determination within forty-
five days after the conclusion of such hearing.

(i) The commissioner may retain at the acquiring
person's expense any attorneys, actuaries, accountants
and other experts not otherwise a part of the commis-
sioner's staff as may be reasonably necessary to assist
the commissioner in reviewing the proposed acquisition
of control.

(j) To the extent permitted by applicable federal laws,
rules and regulations, all statements, amendments or
other material filed pursuant to the provisions of this
section, and all notices of public hearings held pursuant
to the provisions of this section, shall be mailed by the
insurer to its shareholders within five business days
after the insurer has received such statements, amend-
ments, other material or notices. The expenses of
mailing shall be borne by the person making the filing.
As security for the payment of such expenses, such
person shall file with the commissioner an acceptable
bond or other deposit in an amount to be determined by
the commissioner.

(k) The provisions of this section shall not apply to any
offer, request, invitation, agreement or acquisition
which the commissioner by order shall exempt there-
from as (1) not having been made or entered into for the
purpose of, and not having the effect of, changing or
influencing the control of a domestic insurer; or (2) as
otherwise not comprehended within the purposes of this
section.

(l) The following are violations of this section:

(1) The failure to file any statement, amendment or
other material required to be filed pursuant to subsec-
tion (a) or (b) of this section; or

(2) The effectuation or any attempt to effectuate an
acquisition of control of, or merger with, a domestic
insurer unless the commissioner has given his or her
approval thereto.

(m) The courts of this state are hereby vested with
jurisdiction over every person not resident, domiciled or
authorized to do business in this state who files a
statement with the commissioner under this section, and
over all actions involving such person arising out of
violations of this section, and each such person shall be
deemed to have performed acts equivalent to and
constituting an appointment by such a person of the
secretary of state to be his or her true and lawful
attorney upon whom may be served all lawful process
in any action, suit or proceeding arising out of violations
of this section. Copies of all such lawful process shall be
served on the secretary of state and transmitted by
registered or certified mail by the secretary of state to
such person at his or her last known address.

§33-27-4. Registration of insurers; forms required;
materiality; amendments reporting of dividends;
information of insurers; termination of registration;
consolidated filing; violations.

(a) Every insurer which is authorized to do business
in this state and which is a member of an insurance holding company system shall register with the commis-
sioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty days after the effective date of this article or fifteen days after it becomes subject to registration, whichever is later, and annually thereafter by June first of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to regis-
tration under this section to furnish a copy of the registration statement, the summary described in subsection (c) of this section, or other information filed by such insurance company with the insurance regula-

tory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form prescribed by the national association of insurance commissioners, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(2) The identity and relationship of every member of the insurance holding company system.

(3) The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales or exchanges of assets;
(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(F) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(G) Dividends and other distributions to shareholders; and

(H) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(4) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) Information need not be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purpose of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one half of one percent or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.
(e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition.

(f) Subject to subsection (c) of section five of this article, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof.

(g) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, when such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(h) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(i) The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(j) The commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(k) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

(l) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or
such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(m) The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

§33-27-5. Standards; transactions with affiliates; adequacy of surplus; dividends; domestic insurers.

(a) Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) Charges or fees for services performed shall be reasonable;

(3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(4) 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, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(5) 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) 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;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such investment so warrants.

(c) An insurer subject to registration under section four of this article shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (1) thirty days after the
commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (2) the commissioner shall have approved such payment within such thirty-day period.

(d) 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 lesser of (1) ten percent of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or (2) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, 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. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(e) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (1) the commissioner has approved the payment of such dividend or distribution, or (2) the commissioner has not disapproved such payment within the thirty-day period referred to above.

(f) 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 tran-
sactions 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 under-
standing 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 rule, which
the commissioner determines may adversely affect the
interests of the insurer's policyholders.

(g) Nothing contained in subsection (h) herein 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.

(h) A domestic insurer shall not enter into transac-
tions which are part of a plan or series of like transac-
tions with persons within the holding company system
if the purpose of those separate transactions is to avoid
the statutory threshold amount and thus avoid the
review that would occur otherwise. If the commissioner
determines that such separate transactions were entered
into over any twelve month period for such purpose, he
or she may exercise his or her authority under section
nine.

(i) The commissioner, in reviewing transactions
pursuant to subsection (f) of this section, shall consider
whether the transactions comply with the standards set
forth in subsection (a) and whether they may adversely
affect the interests of policyholders.

(j) The commissioner shall be notified within thirty
days of any investment of the domestic insurer in any
one corporation if the total investment in such corpora-
tion by the insurance holding company system exceeds
ten percent of such corporation's voting securities.

(k) With regard to domestic insurers, the following
requirements apply:

(1) Notwithstanding the control of a domestic insurer
by any person, the officers and directors of the insurer
shall not thereby be relieved of any obligation or
liability to which they would otherwise be subject by
law, and the insurer shall be managed so as to assure
its separate operating identity consistent with the
provisions of this chapter.

(2) Nothing herein shall preclude a domestic insurer
from having or sharing a common management or
cooperatively, or jointly using personnel, property or
services with one or more other persons under arrange-
ments meeting the standards of subsection (a) of this
section.

(a) Any insurer failing, without just cause, to file any registration statement as required by this article shall be required, after notice and hearing, to pay a penalty of up to one thousand dollars for each day's delay, to be recovered by the commissioner. Any penalty so recovered shall be paid into the general revenue fund of this state. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to subsection (a), section four, and subsections (c) and (d) of section five of this article, or which violate any other provision of this article, shall pay, in his or her individual capacity, a civil forfeiture of not more than five thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Whenever it appears to the commissioner that any insurer subject to this article or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to section five of this article and which would not have been approved had such approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(d) Whenever it appears to the commissioner that any person or any director, officer, employee or agent thereof has committed a willful violation of this article,
the commissioner may cause criminal proceedings to be
instituted against such person or the responsible
director, officer, employee or agent thereof. Any insurer
who willfully violates this article is guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
more than ten thousand dollars. Any individual who
willfully violates this article is guilty of a misdemeanor,
and, upon conviction thereof, shall be fined in his or her
individual capacity not more than ten thousand dollars
or, if such willful violation involves the deliberate
perpetration of a fraud upon the commissioner, is guilty
of a felony, and, upon conviction thereof, shall be
imprisoned not less than one year nor more than three
years, or both fined and imprisoned.

(e) Any officer, director or employee of an insurance
holding company system who willfully and knowingly
subscribes to or makes or causes to be made any false
statements or false reports or false filings with the
intent to deceive the commissioner in the performance
of his or her duties under this article, is guilty of a
felony, and, upon conviction thereof, shall be fined not
more than ten thousand dollars, or imprisoned not less
than one year nor more than three years, or both fined
and imprisoned. Any fines imposed pursuant to this
subsection shall be paid by the officer, director or
employee in his or her individual capacity.


(a) If an order for liquidation or rehabilitation of a
domestic insurer has been entered, the receiver ap-
pointed under such order shall have a right to recover
on behalf of the insurer, (1) from any parent corporation
or holding company or person or affiliate who otherwise
controlled the insurer, the amount of distributions (other
than distributions of shares of the same class of stock)
paid by the insurer on its capital stock, or (2) any
payment in the form of a bonus, termination settlement
or extraordinary lump sum salary adjustment made by
the insurer or its subsidiary or subsidiaries to a director,
officer or employee, when the distribution or payment
pursuant to (1) or (2) is made at any time during the
one year preceding the petition for liquidation, conser-
oration or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c) and (d) of this section.

(b) No such distribution may be recoverable if the parent corporation or affiliate shows that when paid such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under subsection (a) of this section that such person received. Any person who otherwise controlled the insurer at the time such distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it pursuant to subsection (c), its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE MINIMUM STANDARDS.

§33-28-5b. Medicare supplement insurance.
relation to the premium charge. The commissioner shall
issue reasonable rules to establish minimum standards
for loss ratios and medicare supplement policies on the
basis of incurred claims experience and earned premi-
ums for the entire period for which rates are computed
to provide coverage and in accordance with accepted
actuarial principles and practices. For purposes of rules
issued pursuant to this paragraph, medicare supplement
policies issued as a result of solicitations of individuals
through the mail or mass media advertising, including
both print and broadcast advertising, shall be treated
as individual policies.

(e) Disclosure standards:

(1) In order to provide for full and fair disclosure in
the sale of accident and sickness policies, to persons
eligible for medicare, the commissioner may require by
rule that no policy of accident and sickness insurance
may be issued for delivery in this state and no certificate
may be delivered pursuant to such a policy unless an
outline of coverage is delivered to the applicant at the
time application is made.

(2) The commissioner shall prescribe the format and
content of the outline of coverage required by paragraph
(1). For purposes of this paragraph, “format” means
style, arrangements and overall appearance, including
such items as size, color and prominence of type and the
arrangement of text and captions. Such outline of
coverage shall include:

(A) A description of the principal benefits and
coverage provided in the policy;

(B) A statement of the exceptions, reductions and
limitations contained in the policy;

(C) A statement of the renewal provisions including
any reservation by the insurer of the right to change
 premiums;

(D) A statement that the outline of coverage is a
summary of the policy issued or applied for and that the
policy should be consulted to determine governing
contractual provisions.
(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare, but in no event later than the time of policy delivery.

(4) The commissioner may further promulgate reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for medicare.

(f) Notice of free examination.

Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy of certificate within ten days from its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

(g) Administrative procedures.

Rules promulgated pursuant to this section shall be
subject to the provisions of chapter twenty-nine-a (West Virginia Administrative Procedures Act).

(h) Separability.

If any provision of this section or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Corporate organization.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company or an industrial insured captive insurance company may be incorporated:

(1) As a stock insurer with its capital divided into shares and held by the stockholders; or

(2) As a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(c) A captive insurance company shall have at least one incorporator who shall be a resident of this state.

(d) Before the articles of association are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth his or her finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such finding the commissioner shall consider:

(1) The character, reputation, financial standing and purpose of the incorporators;

(2) The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and

(3) Such other aspects as the commissioner deems...
advisable.

(e) The articles of association, such certificate and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(h) Captive insurance companies formed under the provisions of this chapter shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter. Captive insurance companies are subject to the provisions of article thirty-three, article thirty-four and article thirty-seven of this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-1. Purpose and short title.
§33-32-3. Charter and license requirements for domestic groups.
§33-32-4. Risk retention groups not chartered in this state.
§33-32-5. Tax on premiums collected.
§33-32-16. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.
§33-32-17. Notice and registration requirements of purchasing groups.
§33-32-18. Restrictions on insurance purchased by purchasing groups.
§33-32-19. Administrative and procedural authority regarding risk retention groups and purchasing groups.
§33-32-21. Duty on agents or brokers to obtain license.

§33-32-1. Purpose and short title.

The purpose of this act is to regulate the formation and operation of risk retention groups and purchasing
groups in this state formed pursuant to the provisions
of the federal liability risk retention act of 1986,
hereinafter referred to as "RRA 1986." This article may
be referred to as the "Risk Retention Act of West
Virginia."


1 As used in this article, the term:

2 (a) "Commissioner" means the insurance commis-
3 sioner of the state of West Virginia or the commissioner,
director or superintendent of insurance in any other
5 state.

6 (b) "Completed operations liability" means liability
7 arising out of the installation, maintenance or repair of
8 any product at a site which is now owned or controlled
9 by:

10 (1) Any person who performs that work; or
11 (2) Any person who hires an independent contractor
12 to perform that work; but shall include liability for
13 activities which are completed or abandoned before the
14 date of the occurrence giving rise to the liability.

15 (c) "Domicile" for purposes of determining the state
16 in which a purchasing group is domiciled, means:

17 (1) For a corporation, the state in which the purchas-
18 ing group is incorporated; and

19 (2) For an unincorporated entity, the state of its
20 principal place of business.

21 (d) "Hazardous financial condition" means that, based
22 on its present or reasonably anticipated financial
23 condition, a risk retention group, although not yet
24 financially impaired or insolvent, is unlikely to be able:

25 (1) To meet obligations to policyholders with respect
26 to known claims and reasonably anticipated claims; or
27 (2) To pay other obligations in the normal course of
28 business.

29 (e) "Insurance" means primary insurance, excess
30 insurance, reinsurance, surplus lines insurance and any
other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

(f) "Liability" means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property or other damage or loss to such other persons resulting from or arising out of:

(1) Any business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations;

(2) Any activity of any state or local government, or any agency or political subdivision thereof; or

(3) Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act.

(g) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (f);

(h) "Plan of operation" or a "feasibility study" means an analysis which presents the expected activities and results of a risk retention group including at a minimum:

(1) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product services, premises or operations;

(2) For each state in which the risk retention group intends to operate, the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the group intends to offer;
(3) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(4) Pro forma financial statements and projections;

(5) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(6) Identification of management, underwriting procedures, managerial oversight methods, investment policies and reinsurance agreements;

(7) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of the risk retention group's status in each such state; and

(8) Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

(i) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(j) "Purchasing group" means any group which:

(1) Has as one of its purposes the purchase of liability insurance on a group basis;

(2) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subsection (j)(3) of this section;
(3) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations; and

(4) Is domiciled in any state.

(k) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state:

(1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(2) Which is organized for the primary purpose of conducting the activity described under subdivision (1), subsection (k) of this section;

(3) Which: (A) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(B) Before the first day of January, one thousand nine hundred eighty-five, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands, and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the product liability risk retention act of 1981 before the date of the enactment of the risk retention act of 1986;

(4) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(5) Which: (A) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or
(B) Has as its sole owner an organization which has
as: (i) Its members only persons who comprise the
membership of the risk retention group; and
(ii) Its owners only persons who comprise the mem-
bership of the risk retention group and who are
provided insurance by such group;
(6) Whose members are engaged in businesses or
activities similar or related with respect to the liability
of which such members are exposed by virtue of any
related, similar, or common business trade, product,
services, premises or operations;
(7) Whose activities do not include the provision of
insurance other than:
(A) Liability insurance for assuming and spreading
all or any portion of the liability of its group members;
and
(B) Reinsurance with respect to the liability of any
other risk retention group or any members of such other
group which is engaged in businesses or activities so
that such group or member meets the reinsurance
requirement set forth herein, from membership in the
risk retention group which provides such reinsurance;
and
(8) The name of which includes the phrase “Risk
Retention Group.”
(l) “State” means any state of the United States or the
District of Columbia.
§33-32-3. Charter and license requirements for domestic
groups.
(a) A risk retention group shall, pursuant to the
provisions of article five of this chapter, be chartered
and licensed to write only liability insurance pursuant
to this article and, except as provided elsewhere in this
article, shall comply with all of the laws, rules and
requirements applicable to insurers chartered and
licensed in this state and with section four of this article,
to the extent such requirements are not a limitation on
laws, rules or requirements of this state.
(b) Notwithstanding any other provision of this chapter to the contrary, all risk retention groups chartered in this state shall file with the commissioner and the national association of insurance commissioners, an annual statement on a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner and completed in accordance with the national association of insurance commissioners' instructions and the national association of insurance commissioners accounting practices and procedures manual.

(c) Before it may offer insurance in any state, each risk retention group shall also submit for approval by the insurance commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision of such plan or study, in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten days of any such change. The risk retention group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the commissioner.

(d) At the time of filing its application for a charter, the risk retention group shall provide to the commissioner in summary form the following information: The identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the national association of insurance commissioners. Providing notification to the national association of insurance commissioners is in addition to and shall not be sufficient to satisfy the requirements of section four or any other sections of this article.

(e) Risk retention groups are subject to the provisions of article thirty-three, article thirty-four and article
§33-32-4. Risk retention groups not chartered in this state.

(a) Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state.

(b) Before offering insurance in this state, a risk retention group shall submit the following information to the commissioner on a form prescribed by the national association of insurance commissioners:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under this article;

(2) A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile: Provided, That the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which (i) was defined in the federal product liability risk retention act of 1981 before the twenty-seventh day of October, one thousand nine hundred eighty-six, and (ii) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date;

(3) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process; and

(4) A risk retention group that has been chartered and operating in any state and has previously filed an annual financial statement as required by this section with its state of domicile, must submit a copy of the most recent annual statement with the registration form required by this subsection.
(c) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section three of this article at the same time that the revision is submitted to the commissioner of its chartering state.

(d) A risk retention group shall not commence offering insurance in this state prior to receiving a certificate of registration from the commissioner.

(e) Any risk retention group doing business in this state shall submit to the commissioner:

(1) Annually a copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist (under criteria established by the national association of insurance commissioners);

(2) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(4) Such information as may be required to verify its continuing qualification as a risk retention group under this article.

(f) The commissioner shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code regarding all fees to be submitted with the filings required by this section.

§33-32-5. Tax on premiums collected.

(a) Each risk retention group shall be subject to the same interests, fines and penalties for nonpayment as that generally applicable to insurers under article three, chapter thirty-three of this code: Provided, That the premium tax or other taxes on each risk retention group shall be in accordance with the provisions of this section.
Each risk retention group insurance company shall pay to the commissioner, in the month of February of each year, a tax at the rate of three quarters of one percent on the gross amount of all premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state and on risk and property situated elsewhere upon which no premium tax is otherwise paid during the year ending December 31 next preceding, after deducting from the gross amount of premiums subject to the tax amount received as reinsurance premiums on business in the state and the amount paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders:

*Provided, however,* That the three quarters of one percent premium tax provided for herein shall be waived for a period of five years and thereafter be applicable at a reduced rate of one half of one percent of the gross amount of premiums provided for herein-above, if the said risk retention groups make a minimum qualified investment of two million dollars in the state of West Virginia during the five-year waiver period, as a direct result thereof and the tax commissioner so certifies.

(b) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any risk retention group, and no other premium tax or other taxes shall be levied or collected from any risk retention group by the state or any county, city or municipality within this state, except ad valorem taxes.

(c) To the extent that a risk retention group utilizes insurance agents, each such agent shall keep a complete and separate record of all policies procured from each risk retention group, which record shall be open to examination by the commissioner, as provided in section nine, article two of this chapter. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

(1) The limit of liability;

(2) The time period covered;

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. Any such examination shall be conducted in accordance with the national association of insurance commissioners examiners handbook.


Every application form for insurance from a risk retention group and any policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group.


(a) A risk retention group shall not be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds, or claimants against its insureds, receive any benefit from
any such fund for claims arising out of the operations of such risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, such risks, wherever resident or located, shall not be covered by any insurance guaranty fund or similar mechanism in this state.

(c) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state shall be covered by the state guaranty fund subject to article twenty-six of this chapter.

§33-32-16. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.

A purchasing group and its insurer or insurers shall be subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would:

(1) Prohibit the establishment of a purchasing group;

(2) Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters;

(3) Prohibit a purchasing group or its members from purchasing insurance on a group basis described in subsection (b) of this section;

(4) Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) Require that a purchasing group have a minimum number of members, common ownership or affiliation,
or a certain legal form;

(6) Require that a certain percentage of a purchasing group obtain insurance on a group basis;

(7) Otherwise discriminate against a purchasing group or any of its members; or

(8) Require that any insurance policy issued to a purchasing group or any of its members be counter-signed by an insurance agent or broker residing in this state.

§33-32-17. Notice and registration requirements of purchasing groups.

(a) A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall, on forms prescribed by the national association of insurance commissioners:

(1) Identify the state in which the group is domiciled;

(2) Identify all other states in which the group intends to do business;

(3) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(4) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of such company;

(5) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(6) Identify the principal place of business of the groups; and

(7) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under this article.

(b) A purchasing group shall, within ten days, notify the commissioner of any changes in any of the items set forth in this section.
(c) The purchasing group shall register with and designate the commissioner (or other appropriate authority) as its agent solely for the purpose of receiving service of legal documents or process: Provided, That such requirements shall not apply in the case of a purchasing group which:

(1) Was domiciled before the first day of April, one thousand nine hundred eighty-six, in any state of the United States; and

(2) Is domiciled on and after the second day of October, one thousand nine hundred eighty-six, in any state of the United States and which:

(A) Before the twenty-seventh day of October, one thousand nine hundred eighty-six, purchased insurance from an insurance carrier licensed in any state; and

(B) Since the twenty-seventh day of October, one thousand nine hundred eighty-six, purchased its insurance from an insurance carrier licensed in any state;

(3) Which was a purchasing group under the requirements of the product liability risk retention act of 1981, before the twenty-seventh day of October, one thousand nine hundred eighty-six; and

(4) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before the twenty-seventh day of October, one thousand nine hundred eighty-six.

(d) Each purchasing group that is required to give notice pursuant to subsection (a) of this section shall also furnish such information as may be required by the commissioner to:

(1) Verify that the entity qualifies as a purchasing group;

(2) Determine where the purchasing group is located; and

(3) Determine appropriate tax treatment.

(e) The insurance commissioner shall promulgate rules pursuant to the provisions of chapter twenty-nine-
§33-32-18. Restrictions on insurance purchased by purchasing groups.

(a) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

(b) A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which has a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and regulations of this state. To give notice as required by this section, the purchasing group shall ensure that each group certificate or evidence of insurance has printed or stamped in contrasting color on the front page the following statement:

THIS INSURER IS NOT LICENSED TO DO BUSINESS IN WEST VIRGINIA, AND IS NOT SUBJECT TO THE WEST VIRGINIA INSURANCE GUARANTY ACT OR TO ALL OF THE PROTECTIONS OF THE INSURANCE LAWS AND RULES OF THIS STATE.

(c) A purchasing group shall not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole: Provided, That coverage may provide for a deductible or self-insured retention applicable to individual members.

(d) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

§33-32-19. Administrative and procedural authority
The commissioner is authorized to make use of any of the powers established under this chapter of this code to enforce the laws of this state so long as those powers are not specifically preempted by the national product liability risk retention act of 1981, as amended by the risk retention amendments of 1986. This includes, but is not limited to, the commissioner’s administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the law and rules of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

§33-32-21. Duty on agents or brokers to obtain license.

(a) A person, or a person working for a firm, association or corporation, shall not act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state from a risk retention group unless such person, or person working for a firm, association or corporation, is licensed as an insurance agent in accordance with article twelve of this chapter.

(b) A person, or a person working for a firm, association or corporation, shall not act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person, or person working for a firm, association or corporation, is licensed as an insurance agent in accordance with article twelve of this chapter.

(c) A person, or a person working for a firm, association or corporation, shall not act or aid in any manner in soliciting, negotiating or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy.
unless such person, or person working for a firm, association or corporation, is licensed as an insurance agent in accordance with article twelve of this chapter.

(d) A person, or a person working for a firm, association or corporation, shall not act or aid in any manner in soliciting, negotiating or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless such person, or person working for a firm, association or corporation, is licensed as an excess line broker in accordance with section thirteen, article twelve of this chapter.

(e) For purposes of acting as an agent for a risk retention group or purchasing group pursuant to the provisions of this section, the requirement of residence in this state shall not apply.

(f) Every person, or person working for a firm, association or corporation, licensed pursuant to the provisions of this chapter, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by section nine of this article in the case of a risk retention group and in the case of a purchasing group, the notice required by subsection (b), section eighteen of this article.


(a) In addition to complying with the requirements of this article, any risk retention group operating in this state prior to enactment of the amendments made to this article in the regular session of the Legislature during the year one thousand nine hundred ninety-two shall comply with the provisions of subsection (a), section four of this article before the thirty-first day of December, one thousand nine hundred ninety-two.

(b) Any purchasing group which was doing business in this state prior to enactment of the amendments made to this article in the regular session of the Legislature during the year one thousand nine hundred ninety-two shall furnish notice to the commissioner pursuant to the
provisions of section seventeen of this article before the thirty-first day of December, one thousand nine hundred ninety-two.

ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED PROPERTY/CASUALTY INSURER ACT.

§33-36-1. Short title.
§33-36-2. Definitions.
§33-36-3. Limitation on business placed with controlled insurer.
§33-36-4. Liability of controlling producer in the event of insolvency of controlled insurer.

§33-36-1. Short title.

This article may be cited as the “Business Transacted with Producer-Controlled Property/Casualty Insurer Act”.

§33-36-2. Definitions.

As used in this article:

(a) “Producer” means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than himself, herself or itself: Provided, That the term “producer” is not intended to expand upon or provide for activities beyond those permitted by article twelve of this chapter.

(b) “Reinsurance intermediary” means any person, firm, association or corporation that acts as a producer in soliciting, negotiating or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer or acts as a producer in accepting any reinsurance contract or binder on behalf of an assuming insurer.

(c) “Control” or “controlled” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanage-
ment services, or otherwise. Control shall be presumed
to exist if any person, directly or indirectly, owns,
controls, holds with the powers to vote, or holds proxies
representing a majority of the outstanding voting
securities of any other person. A person may not be
deed to control another person solely by reason of
being an officer or director of such other person.
(d) "Licensed property/casualty insurer" or "insurer"
means any person, firm, association or corporation duly
licensed to transact a property/casualty insurance
business in this state and which issues policies covered
by the provisions of the West Virginia Insurance
Guaranty Association Act contained in article twenty-
six of this chapter: Provided, That entities which are not
licensed property/casualty insurers for the purposes of
this article include, but are not limited to, the following:
(1) All nonadmitted insurers;
(2) All risk retention groups as defined in the
Superfund Amendments Reauthorization Act of 1986,
Supp. 1986) and article thirty-two of this chapter;
(3) All residual market pools and joint underwriting
authorities or associations; and
(4) All captive insurers as defined in article thirty-one
of this chapter.
(e) "Independent casualty actuary" means a casualty
actuary who is a member of the American academy of
actuaries and who is not affiliated with, nor an
employee, principal, nor the direct or indirect owner of,
or in any way controlled by the insurer or producer.
(f) "Violation" means, for purposes of this article, a
finding by the commissioner that:
(1) The controlling producer did not materially
comply with section three of this article; or
(2) The controlled insurer, with respect to business
placed by the controlling producer, engaged in a pattern
of charging premiums that were lower than those being
charged by such insurer or other insurers for similar risks written during the same period and placed by noncontrolling producers. When determining whether premiums were lower than those prevailing in the market, the commissioner shall take into consideration applicable industry or actuarial standards at the time the business was written; or

(3) The controlling producer failed to maintain records sufficient to:

(A) Demonstrate that such producer's dealings with its controlled insurer were fair and equitable and in compliance with article twenty-seven of this chapter; and

(B) Accurately disclose the nature and details of its transactions with the controlled insurer, including such information as is necessary to support the charges or fees to the respective parties; or

(4) The controlled insurer, with respect to business placed by the controlling producer, either failed to establish or deviated from its underwriting procedures; or

(5) The controlled insurer's capitalization at the time the business was placed by the controlling producer and with respect to such business was not in compliance with criteria established by the commissioner or this chapter; or

(6) The controlling producer or the controlled insurer failed to substantially comply with article twenty-seven of this chapter and any rules relative thereto.

§33-36-3. Limitation on business placed with controlled insurer.

(a) A producer that has control of a licensed property/casualty insurer shall not directly or indirectly place business with such insurer in any transaction in which such producer, at the time the business is placed, is acting as such on behalf of the insured for any compensation, commission or other thing of value, unless:
(1) There is a written contract between the controlling producer and the insurer, which contract has been approved by the board of directors of the insurer;

(2) Such producer, prior to the effective date of the policy, delivers written notice to the prospective insured disclosing the relationship between such producer and the controlled insurer. Such disclosure, signed by the insured, shall be retained in the underwriting file until the filing of the report on examination covering the period in which the coverage is in effect: Provided, That if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his or her records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has notified or will notify the insured;

(3) All funds collected for the account of the insurer by the controlling producer shall be paid, net of commissions, cancellations and other adjustments, to the insurer no less often than quarterly;

(4) In addition to any other required loss reserve certification, the controlled insurer shall annually, on the first day of April of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported on business placed by such producer;

(5) The controlled insurer shall report annually to the commissioner the amount of commissions paid to such producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance; and

(6) Every controlled insurer shall have an audit committee of its board of directors composed of independent directors. Prior to approval of the annual
financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or such other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(b) Any reinsurance intermediary that has control of an assuming insurer shall not directly or indirectly place business with such insurer in any transaction in which such reinsurance intermediary is acting as a broker on behalf of the ceding insurer. Any reinsurance intermediary that has control of a ceding insurer shall not directly or indirectly accept business from such insurer in any transaction in which such reinsurance intermediary is acting as a producer on behalf of the assuming insurer. The prohibitions in this subsection shall not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

§33-36-4. Liability of controlling producer in the event of insolvency of controlled insurer.

(a) If the commissioner has reason to believe that a controlling producer has committed or is committing an act which could be determined to be a violation, as defined in subsection (f), section two of this article, he or she shall serve upon the controlling producer in the manner provided by section twelve, article two of this chapter a statement of the charges and notice of a hearing to be conducted in accordance with section thirteen, article two of this chapter.

(b) At such hearing, the commissioner must establish that the controlling producer engaged in a violation, as defined in subsection (f), section two of this article. The controlling producer shall have an opportunity to be heard and to present evidence rebutting the charges and to establish that the insolvency of the controlled insurer arose out of events not attributable to the violation. The decision, determination or order of the commissioner shall be subject to judicial review pursuant to section
(c) Upon the finding, pursuant to the hearing described in subsection (b) of this section, that the controlling producer committed a violation, as defined in subsection (f), section two of this article, and the controlling producer failed to establish that such violation did not substantially contribute to the insolvency, the controlling producer shall reimburse the West Virginia insurance guaranty association for all payments made for losses, loss adjustment and administrative expenses on the business placed by such producer in excess of gross earned premiums and investment income earned on premiums and loss reserves for such business.

(d) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in this chapter.

(e) Nothing contained in this article is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.

For the purposes of this article:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Insurer" means any person, firm, association or corporation engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuities as limited to:

(1) Any insurer who is doing an insurance business,
or has transacted insurance in this state, and against whom claims arising from that transaction may exist now or in the future:

(2) This includes, but is not limited to, any domestic insurer as defined 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.

(c) "Managing general agent" means any person, firm, association or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or greater than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year, together with one or more of the following:

(1) Adjusts or pays claims in excess of an amount determined by the commissioner; or

(2) Negotiates reinsurance on behalf of the insurer.

Notwithstanding the preceding provision, the following persons are not to be considered as managing general agents for the purposes of this article:

(1) An employee of the insurer;

(2) A United States manager of the United States branch of an alien insurer;

(3) An underwriting manager that, pursuant to
contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written without regard to the profitability of the business written;

(4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(d) "Underwrite" means to accept or reject risk on behalf of the insurer, as authorized by the insurer.

§33-37-2. Licensure.

(a) Any person, or a person working for a firm, association or corporation, shall not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless such person is licensed and appointed as an agent of the insurer in this state.

(b) Any person, or a person working for a firm, association or corporation, shall not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed and appointed as an agent of the insurer in this state. The license held by such person may be a nonresident license.

(c) The commissioner may require a bond in an amount acceptable to him or her for the protection of the insurer.

(d) The commissioner may require the managing general agent to maintain an errors and omissions policy of liability insurance.


Any person, or a person working for a firm, association or corporation, acting in the capacity of a managing general agent shall not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities
of each party and whereby both parties share responsibility for a particular function, which specifies the division of such responsibilities, and which contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(b) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

(d) The managing general agent shall maintain separate records of business that he or she writes. The insurer shall have access to and the right to copy all accounts and records related to its business, in a form usable by it. The commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable to him or her.

(e) The contract may not be assigned, in whole or in part, by the managing general agent.

(f) The contract shall contain appropriate underwriting guidelines including:

(1) The maximum annual premium volume;
(2) The basis of the rates to be charged;
(3) The types of risks that may be written;
(4) Maximum limits of liability;
(5) Applicable exclusions;
(6) Territorial limitations;

(7) Policy cancellation provisions; and

(8) The maximum policy period. The insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable laws and rules concerning cancellation and nonrenewal of insurance policies.

(g) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(1) All claims must be reported to the company in a timely manner.

(2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

   (A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

   (B) Involves a coverage dispute;

   (C) May exceed the managing general agent's claims settlement authority;

   (D) Is open for more than six months; or

   (E) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(3) All claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(h) If electronic claims files are in existence, the
contract must address the timely transmission of the
data contained in such files.

(i) If the contract provides for a sharing of interim
profits by the managing general agent, and the manag-
ing general agent has the authority to determine the
amount of the interim profits by establishing loss
reserves or controlling claim payments, or in any other
manner, interim profits shall not be paid to the
managing general agent until one year after they are
earned for property insurance business and five years
after they are earned on casualty business: Provided,
That no such profits may be paid until they have been
verified pursuant to section four of this article.

(j) The managing general agent shall not:

(1) Bind reinsurance or retrocessions on behalf of the
insurer, except that the managing general agent may
bind facultative reinsurance contracts pursuant to
obligatory facultative agreements if the contract with
the insurer contains reinsurance underwriting guide-
lines including, for both reinsurance assumed and
ceded, a list of reinsurers with which such automatic
agreements are in effect, the coverages and amounts or
percentages that may be reinsured and commission
schedules;

(2) Commit the insurer to participate in insurance or
reinsurance syndicates;

(3) Appoint any agent without assuring that the agent
is lawfully licensed to transact the type of insurance for
which he or she is appointed;

(4) Without prior approval of the insurer, pay or
commit the insurer to pay a claim over a specified
amount, net of reinsurance, which shall not exceed one
percent of the insurer's policyholders' surplus as of the
thirty-first day of December off the last completed
calendar year;

(5) Collect any payment from a reinsurer or commit
the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval
is given, a report must be promptly forwarded to the

(a) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary in a form consistent with the requirements for actuarial certifications as imposed upon the insurer by statute or rule of the commissioner, attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This required actuary's opinion is in addition to any other required loss reserve certification.

(c) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

(e) Within thirty days of entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the commissioner. A notice of appointment of a managing general agent shall include a statement of duties which such agent is expected to perform on behalf of the insurer, the lines of insurance for which such agent is to be authorized to act, and any other information the commissioner may request.

(f) An insurer shall review its books and records each
quarter to determine if any producer as defined by subsection (c), section one of this article has become, by operation of that subsection, a managing general agent as defined therein. If the insurer determines that a producer has become a managing general agent as defined in subsection (c), section one, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer must fully comply with the provisions of this article within thirty days thereafter.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its managing general agents. This subsection shall not apply to relationships governed by the Insurance Holding Company Act or the Business Transacted with Producer-Controlled Insurer Act.

§33-37-5. Examination authority.

The acts of a managing general agent are considered to be the acts of the insurer on whose behalf such agent is acting. A managing general agent may be examined as if it were the insurer pursuant to the provisions of section nine, article two of this chapter.

§33-37-6. Penalties and liabilities.

(a) If the commissioner finds after a hearing conducted in accordance with section thirteen, article two of this chapter that any person has violated any provision of this article, the commissioner may order:

(1) For each separate violation, a penalty in an amount of one thousand dollars;

(2) Revocation or suspension of the producer's license; and

(3) Reimbursement by the managing general agent of the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this article committed by the managing general agent.
(b) The decision, determination or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to section fourteen, article two of this chapter.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in this chapter.

(d) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and creditors.


The commissioner is thereby authorized to promulgate reasonable rules for the implementation and administration of the provisions of this article, pursuant to chapter twenty-nine-a of this code.

CHAPTER 109

(H. B. 4207—By Delegates Susman and Williams)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to life insurance policies and defining those parties having an insurable interest in the same, including relatives, those with business or economic interests, and charitable institutions.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§33-6-2. Insurable interest in one's own life or life of another; actions to recover benefits; insurable interests defined; requirements for charitable institutions.
(a) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representative or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(b) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

(c) "Insurable interest" with reference to personal insurance includes only interests as follows:

(1) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.

(2) In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured.

(3) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(4) A charitable institution as defined under Sections 501(c)(3), 501(c)(6), 501(c)(8) and 501(c)(9) of the Internal Revenue Code of 1986, as amended.
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 motor vehicle insurance; designating the primary insurance coverage on a motor vehicle owned by certain types of businesses while being operated permissively in specified circumstances by an individual who is otherwise insured; and providing that the business owner's motor vehicle insurance shall be primary if the vehicle is being operated with permission by an employee of the business owner who is acting within the scope of his or her employment.

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 or leased motor vehicles; exceptions.

1 (a) An insurer shall not 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.

7 (b) 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 he or she is permitted to use by a person, firm
or corporation that owns the vehicle and is engaged in
the business of selling, repairing, leasing or servicing
motor vehicles. Coverage under any motor vehicle
insurance policy available to such insured individual
shall be primary, and any collision, comprehensive,
property or bodily injury insurance coverage owned or
obtained by a person, firm or corporation that owns the
motor vehicle and is engaged in the business of selling,
repairing, leasing or servicing motor vehicles shall be
secondary. Recovery under the motor vehicle owner's
insurance policy shall not be permitted until the insured
individual has exhausted the limits of all other insur-
ance policies available to him or her: Provided, That the
following conditions are met: (1) No separate consid-
eration is paid by or on behalf of the insured individual
at the time of his or her use of the vehicle; and (2) the
insured individual is operating the vehicle with the
business owner's permission as a replacement vehicle
provided to the insured individual while his or her
vehicle is out of use because it is being repaired or
serviced by the business owner or another person with
the permission of the business owner.

(c) Notwithstanding any provision of this section to
the contrary, any insurance coverage available to the
insured individual as described in the foregoing
paragraph shall be secondary to any motor vehicle
liability insurance owned or obtained by the person,
firm or corporation engaged in the business of selling,
repairing, leasing or servicing motor vehicles, if the
insured individual is an employee of the business owner
and is operating the motor vehicle with the permission
of the business owner while acting within the scope of
his or her employment or the insured individual is
testing the vehicle for possible purchase or for a lease
with more than a thirty-day term.
CHAPTER 111
(H. B. 4506—By Delegates Phillips and Ashley)

[Passed February 26, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, 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 one-a, relating to motor vehicle insurance policies; notice of cancellation of the same; definition of loss payee; and notification of cancellation and nonrenewal to loss payee.

Be it enacted by the Legislature of West Virginia:

That article six-a, 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 one-a, to read as follows:

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1a. Loss payee defined; notification of cancellation and nonrenewal to loss payee.

  (a) For purposes of this article, a loss payee is defined as the person or persons not a named insured designated on an automobile liability insurance policy contract as being entitled to the proceeds of or payments under such policy.

  (b) In every instance in which an insurer notifies an insured of its intent to cancel or not renew an automobile liability insurance contract or policy, the insurer shall also provide notice to the loss payee of such cancellation and nonrenewal in accordance with the same notice requirements established for the insured pursuant to sections one and four of this article.
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-d, relating to insurance policies covering motor vehicles; prohibiting any insurer, agent or adjuster from requiring an insured or claimant to use a particular company or location providing automobile glass replacement or repair services or products; prohibiting the use of intimidation, coercion or other specified acts in order to require an insured or claimant to use a particular company or location providing such services or products; permitting agreements or arrangements with particular companies; permitting distribution of lists which include glass companies in the area; requirement of payment of repair or replacement services at the prevailing market rate; and prohibiting waiver of insurance deductibles, offering of rebates or discounts or other incentives for automobile glass repair by any automobile glass company.

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 a new article, designated article six-d, to read as follows:

ARTICLE 6D. MOTOR VEHICLE REPAIR AND REPLACEMENT REFERRALS.

§33-6D-1. Required use of particular companies or locations providing automobile glass replacement or repair services or products prohibited.

§33-6D-2. Intimidation, coercion and other acts prohibited; permissive agreements.

§33-6D-3. Permissible referrals; freedom of choice; payment of costs at prevailing market rates.
§33-6D-1. Required use of particular companies or locations providing automobile glass replacement or repair services or products prohibited.

No insurer issuing or renewing in this state any motor vehicle insurance policy, nor any agent or adjuster thereof, may require the insured or any person making a claim under such policy to use a particular company or location to obtain automobile glass replacement or repair services or products insured, in whole or in part, by that policy.

§33-6D-2. Intimidation, coercion and other acts prohibited; permissive agreements.

No such insurer, agent or adjuster may engage in any act or practice of intimidation, coercion or threat for or against any such insured or claimant to use a particular company or location to obtain automobile glass replacement or repair services or products covered, in whole or in part, by the insurance policy: Provided, That nothing contained in this article shall prohibit an insurer, agent or adjuster from entering into an agreement or arrangement with any company regarding automobile glass prices or services for the repair or replacement of automobile glass.

§33-6D-3. Permissible referrals; freedom of choice; payment of costs at prevailing market rates.

(a) Nothing contained in this article prohibits any insurer, agent or adjuster from providing to an insured or claimant a list that includes the names of automobile glass companies or locations that are reasonably close and convenient to the insured or claimant, and with which the insurer may have made special arrangements with respect to automobile glass prices or services.

(b) If an insurer, agent or adjuster provides an insured or claimant with a list of automobile glass companies or locations, such insurer, agent or adjuster shall advise the insured or claimant that he or she may use any other automobile glass company or location of his or her choice.
(c) All insurers shall fully and promptly pay the cost of automobile glass replacement or repair services or products from any nonlisted automobile glass company or location, less any applicable deductible amount payable by the insured according to the terms of the insurance policy, at no less than the prevailing market price charged by other automobile glass companies or locations providing comparable services or products in the same geographic area within the state.

(d) No automobile glass company or location may waive insurance deductibles or offer rebates, discounts or other incentives for automobile glass repair which is being reimbursed by insurance. An insurer may limit payment of all glass claims to a glass company or location that has violated this provision to the lowest competitive price. The glass company or location may not seek reimbursement for any amounts not paid directly from the insured or claimant.

CHAPTER 113
(Com. Sub. for H. B. 4184—By Delegates Lane and Kiss)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen-b; 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 health care administration; creating the uniform health care administration act; setting forth policies and procedures; authorizing the insurance commissioner to promulgate legislative rules; creating an advisory panel; creating a compliance period; reserving rights to additional information; and requiring the participation of certain health care providers, insurers, health care corporations and other such agencies.
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 a new article, designated article fifteen-b; 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:

CHAPTER 33. INSURANCE.

Article
15B. Uniform Health Care Administration Act.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

§33-15B-1. Policy provisions.
§33-15B-2. Scope of article.
§33-15B-3. Insurance commissioner to promulgate rules; use of standardized forms and classifications; advisory panel and appointments.
§33-15B-4. Compliance period; reservation of right to additional information.

§33-15B-1. Policy provisions.

The Legislature hereby finds that there is a need to provide guidelines regarding uniform health care administration in order to best serve consumers, health care providers and insurers and to organize and streamline the claims process. The purpose of this article is to require the insurance commissioner to develop standard forms and procedures regarding health care claims and to require that all insurers, third party providers, and health care providers implement and use such standards in a uniform manner.

§33-15B-2. Scope of article.

The provisions of this article apply to all health care providers in the state; all insurers writing or issuing accident and sickness policies covered by article fifteen of this chapter; hospital service corporations, health service corporations, medical service corporations, and dental service corporations organized in accordance
with the provisions of article one, chapter thirty-one and chapter thirty-three of this code; all third party providers; all state agencies and departments, including, but not limited to, the public employees insurance agency; workers’ compensation insurance; and providers of services under medicare and medicaid.

§33-15B-3. Insurance commissioner to promulgate rules; use of standardized forms and classifications; advisory panel and appointments.

(a) The insurance commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the implementation and use of uniform health care administrative forms. Such rules shall be developed no later than the first day of December, one thousand nine hundred ninety-two, and shall establish, where practicable, the acceptance and use throughout the health care system of standard administrative forms, terms or procedures, including, but not limited to, the following:

(1) The standard health care financing administration fifteen hundred (HCFA 1500) health insurance claim form, or other similar forms, and terms and definitions to be used therewith which are consistent with insurance industry standards.

(2) International classification of disease, ninth clinical modifications (ICD-9-CM) and common procedural terminology (CPT) codes, as amended, or another similar standard code.

(3) Consideration of current practices involving reimbursement of claims and explanation of benefits, and the implementation of standards and guidelines regarding explanation of benefits, including, but not limited to, consideration of line item explanations of payments or denial of payments.

(b) The legislative rules required herein shall be developed by the insurance commissioner with the advice of a thirteen-member panel to be appointed by the commissioner. Such panel shall consist of the insurance commissioner; one allopath and one osteopath
who shall be recommended by the West Virginia State
medical association; a representative of the hospital
industry who shall be recommended by the West
Virginia hospital association; one dentist recommended
by the West Virginia dental association and one
pharmacist recommended by the West Virginia phar-
macists association; two members representing commer-
cial health insurers who shall be recommended by the
association representing accident and sickness insu-
rance; a representative of third party administrators; a
representative of the public employees insurance
agency; a representative from the workers' compensa-
tion commission; and two members representing consu-
mers. The insurance commissioner shall make such
appointments thirty days after the effective date of this
section.

(c) The insurance commissioner and the advisory
panel shall review the legislative rules effected pursuant
to this section as necessary on at least an annual basis
and update the same in a timely manner in order to
conform to current legislation and health care adminis-
trative trends.

§33-15B-4. Compliance period; reservation of right to
additional information.

(a) All health care providers, insurers, third party
providers and state agencies or departments shall have
one year from the date the insurance commissioner
establishes the legislative rules required by section three
herein to comply with the requirements of the same.

(b) This section shall not limit the right of any insurer,
third party provider, state agency or department to
require additional information on any claim.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.

*Clerk's Note: This section was also amended by H. B. 4666 (Chapter 108),
which passed subsequent to this act.
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 frauds), article twelve (agents, brokers and solicitors), section fourteen, article fifteen (individual policies), article fifteen-a (long-term care insurance), article fifteen-b (uniform health care administration act), 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-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.

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. 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
fifteen-b (uniform health care administration act),
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.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§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

*Clerk's Note: These sections were also amended by H. B. 4666 (Chapter
108), which passed subsequent to this act.
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) Factly 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 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 six-c (guaranteed loss ratio), article seven (assets and liabilities), article eight (investments), section fourteen, article fifteen (individual policies), article fifteen-b (uniform health care administration act), 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 114
(H. B. 4734—By Delegates Rutledge and Browning)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of investments; charges for expenses of the board; creation of loss expenses account; purpose of the account; expenditures from the account; transfer of funds remaining in the account to the liquidity investment pool; and transfer of excess funds and appropriation of the funds by the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-6. Costs and expenses; fees for services; special revenue account; costs of determining third parties' liability; recoupment of investment losses.

(a) The board shall make a charge against the earnings of the various funds managed by the board for all necessary expenses of the board. The charge shall be on a pro rata basis of actual earnings of the various funds managed by the board. The charge shall be
deposited to the credit of the general revenue fund.

(b) There is hereby created in the state treasury a special revenue account to be known as the “loss expenses account.” The purpose of this account is to provide funds to the board of investments to pay costs, fees and expenses incurred, or to be incurred, for the following: (1) Investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of January, one thousand nine hundred eighty-nine; (2) consulting services regarding the restructuring of the office of the treasurer following said losses; and (3) implementation of the recommendations made as a result of the consultations regarding restructuring. That special revenue account shall be funded by depositing income derived by the board from securities lending and recoveries from third parties. The board is authorized to deposit into the special revenue account, and to expend in accordance with the provisions of this section, those funds received from such recoveries and not more than two million dollars annually from income derived by the board from securities lending. Funds in the loss expense account in excess of reasonably estimated costs, fees and expenses for any fiscal year and any funds remaining in such special revenue account at the end of each fiscal year after expenditures, for the purposes specified above, may be transferred by the board to its “liquidity investment pool,” to be used, in such manner as the board determines, to eliminate the present imbalance in the state accounts caused by the investment losses described above in this subsection: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this section may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The authority for this special revenue account expires on the thirtieth day of June, one thousand nine hundred ninety-five.
CHAPTER 115
(Com. Sub. for H. B. 4373—By Delegate Brown)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five-a and eight, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article five, chapter fifty-seven of said code, all relating to providing that a citizen may not be excluded from jury services because of a disability; providing accommodation to jurors with disabilities other than physical; requiring interpreters to assist a juror who is deaf or a deaf mute because of any hearing impairment and readers for those who are visually impaired; and providing for payment therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter 52. Juries.

ARTICLE 1. PETIT JURIES.


§52-1-5a. Jury qualification form; contents; procedure for use; penalties.

§52-1-8. Disqualification from jury service.


A citizen may not be excluded from jury service on account of race, color, religion, sex, national origin, economic status or being a qualified individual with a disability.

§52-1-5a. Jury qualification form; contents; procedure for use; penalties.
(a) Not less than twenty days before the date for
which persons are to report for jury duty, the clerk may,
if directed by the court, serve by first class mail, upon
each person listed on the master list, a juror qualifica-
tion form accompanied by instructions necessary for its
completion: Provided, That the clerk may, if directed by
the court, mail the juror qualification form to only those
prospective jurors drawn for jury service under the
provisions of section seven of this article. Each prospec-
tive juror shall be directed to complete the form and
return it by mail to the clerk within ten days after its
receipt. The juror qualification form is subject to
approval by the circuit court as to matters of form and
shall elicit the following information concerning the
prospective juror:

(1) The juror's name, sex, race, age and marital status;
(2) The juror's level of educational attainment, 
occupation and place of employment;
(3) If married, the name of the juror's spouse, and the
occupation and place of employment of the spouse;
(4) The juror's residence address and the juror's
mailing address if different from the residence address;
(5) The number of children which the juror has and
their ages;
(6) Whether the juror is a citizen of the United States
and a resident of the county;
(7) Whether the juror is able to read, speak and
understand the English language;
(8) Whether the juror has any physical or mental
disability substantially impairing the capacity to render
satisfactory jury service: Provided, That a juror with a
physical disability, who can with reasonable accommo-
dation render competent service, is eligible for service;
(9) Whether the juror has, within the preceding two
years, been summoned to serve as a petit juror, grand
juror or magistrate court juror, and has actually
attended sessions of the magistrate or circuit court and
been compensated as a juror;
(10) Whether the juror has lost the right to vote because of a criminal conviction; and

(11) Whether the juror has been convicted of perjury, false swearing or other infamous offense.

The juror qualification form may also request information concerning the prospective juror's religious preferences and organizational affiliations, except that the form and the accompanying instructions shall clearly inform the juror that this information need not be provided if the juror declines to answer such inquiries.

(b) The juror qualification form shall contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and an acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than five hundred dollars or imprisonment for not more than thirty days, or both fine and imprisonment. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may assist the prospective juror in the preparation of the form and indicate that such person has done so and the reason therefor. If an omission, ambiguity or error appear in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification or correction and to return the form to the clerk within ten days after its second receipt.

(c) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commission to appear forthwith before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk. At that time the prospective juror may be questioned, with regard to the responses to questions contained on the form and the grounds for the prospective juror's excuse or disquali-
Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(d) Any person who willfully misrepresents a material fact on a juror qualification form or during any interview described in subsection (c) of this section, for the purpose of avoiding or securing service as a juror, is guilty of a misdemeanor, and, upon conviction, shall be fined not more than five hundred dollars or imprisoned not more than thirty days, or both fined and imprisoned.

§52-1-8. Disqualification from jury service.

(a) The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel or jury box.

(b) A prospective juror is disqualified to serve on a jury if the prospective juror:

(1) Is not a citizen of the United States, at least eighteen years old and a resident of the county;

(2) Is unable to read, speak and understand the English language. For the purposes of this section, the requirement of speaking and understanding the English language is met by the ability to communicate in American sign language or signed English;

(3) Is incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion;

(4) Has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magis-
trate court juror, and has actually attended sessions of the magistrate or circuit court and been compensated as a juror pursuant to the provisions of section twenty-one of this article, section thirteen, article two of this chapter, or pursuant to an applicable rule or regulation of the supreme court of appeals promulgated pursuant to the provisions of section eight, article five, chapter fifty of this code;

(5) Has lost the right to vote because of a criminal conviction; or

(6) Has been convicted of perjury, false swearing or other infamous offense.

(c) A prospective juror sixty-five years of age or older is not disqualified from serving, but shall be excused from service by the court upon the juror's request.

(d) A prospective grand juror is disqualified to serve on a grand jury if the prospective grand juror is an officeholder under the laws of the United States or of this state except that the term "officeholder" does not include notaries public.

(e) A person who is physically disabled and can render competent service with reasonable accommodation shall not be ineligible to act as juror or be dismissed from a jury panel on the basis of disability alone: Provided, That the circuit judge shall, upon motion by either party or upon his or her own motion, disqualify a disabled juror if the circuit judge finds that the nature of potential evidence in the case including, but not limited to, the type or volume of exhibits or the disabled juror's ability to evaluate a witness or witnesses, unduly inhibits the disabled juror's ability to evaluate the potential evidence. For purposes of this section:

(1) Reasonable accommodation includes, but is not limited to, certified interpreters for the hearing impaired, spokespersons for the speech impaired and readers for the visually impaired.

(2) The court shall administer an oath or affirmation to any person present to facilitate communication for a disabled juror. The substance of such oath or affirma-
tion shall be that any person present as an accommodation to a disabled juror will not deliberate on his or her own behalf, although present throughout the proceedings, but act only to accurately communicate for and to the disabled juror.

(f) Nothing in this article shall be construed so as to limit in any way a party's right to preemptory strikes in civil or criminal actions.

CHAPTER 57. EVIDENCES AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

(a) In any court proceeding wherein a party or witness or juror cannot readily understand or verbally communicate the English language because the witness or juror is deaf or a deaf mute or because of any other hearing impairment, such person shall have the right to have a qualified interpreter to assist the witness or juror at every stage of the proceeding. Such right shall also pertain in any proceeding before administrative boards, commissions or agencies of this state or any political subdivision or municipality thereof, and in coroners' inquests and grand jury proceedings.

(b) The director of the administrative office of the supreme court of appeals shall establish a program to facilitate the use of interpreters in courts of this state and in extra-judicial criminal proceedings as provided for in this section.

(1) The director shall prescribe, determine and certify the qualifications of persons who may serve as certified interpreters in courts of this state in proceedings involving the hearing impaired. Persons certified by the director shall be interpreters certified by the national registry of interpreters for the deaf, or the West Virginia registry of interpreters for the deaf or approved by the chief of services for the deaf and hearing impaired of West Virginia of the West Virginia division of vocational rehabilitation, or shall be such other persons deemed by the director to be qualified by education, training and experience. The director shall
29 maintain a current master list of all interpreters
30 certified by the director and shall report annually on the
31 frequency of requests for, and the use and effectiveness
32 of, interpreters.

(2) Each circuit court shall maintain on file in the
34 office of the clerk of the court a list of all persons who
35 have been certified as oral or manual interpreters for
36 the hearing impaired by the director of the administra-
37 tive office of the supreme court of appeals in accordance
38 with the certification program established pursuant to
39 this section.

(3) In any criminal or juvenile proceeding, or other
40 proceeding described in section five, article eleven,
41 chapter fifty-one of this code, the judge of the circuit
42 court in which such proceeding is pending, or, if such
43 proceeding is in a magistrate court, then the judge of
44 the circuit court to which such proceeding may be
45 appealed or presented for judicial review, shall, with the
46 assistance of the director of the administrative office of
47 the supreme court of appeals, utilize the services of the
48 most available certified interpreter, or when no certified
49 interpreter is reasonably available, as determined by the
50 judge, the services of an otherwise competent interpre-
51 ter, if the judge determines on his own motion or on the
52 motion of a party that such party or a witness who may
53 present testimony in the proceeding suffers from a
54 hearing impairment so as to inhibit such party's
55 comprehension of the proceedings or communication
56 with counsel or the presiding judicial officer, or so as
57 to inhibit such witness' comprehension of questions and
58 the presentation of such testimony. The utilization of an
59 interpreter shall be appropriate at any stage of the
60 proceeding, judicial or extrajudicial, at which a person
61 would be entitled to representation by an attorney and
62 a waiver of the right to counsel shall not constitute a
63 waiver of the right to an interpreter as provided for by
64 this section.

(c) Whenever a qualified interpreter is appointed
67 pursuant to the provisions of subsection (b) of this
68 section, or to accommodate a juror, the court shall, at
69 the conclusion of the proceedings or interrogation, by
order, fix the compensation of such interpreter. The compensation shall include reimbursement for all reasonable and necessary expenses actually incurred in the performance of such duties, but expenses shall not be incurred in excess of the prevailing rate for state employees. In all such appointments arising from subdivision (3), subsection (b) of this section, the compensation shall be paid by the state auditor from the fund administered by the supreme court of appeals for other court costs. In other proceedings before any circuit or magistrate court, supreme court of appeals or before any administrative boards, commissions and agencies, the compensation shall be fixed by such court, board, commission or agency and paid, within the limit of available funds, by such court, board, commission or agency.

(d) In any proceeding described in subdivision (3), subsection (b) of this section, if the circuit judge does not appoint an interpreter, an individual requiring the services of an interpreter may seek the assistance of the clerk of the circuit court or the director of the administrative office of the supreme court of appeals in obtaining the assistance of a certified interpreter.

(e) Whenever an interpreter is necessary in any court proceeding because a witness or party speaks only a foreign language or for any other reason, an interpreter shall be sworn truly to interpret.

CHAPTER 116
(H. B. 4713—By Delegates Damron and Reid)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, seven-a, nineteen and twenty, article one, chapter fifty-two of said code; and to amend and reenact section two, article one-c, chapter sixty-two of said code, all
relating to court administration generally, repealing the requirement that circuit clerks keep an execution book, allowing the master list to be compiled by a merge sampling; setting a time schedule for compilation of the master list; requiring electronic methods of jury selection be documented in writing and approved by the chief judge; requiring that jury commissioners be notified of all selections from jury lists; requiring attendance at selections only if required by chief judge; eliminating requirement that clerk transmit juror payment order to the auditor; updating language on payment records kept by clerk; allowing method of payment of jurors to be determined by tax commissioner; allowing payment of jurors in cash; and allowing magistrate court to receive cash bail in excess of two thousand five hundred dollars.

Be it enacted by the Legislature of West Virginia:

That section eight, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections five, seven-a, nineteen and twenty, article one, chapter fifty-two of said code be amended and reenacted; and that section two, article one-c, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter
52. Juries.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIRES.

§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.
§52-1-7a. Alternate procedure for selection of jury by electronic data processing methods.
§52-1-19. Record of allowance to jurors.
§52-1-20. Payment of compensation.

§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.

1 (a) In each county, the jury commission shall compile 2 and maintain a master list of residents of the county
from which prospective jurors are to be chosen. The master list shall be a list of individuals compiled from not less than two of the following source lists:

(1) Persons who have filed a state personal income tax return for the preceding tax year;

(2) Persons who are registered to vote in the county;

(3) Persons who hold a valid motor vehicle operator's or chauffeur's license as determined from the drivers' license lists provided by the department of motor vehicles.

The jury commission shall compile the master list by combining all the names from each source used and eliminating all duplicates or by selecting a sample of names from each source used by means of a random key number system. If a sample of names is selected from each source list, the same percentage of names must be selected from each list. One source list shall be designated a primary source. Names selected from the second source shall be compared with the entire list of names on the primary source. Duplicate names shall be removed from the second source sample, and the remaining names shall be combined with the sample of names selected from the primary source to form the master list. If more than two source lists are used, this process shall be repeated, using the previously combined list for comparison with the third source list, and so on.

(b) The master list so compiled shall be used for a period of two years or such other period as designated by the chief judge.

(c) In addition to the master list required to be compiled under the provisions of subsection (a) of this section, the jury commission shall compile a list of persons who pay real property taxes to compile and maintain a list of freeholders to be used as jurors in condemnation cases.

(d) Any public officer of an agency, department or political subdivision of this state having custody, possession or control of any of the source lists designated to be used in compiling the master list, shall make the
source list available to the jury commission for inspection, reproduction and copying at all reasonable times:

Provided. That the tax commissioner shall be exempt from this requirement. The master list and the freeholder list shall be open to the public for examination.

§52-1-7a. Alternate procedure for selection of jury by electronic data processing methods.

Notwithstanding any provision of this article to the contrary, the court may, after conferring with the clerk and the jury commissioners and documenting in writing the methods to be used, with such documentation to be approved by the chief judge, direct the use of electronic data processing methods, or a combination of manual and machine methods, for any combination of the following tasks:

(a) Recording in machine readable form names that are initially selected manually from source lists authorized by this article.

(b) Copying of names from source lists authorized by this article, from any counties or other sources that maintain those lists in machine readable form such as punched cards, magnetic tapes or magnetic discs.

(c) Selecting names from source lists for inclusion in the jury list.

(d) Selecting names from the jury list for the list of jurors summoned to attend at any term of court.

(e) Sorting or alphabetizing lists of names, deleting duplicate selections of names and deleting names of persons exempt, disqualified or excused from jury service.

(f) Selecting and copying names for the creation of any papers, records or correspondence necessary to recruit, select and pay jurors and for other clerical tasks.

If the court elects to use electronic machine methods for any tasks described above, the selection system shall be planned and programmed in order to ensure that any group of names chosen will represent all segments of
source files from which drawn and that the mathematical odds of any single name being picked are substantially equal.

When machine methods for jury selection are employed, both the jury list and the jury list as recorded in machine readable form shall be safely kept in a secure location with the office of the clerk of the circuit court. The jury commissioners shall be notified of any selection of jurors from a source list and may be present for such selections or shall be in attendance if directed by the chief circuit judge.

§52-1-19. Record of allowance to jurors.

The clerk of any court upon which juries are in attendance shall make an entry upon its record stating separately the amount which each juror is entitled to receive out of the state treasury for services or attendance during the term. Any clerk who fails to pay over, as required by law, any moneys so received by the clerk or otherwise to comply with the provisions of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars.

§52-1-20. Payment of compensation.

The method of payment of jurors shall be determined by the chief judge and approved by the state tax commissioner. It is the duty of the clerk, as soon as practicable after the adjournment of the court or before the adjournment of the court at such time as the chief judge may direct, to deliver to the sheriff of the county a certified accounting of the amount to which each juror is entitled. If any sheriff fails to pay any allowance as required by law, the sheriff may be proceeded against as for a contempt of court.

Any allowance paid by the sheriff under the provisions of this section shall be repaid to the sheriff out of the state treasury upon the production of satisfactory proof that the same has actually been paid by the sheriff. Proof of payment shall be in the form of a complete itemized statement indicating the total amount eligible for reimbursement.
CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-2. Bail defined; form; receipts.

1. Bail is security for the appearance of a defendant to
2. answer to a specific criminal charge before any court
3. or magistrate at a specific time or at any time to which
4. the case may be continued. It may take any of the
5. following forms:

6. (a) The deposit by the defendant or by some other
7. person for him of cash.

8. (b) The written undertaking by one or more persons
9. to forfeit a sum of money equal to the amount of the bail
10. if the defendant is in default for appearance, which shall
11. be known as a recognizance.

12. (c) Such other form as the judge of the court that will
13. have jurisdiction to try the offense may determine.

14. All bail shall be received by the clerk of the court,
15. or by the magistrate and, except in case of recognizance,
16. receipts shall be given therefor by him.

CHAPTER 117
(Com. Sub. for S. B. 458—By Senator Chernenko)

[Passed March 2, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-one of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section nineteen, relating to prohibiting
discrimination against employees and prospective
employees for the use of tobacco products off the
premises during nonworking hours.
Be it enacted by the Legislature of West Virginia:

That chapter twenty-one, article 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 nineteen, to read as follows:

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.


(a) It shall be unlawful for any employer, whether public or private, or the agent of such employer to refuse to hire any individual or to discharge any employee or otherwise to disadvantage or penalize any employee with respect to compensation, terms, conditions or privileges of employment solely because such individual uses tobacco products off the premises of the employer during nonworking hours.

(b) This section shall not apply with respect to an employer which is a nonprofit organization which, as one of its primary purposes or objectives, discourages the use of one or more tobacco products by the general public.

(c) This section shall not prohibit an employer from offering, imposing or having in effect a health, disability or life insurance policy which makes distinctions between employees for type of coverage or price of coverage based upon the employee’s use of tobacco products: Provided, That any differential premium rates charged to employees must reflect differential costs to the employer: Provided, however, That the employer must provide employees with a statement delineating the differential rates used by its insurance carriers.

(d) Nothing in this section shall be construed to prohibit an employer from making available to smokers and other users of tobacco products, programs, free of charge or at reduced rates, which encourage the reduction or cessation of smoking or tobacco use.
Chapter 118

(Com. Sub. for H. B. 4190—By Delegates Damron and Reed)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensatory time in lieu of overtime pay for employees of county or municipal governments; providing a rate of compensation time; limiting the maximum accrual of compensation time; limiting the usage of compensation time; requiring agreement prior to performance of work; and providing for monetary compensation in event of termination of employment.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§21-5C-3. Maximum hours; overtime compensation.

1 (a) On and after the first day of July, one thousand nine hundred eighty, no employer shall employ any of his employees for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

(b) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

12 (1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not
measured by or dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either: (a) Both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the commissioner set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the commissioner) paid to performers, including announcers, on radio and television programs;

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;
(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal or regular workweek where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workweek.

(c) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section two and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(d) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection:
(1) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) Is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the commissioner as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in subdivisions (1) through (7) of subsection (b) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in subdivisions (5), (6) and (7) of subsection (b) shall be creditable toward overtime compensation payable pursuant to this section.

(f) (1) Employees of county and municipal governments may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime is required pursuant to this section.

(2) County and municipal governments may provide compensatory time under subdivision (1) of this subsection, only pursuant to a written agreement arrived at between the employer and employee before the perfor-
mance of the work, and recorded in the employer's record of hours worked, and if the employee has not accrued compensatory time in excess of the limit prescribed in subdivision (3) of this subsection. Any written agreement may be modified at the request of either the employer or the employee, but under no circumstances shall changes in the agreement deny an employee compensatory time heretofore acquired.

(3) An employee may accrue up to four hundred eighty hours of compensatory time if the employee's work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work for a county or municipal government may accrue up to two hundred forty hours of compensatory time. Any such employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may be, shall for additional overtime hours of work, be paid overtime compensation. If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under subdivision (1) of this subsection shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than:

(A) The average regular rate received by such employee during the last three years of the employee's employment; or

(B) The final regular rate received by such employee, whichever is higher.

(5) An employee of a county or municipal government:

(A) Who has accrued compensatory time off authorized to be provided under subdivision (1) of this subsection; and

(B) Who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable time after making the
request if the use of the compensatory time does not unduly disrupt the operation of the public agency. Compensatory time must be used within one year from the time it was acquired.

(6) For purposes of this subsection the terms “compensatory time” and “compensatory time off” mean hours during which an employee is not working, which are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee’s regular rate.

CHAPTER 119
(H. B. 4043—By Mr. Speaker, Mr. Chambers, and Delegate Damron)

[Passed January 10, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to apportionment of membership of the House of Delegates; making technical corrections to delegate districts to reflect the intent of the Legislature in its original reenactment of this section in one thousand nine hundred ninety-one.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter 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. APPORTIONMENT OF REPRESENTATION.


(1) “County” means the territory comprising a county
5 of this state as it existed on the first day of January, one thousand nine hundred eighty, notwithstanding any boundary changes made subsequent thereto;

(2) "Block," "block group," "census tract," "place" and "voting district" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred ninety census of population and described on census maps prepared by the bureau of the census. Such maps are, at the time of this enactment, maintained by the bureau of the census and filed in the office of legislative services;

(3) "Magisterial district" means the territory comprising a magisterial district of this state as reported to and used by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred ninety census of population and described on census maps prepared by the bureau of the census;

(c) The House of Delegates shall be composed of one hundred members elected from the delegate districts hereinafter described:

(1) The county of Hancock and Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 110, Block 111, Block 125, Block 126, Block 131 and Block 132 of Block Group 1 in Census Tract 0301 contained in voting district EP 26, Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 110, Block 111, Block 114 and Block 115 of Block Group 1 in Census Tract 0302 contained in voting district EP 26, Block 202, Block 203, Block 204, Block 205 and Block 206 of Block Group 2 in Census Tract 0302 contained in voting district EP 26, and Block 109, Block 112, Block 113, Block 114, Block 115, Block 119, Block 120, Block 121, Block 122 and Block 130 of Block Group 1 in Census Tract 0301 contained in voting district EP 34B of the Weirton magisterial district in the county of Brooke shall constitute the first delegate district and shall elect two delegates;
(2) That portion of Brooke county not included in the first delegate district, voting district EP 12, voting district EP 13, voting district EP 142, voting district EP 146, voting district EP 147, voting district EP 158, voting district EP 159, voting district EP 160, voting district EP 161, and Block 101A, Block 101B, Block 101C, Block 102, Block 103, Block 104, Block 105A, Block 105B, Block 106A, Block 106B, Block 107, Block 108A, Block 108B, Block 109A, Block 109B, Block 110A, Block 110B, Block 111A, Block 111B, Block 112, Block 113A, Block 113B, Block 114, Block 115A, Block 115B and Block 118 of Block Group 1 in Census Tract 0020 contained in voting district EP 14, and Block 315A, Block 315C, Block 316A and Block 316C of Block Group 3 in Census Tract 0020 contained in voting district EP 14 of the District One magisterial district of Ohio county and voting district EP 134, voting district EP 135, voting district EP 138, voting district EP 141, Block 319, Block 320, Block 321, Block 322 and Block 325 of Block Group 3 in Census Tract 0018 contained in voting district EP 137, and Block 413, Block 424, Block 428, Block 429, Block 430, Block 431, Block 432 and Block 433 of Block Group 4 in Census Tract 0018 contained in voting district EP 137, and Block 504A of Block Group 5 in Census Tract 0018 contained in voting district EP 137, and Block 601A, Block 602A, Block 603A, Block 607A, Block 610, Block 611, Block 612 and Block 613 of Block Group 6 in Census Tract 0018 contained in voting district EP 137, and Block 701A of Block Group 7 in Census Tract 0018 contained in voting district EP 137 of the District Three magisterial district of Ohio county shall constitute the second delegate district and shall elect two delegates;

(3) That portion of Ohio county not included in the second delegate district, except Block 206, Block 216, Block 217, Block 218, Block 220, Block 221, Block 222 and Block 299 of Block Group 2 in Census Tract 0025 contained in voting district EP 100 of magisterial District Three of Ohio county shall constitute the third delegate district and shall elect two delegates;

(4) The county of Marshall and Block 206, Block 216,
(5) The county of Wetzel except for voting district EP 37 and voting district EP 38 of magisterial District Two shall constitute the fifth delegate district and shall elect one delegate;

(6) The counties of Doddridge and Tyler and voting district EP 37 and voting district EP 38 of magisterial District Two of Wetzel county shall constitute the sixth delegate district and shall elect one delegate;

(7) The counties of Pleasants and Ritchie and voting district EP 27 and voting district EP 31 of the DeKalb-Troy magisterial district of Gilmer county shall constitute the seventh delegate district and shall elect one delegate;


(9) The county of Wirt and all of the Steele magisterial district, all of the Slate magisterial district, that portion of voting district EP 81 in the Tygart magisterial district, that portion of voting district EP 81 and voting district EP 82 of the Harris magisterial district,

(10) That portion of Wood county not included in the eighth or ninth delegate district shall constitute the tenth delegate district and shall elect three delegates;

(11) The county of Roane and voting district EP 23 of the Ripley magisterial district and all of the Washington magisterial district of Jackson county shall constitute the eleventh delegate district and shall elect one delegate;


(13) All of the Union magisterial district and voting district EP 13 and voting district EP 14 of the Ravenswood magisterial district of Jackson county, and all of the Cologne magisterial district, all of the Copper magisterial district, all of the Graham magisterial district, all of the Union magisterial district, all of the Waggener magisterial district and voting district EP 1, voting district EP 10 and voting district EP 12 of the Robinson magisterial district of Mason county, and all of the Buffalo-Union magisterial district, all of the Pocatalico magisterial district, and voting district EP 27, voting district EP 28 of the Scott magisterial district and that portion of voting district EP 28 in the Teays
magisterial district of Putnam county shall constitute the thirteenth delegate district and shall elect two delegates;

(14) That portion of Mason county not in the thirteenth delegate district and that portion of Putnam county not in the thirteenth delegate district shall constitute the fourteenth delegate district and shall elect two delegates;

(16) That portion of Cabell county not included in the fifteenth delegate district and voting district EP 59, voting district EP 60, voting district EP 61 and voting district EP 63 of the Westmoreland magisterial district and that portion of voting district EP 59 in the Ceredo magisterial district of Wayne county shall constitute the sixteenth delegate district and shall elect three delegates;


(18) That portion of Wayne county not in the sixteenth or seventeenth delegate district shall constitute the eighteenth delegate district and shall elect one delegate;

(19) The county of Mingo and voting district EP 43 of the West magisterial district of Logan county shall constitute the nineteenth delegate district and shall elect two delegates;

(20) All of the county of Logan except voting district EP 43 of the West magisterial district and all of the
247 county of Lincoln except the Carroll magisterial district and voting district EP 1, that portion of voting district EP 2, voting district EP 3, voting district EP 7, voting district EP 15, voting district EP 16, voting district EP 17 and voting district EP 18 of the District Three magisterial district and that portion of voting district EP 2, voting district EP 5 and voting district EP 9 of the District Two magisterial district of Boone county shall constitute the twentieth delegate district and shall elect four delegates: Provided, That not more than three delegates may be nominated, elected or appointed who are residents of any single county within the twentieth delegate district;

260 (21) That portion of Boone county not included in the twentieth delegate district shall constitute the twenty-first delegate district and shall elect one delegate;

263 (22) The county of McDowell shall constitute the twenty-second delegate district and shall elect two delegates;


285 (25) That portion of Mercer county not included in the twenty-third or twenty-fourth delegate district shall
constitute the twenty-fifth delegate district and shall elect two delegates;


(27) The county of Raleigh except Block 101, Block 102, Block 103, Block 104, Block 106, Block 107, Block 108, Block 109, Block 137, Block 138, Block 142 and Block 143 of Block Group 1 in Census Tract 0112 contained in voting district EP 61, and Block 301, Block 302, Block 303, Block 305, Block 330, Block 331, Block 332, Block 333, Block 334, Block 347, Block 348, Block 353 and Block 354 of Block Group 3 in Census Tract 0112 contained in voting district EP 61 in the District Two magisterial district and that portion of Summers county not included in the twenty-sixth delegate district shall constitute the twenty-seventh delegate district and shall elect five delegates: Provided, That not more than four delegates may be nominated, elected or appointed who are residents of any county within the twenty-seventh delegate district;

(28) The county of Greenbrier except voting district EP 54 in the Meadow Bluff magisterial district shall constitute the twenty-eighth delegate district and shall elect two delegates;

(29) All of the county of Fayette, voting district EP 54 in the Meadow Bluff magisterial district of Greenbrier county, voting district EP 131 and voting district EP 132 in the District One magisterial district of Kanawha county, voting district EP 25 in the Jefferson magisterial district of Nicholas county, and Block 101, Block 102, Block 103, Block 104, Block 106, Block 107, Block 108, Block 109, Block 137, Block 138, Block 142 and Block 143 of Block Group 1 in Census Tract 0112 contained in voting district EP 61 and Block 301, Block 302, Block 303, Block 305, Block 330, Block 331, Block 332, Block 333, Block 334, Block 347, Block 348, Block
district EP 549, voting district EP 553, voting district EP 573, Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214 and Block 215 of Block Group 2 in Census Tract 0005 contained in voting district EP 541, Block 304 of Block Group 3 in Census Tract 0005 contained in voting district EP 541, Block 305 of Block Group 3 in Census Tract 0011 contained in voting district EP 541, that portion of Census Tract 0110 contained in voting district EP 541, Block 501A and Block 504 of Block Group 5 in Census Tract 0011 contained in voting district EP 541, Block 304 of Block Group 3 in Census

(31) That portion of magisterial District Five of Kanawha county not included in the thirtieth delegate district shall constitute the thirty-first delegate district and shall elect one delegate;

(32) That portion of Kanawha county not included in the twenty-ninth, thirtieth or thirty-first delegate district shall constitute the thirty-second delegate district and shall elect four delegates;

(33) The counties of Calhoun and Clay and voting district EP 12 and voting district EP 13 of the DeKalb-Troy magisterial district of Gilmer county shall constitute the thirty-third delegate district and shall elect one delegate;

(34) The county of Braxton and the Center magisterial district, the City magisterial district and the Glenville magisterial district of Gilmer county shall constitute the thirty-fourth delegate district and shall elect one delegate;

(35) The Grant magisterial district, the Hamilton magisterial district, the Summersville magisterial district, the Wilderness magisterial district, voting district EP 16 of the Beaver magisterial district, voting
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409  district EP 24, voting district EP 26 and voting district EP 27 of the Jefferson magisterial district, and voting district EP 28 of the Kentucky magisterial district of Nicholas county shall constitute the thirty-fifth delegate district and shall elect one delegate;

415  (36) The county of Webster and that portion of Nicholas county not included in the twenty-ninth or thirty-fifth delegate district shall constitute the thirty-sixth delegate district and shall elect one delegate;

419  (37) The counties of Pocahontas and Randolph shall constitute the thirty-seventh delegate district and shall elect two delegates;

423  (38) The county of Lewis and voting district EP 4 and voting district EP 7 of the Banks magisterial district of Upshur county shall constitute the thirty-eighth delegate district and shall elect one delegate;

429  (39) The Buckhannon magisterial district, the Meade magisterial district, the Washington magisterial district, voting district VTD 10, voting district EP 35, that portion of voting district EP 14 and that portion of voting district EP 15 of the Union magisterial district and voting district EP 6 of the Banks magisterial district of Upshur county shall constitute the thirty-ninth delegate district and shall elect one delegate;

435  (40) The county of Barbour and that portion of Upshur county not included in the thirty-eighth or thirty-ninth delegate district shall constitute the fortieth delegate district and shall elect one delegate;

438  (41) The county of Harrison shall constitute the forty-first delegate district and shall elect four delegates;

440  (42) The county of Taylor, voting district EP 125 of the Palatine magisterial district of Marion county, and voting district EP 62 of the Eastern magisterial district of Monongalia county shall constitute the forty-second delegate district and shall elect one delegate;

445  (43) That portion of Marion county not included in the forty-second delegate district shall constitute the forty-
third delegate district and shall elect three delegates;

(44) That portion of Monongalia county not included in the forty-second delegate district shall constitute the forty-fourth delegate district and shall elect four delegates;

(45) All of the Grant magisterial district, all of the Kingwood magisterial district, all of the Pleasant magisterial district, voting district EP 25 of the Reno magisterial district, that portion of voting district EP 6, voting district EP 17, voting district EP 18 and voting district EP 19 of the Portland magisterial district and voting district EP 9, voting district EP 12, that portion of Block Group 1 in Census Tract 9639 contained in voting district EP 10, that portion of Block Group 4 in Census Tract 9639 contained in voting district EP 10, and Block 301, Block 302, Block 303, Block 304, Block 305B, Block 312B, Block 313, Block 314, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 326, Block 337, Block 338 and Block 399 of Block Group 3 in Census Tract 9639 contained in voting district EP 10, and Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338B, Block 340B, Block 349, Block 350, Block 351, Block 352, Block 353, Block 354, Block 355, Block 356, Block 357, Block 358, Block 359, Block 360, Block 361, Block 362, Block 363, Block 364, Block 365, Block 366, Block 367, Block 368 and Block 399C of Block Group 3 in Census Tract 9643 contained in voting district EP 11 of the Valley magisterial district of Preston county shall constitute the forty-fifth delegate district and shall elect one delegate;

(46) The county of Tucker and that portion of Preston county not included in the forty-fifth delegate district shall constitute the forty-sixth delegate district and shall elect one delegate;

(47) The county of Hardy and all of the county of Pendleton except voting district EP 13 of the Union magisterial district shall constitute the forty-seventh delegate district and shall elect one delegate;

(48) The county of Grant and voting district EP 1,


(50) The county of Hampshire and that portion of Mineral county not included in the forty-eighth or forty-ninth delegate district shall constitute the fiftieth delegate district and shall elect one delegate;

(51) The county of Morgan and voting district EP 40, voting district EP 41 and voting district EP 42 of the Hedgesville magisterial district of Berkeley county shall constitute the fifty-first delegate district and shall elect one delegate;


(53) All of the Gerrardstown magisterial district, all of the Mill Creek magisterial district and voting district
EP 29, voting district EP 31, voting district EP 34, voting district EP 35 and Block 119, Block 127, Block 128, Block 130, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142 and Block 143 of Block Group 1 in Census Tract 9720 contained in voting district EP 25 of the Arden magisterial district of Berkeley county shall constitute the fifty-third delegate district and shall elect one delegate;

(54) That portion of Berkeley county not included in the fifty-first, fifty-second or fifty-third delegate district shall constitute the fifty-fourth delegate district and shall elect one delegate;

(55) All of the Middleway magisterial district, all of the Shepherdstown magisterial district, voting district EP 22 of the Kabletown magisterial district and voting district EP 13 of the Harpers Ferry magisterial district of Jefferson county shall constitute the fifty-fifth delegate district and shall elect one delegate; and

(56) That portion of Jefferson county not included in the fifty-fifth delegate district shall constitute the fifty-sixth delegate district and shall elect one delegate.

(d) Regardless of the changes in delegate district boundaries made by the provisions of subsection (c) of this section, the delegates elected at the general election held in the year one thousand nine hundred ninety shall continue to hold their offices as members of the House of Delegates for the term, and as representatives of the county or delegate district, for which each thereof, respectively, was elected. Any appointment made prior to the first day of December, one thousand nine hundred ninety-two, to fill a vacancy in the office of a member of the House of Delegates shall be made for the remainder of the term, and as representative of the county or delegate district, for which the vacating delegate was elected or appointed.

(e) In amending and reenacting this section, it is not the intention of the Legislature to alter or change the arrangement of the delegate districts and the apportionment of delegates as they were intended to be adopted.
in the prior enactment of this section subsequent to the United States census for the year one thousand nine hundred ninety. Rather, it is the intent of the Legislature in amending this section to have the language comport with the maps relied upon by the Legislature and the map attached to Enrolled House Bill 301 (1991 third extraordinary session) and to correct certain other technical errors, such amendments being necessary to reflect the intention of the Legislature at the time of its initial reenactment of this section after the census.

CHAPTER 120
(Com. Sub. for H. B. 4655—By Mr. Speaker, Mr. Chambers, and Delegate J. Martin)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-c, relating to restructuring and reorganizing joint legislative agencies, personnel and services; creation of divisions; and placing the operation of the divisions, joint agencies, personnel and services under the direction and policies of the joint committee.

Be it enacted by the Legislature of West Virginia:

That article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-c, to read as follows:

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-3c. Reorganization of joint legislative agencies.

1 (a) The joint committee on government and finance has the authority over and direction of joint legislative agencies, personnel and services, including, but not limited to, the following:
(1) The commission on special investigations provided for in article five, chapter four of this code;

(2) The court of claims provided for in article two and crime victims compensation provided for in article two-a, chapter fourteen of this code;

(3) The legislative auditor provided for in article two, chapter four of this code;

(4) The legislative rule-making review committee provided for in article three, chapter twenty-nine-a of this code;

(5) The legislative reference library provided for in section three of this article;

(6) The legislative automated systems division;

(7) Legislative services;

(8) Public information; and

(9) Joint services provided by one or more of the joint agencies set forth in this subsection. The following joint services are included:

(A) Bill drafting;

(B) Budget analysis;

(C) Duplicating;

(D) Financial, payroll, personnel and purchasing for joint agencies and personnel;

(E) Fiscal analysis;

(F) Post audits and performance audits;

(G) Research; and

(H) Joint services to other joint legislative committees created and authorized by this code, to joint standing committees of the Senate and House of Delegates, to standing committees of the Senate and House of Delegates and to legislative interim committees.

(b) Notwithstanding any other provision of this chapter to the contrary, the joint committee on government and finance has the authority to reorganize and
restructure the joint legislative agencies, personnel and
services as provided in subsection (a) of this section for
the purposes of improving their efficiency and the
service they provide to the Legislature and to improve
the management thereof by the joint committee. To
accomplish these purposes, the joint committee may
create divisions as it determines necessary and transfer
and assign the joint agencies, personnel and services to
the divisions. The divisions, joint agencies, personnel
and services shall operate under the direction and
policies of the joint committee: Provided, That nothing
in this section shall be construed to permit the joint
commitee to alter or redefine the powers, duties and
responsibilities vested in the commission on special
investigations pursuant to article five of this chapter.

CHAPTER 121
(Com. Sub. for S. B. 48—By Senators J. Manchin, Hawse, Felton,
Chernenko and Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article seven of said chapter, relating to littering and criminal penalties therefor; presumption; responsibility for animals; alternative sentences and courts authorized to impose them; verification of compliance with alternative sentence; penalties for failure to comply with alternative sentence; requirement that litter control fund be appropriated; and requirement that commissioner of highways place signs informing persons of maximum penalties for littering.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that section twenty-
six, article seven of said chapter be amended and reenacted to read as follows:

Article
   5. Water Resources.
   7. Law Enforcement, Motorboating, Litter.

ARTICLE 5. WATER RESOURCES.

§20-5-15. Litter along streams, criminal penalties, enforcement.

(a) It shall be unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter as defined in section twenty-four, article seven of this chapter and also any garbage, refuse, trash, can, bottle, paper, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter into any river, stream, creek, branch, brook, lake or pond, or upon the surface of any land within one hundred yards thereof, or in such location that high water or normal drainage conditions will cause any such materials or substances to be washed into any river, stream, creek, branch, brook, lake or pond.

(b) No portion of this section shall be construed to restrict an owner, renter or lessee in the use of his own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article five-a of this chapter. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any river, stream, creek, branch, brook, lake or pond, it shall be deemed prima facie evidence that such owner, renter or lessee intended to violate the provisions of this section: Provided, That if a landowner, renter or lessee, private or otherwise, reports any such placing, depositing, dumping or throwing of any such substances or materials upon his or her property to the prosecuting attorney, county commission, or the division of natural
resources, then the landowner, renter or lessee will be presumed to not have knowingly permitted such placing, depositing, dumping or throwing of such materials or substances.

(c) In addition to enforcement by the director, the chief of the division of water resources, and the division's chief law-enforcement officer, the provisions of this section may be enforced by all other proper law-enforcement agencies.

(d) (1) Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon his or her first conviction, shall be fined not less than fifty nor more than five hundred dollars. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior permission of the owner, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. For the first offense, the alternative sentence of litter pickup shall be not less than eight hours nor more than sixteen hours in lieu of a fine. For purposes of this subdivision, the term "court" shall include circuit, magistrate and municipal courts.

(2) Upon his or her second conviction, such person shall be fined not less than two hundred fifty dollars nor more than one thousand dollars and imprisoned in the county jail not less than twenty-four hours nor more than six months. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior permission of the owner, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed.
deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. For the second offense, the alternative sentence of litter pickup shall be not less than sixteen hours nor more than thirty-two hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term “court” shall include circuit and magistrate courts.

(3) Upon such person’s third and successive conviction, he or she shall be fined not less than five hundred dollars nor more than two thousand dollars and imprisoned in the county jail not less than forty-eight hours nor more than one year. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior permission of the owner, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. Upon a third conviction the alternative sentence of litter pickup shall be not less than thirty-two hours nor more than sixty-four hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term “court” shall include circuit and magistrate courts.

(4) The alternative sentence of litter pickup herein set forth shall be verified by the conservation officers or environmental inspectors from the division of natural resources, office of environmental enforcement or a regional engineering technician from the division of natural resources, pollution prevention and open dumps program (PPOD) of the county in which the offense occurred. Any defendant receiving the herein specified alternative sentence of litter pickup shall provide within a time to be set by the court written acknowledgement from said conservation officers or environmental officers that the sentence has been completed.
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(5) Any person who has been found by the court to have willfully failed to comply with the terms of an alternative sentence imposed by the court pursuant to this section shall be subject at the discretion of the court to up to twice the original penalty provisions available to the court at the time of conviction.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 122

(H. B. 4094—By Delegates Love and L. White)

[Passed February 27, 1992: 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.


1 After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state lottery commission should be continued and reestablished. Accordingly, notwithstanding 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-eight.

CHAPTER 123
(H. B. 4077—By Delegates Gallagher and Ashley)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and fourteen, article one; section one, article two; sections two-a, four and six, article three; sections one, two, three, four, five, six, seven, nine and ten, article four; sections two, eight, ten, eleven and thirteen, article five; and section one, article six, all of chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to magistrate courts.

Be it enacted by the Legislature of West Virginia:

That sections four and fourteen, article one; section one, article two; sections two-a, four and six, article three; sections one, two, three, four, five, six, seven, nine and ten, article four;
sections two, eight, ten, eleven and thirteen, article five; and
section one, article six, all of chapter fifty 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. Courts and Officers.
2. Jurisdiction and Authority.
4. Procedure Before Trial.
5. Trials, Hearings and Appeals.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-4. Qualifications of magistrates; training; oath; continuing education, time devoted to public duties.

§50-1-14. Duties of sheriff; service of process; bailiff.

§50-1-4. Qualifications of magistrates; training; oath; continuing education; time devoted to public duties.

1 Each magistrate shall be at least twenty-one years of age, shall have a high school education or its equivalent, shall not have been convicted of any felony or any misdemeanor involving moral turpitude and shall reside in the county of his election. No magistrate shall be a member of the immediate family of any other magistrate in the county. In the event more than one member of an immediate family shall be elected in a county, only the member receiving the highest number of votes shall be eligible to serve. For purposes of this section, immediate family means the relationship of mother, father, sister, brother, child or spouse. Notwithstanding the foregoing provisions of this section, each person who held the office of justice of the peace on the fifth day of November, one thousand nine hundred seventy-four, and who served in or performed the functions of such office for at least one year immediately prior thereto shall be deemed qualified to run for the office of magistrate in the county of his residence.

20 No person shall assume the duties of magistrate unless he shall have first attended and completed a course of instruction in rudimentary principles of law and procedure which shall be given in accordance with
the supervisory rules of the supreme court of appeals.

All magistrates shall be required to attend such other
courses of continuing educational instruction as may be
required by supervisory rule of the supreme court of
appeals. Failure to attend such courses of continuing
educational instruction without good cause shall consti-
tute neglect of duty. Such courses shall be provided at
least once every other year. Persons attending such
courses outside of the county of their residence shall be
reimbursed by the state for expenses actually incurred
in accordance with the supervisory rules of the supreme
court of appeals.

Each magistrate shall, before assuming the duties of
office, take an oath of office to be administered by the
circuit judge of the county, or the chief judge thereof
if there is more than one judge of the circuit court. Each
magistrate shall maintain the qualifications for office at
all times.

Each magistrate who serves five thousand or less in
population shall devote such time to his public duties as
shall be required by rule or regulation of the judge of
the circuit court, or the chief judge thereof if there is
more than one judge of the circuit court. Each magis-
trate who serves more than five thousand in population
shall devote full time to his public duties. As nearly as
practicable, the workload and the total number of hours
required shall be divided evenly among the magistrates
in a county by such judge.

§50-1-14. Duties of sheriff; service of process; bailiff.

(a) It shall be the duty of each sheriff to execute all
civil and criminal process from any magistrate court
which may be directed to such sheriff. Process shall be
served in the same manner as provided by law for
process from circuit courts.

Subject to the supervision of the chief justice of the
supreme court of appeals or of the judge of the circuit
court, or the chief judge thereof if there is more than
one judge of the circuit court, it shall be the duty of the
sheriff, or his designated deputy, to serve as bailiff of
a magistrate court upon the request of the magistrate. Such service shall also be subject to such administrative rules as may be promulgated by the supreme court of appeals. A writ of mandamus shall lie on behalf of a magistrate to enforce the provisions of this section.

(b) The sheriff of any county may employ, by and with the consent of the county commission, one or more persons whose sole duties shall be the service of civil process and the service of subpoenas and subpoenas duces tecum. Any such person shall not be considered a deputy or deputy sheriff within the meaning of subdivision (2), subsection (a), section two, article fourteen, chapter seven of this code, nor shall any such person be authorized to carry deadly weapons in the performance of his duties.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

Except as limited herein and in addition to jurisdiction granted elsewhere to magistrate courts or justices of the peace, magistrate courts shall have jurisdiction of all civil actions wherein the value or amount in controversy or the value of property sought, exclusive of interest and cost, is not more than three thousand dollars. Magistrate courts shall have jurisdiction of all matters involving unlawful entry or detainer of real property or involving wrongful occupation of residential rental property, so long as the title to such property is not in dispute. Except as the same may be in conflict with the provisions of this chapter, the provisions of article three, chapter fifty-five of this code, regarding unlawful entry and detainer, shall apply to such actions in magistrate court. Magistrate courts shall have jurisdiction of actions on bonds given pursuant to the provisions of this chapter. Magistrate courts shall have continuing jurisdiction to entertain motions in regard to post-judgment process issued from magistrate court and decisions thereon may be appealed in the same manner as judgments.

Magistrate courts shall not have jurisdiction of actions in equity, of matters in eminent domain, of matters in
which the title to real estate is in issue, of proceedings seeking satisfaction of liens through the sale of real estate, of actions for false imprisonment, of actions for malicious prosecution or of actions for slander or libel or of any of the extraordinary remedies set forth in chapter fifty-three of this code.

Magistrates, magistrate court clerks, magistrate court deputy clerks, and magistrate assistants shall have the authority to administer any oath or affirmation, to take any affidavit or deposition, unless otherwise expressly provided by law, and to take, under such regulations as are prescribed by law, the acknowledgment of deeds and other writings.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines.

§50-3-4. Disposition of costs; magistrate court fund.

§50-3-6. Collection of costs and fines.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines.

(a) A magistrate court may accept credit cards in payment of all costs, fines, forfeitures or penalties. The supreme court of appeals shall adopt rules and regulations regarding the use of credit cards to pay fines, and such rules and regulations shall state that any charges made by the credit company shall be paid by the person responsible for paying the fine. A magistrate court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court so long as the court requires the balance to be paid within ninety days and in accordance with a payment plan which specifies: (1) The number of additional payments to be made; (2) the dates on which such payments and amounts shall be made; and (3) amounts due on such dates.

(b) If costs, fines, forfeitures or penalties imposed by the magistrate court for hunting or fishing violations as described in chapter twenty of this code, or for motor vehicle violations as described in section three-a, article
three, chapter seventeen-b of this code are not paid in full within ninety days of the judgment, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk must notify the director of the division of natural resources or the division of motor vehicles, whichever is applicable, of such failure to pay.

Upon such notice, the division of motor vehicles shall suspend the operator's or commercial driver's license and the director of the division of natural resources shall suspend the hunting or fishing license of the person defaulting on payment until such time that the costs, fines, forfeitures or penalties are paid.

(c) If a person charged with a motor vehicle violation, as defined in section three-a, article three, chapter seventeen-b of this code, fails to appear or otherwise respond in court, the magistrate court must notify the director of the division of motor vehicles thereof within fifteen days of the scheduled date to appear, unless such person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon such notice, the division of motor vehicles shall suspend the operator's or commercial driver's license of the person failing to appear or otherwise respond in accordance with the provisions of section six, article three, chapter seventeen-b of this code.

(d) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution when rendering judgment.

§50-3-4. Disposition of costs; magistrate court fund.

Except for the funds specified in section four-a, all costs collected in magistrate courts in a civil or criminal proceeding shall be submitted on or before the tenth day of the month following the month of their collection to the magistrate court clerk or, if there is no magistrate court clerk, to the clerk of the circuit court along with such information as may be required by the rules of the supreme court and by the rules of the chief inspector of public offices. Such clerk shall pay costs into the special county fund hereafter created during each fiscal year until there shall have been paid a sum equal to
twelve thousand five hundred dollars multiplied by the
number of magistrates authorized for such county. All
costs collected in excess of such sum during a fiscal year
shall be paid to the state. All costs and fees collected by
magistrates on or after the first day of July, one
thousand nine hundred seventy-six, shall be paid into
said special county fund hereinafter created.

There is hereby created in each county a special
county fund designated as the magistrate court fund. No
moneys shall be appropriated from the fund except for
the purposes provided for in this section. Any money
remaining in the magistrate court fund on the thirtieth
day of June, one thousand nine hundred seventy-nine,
and on the thirtieth day of June of each year thereafter,
shall be paid to the state.

A county may, in accordance with the supervisory
rules of the supreme court of appeals, appropriate and
spend from such fund such sums as shall be necessary
to defray the expenses of providing services to magis-
trate courts.

§50-3-6. Collection of costs and fines.

On motion of the prosecuting attorney, the magistrate
court may issue execution or employ other means of
enforcing judgment to collect fines and costs imposed in
proceedings before the court and tax the cost thereof as
a part of the execution or other process. Such execution
or other process shall be directed to the sheriff for
collection. The sheriff shall collect the fees prescribed
for his services from the party from whom the fine or
costs are being collected. Money so collected shall be
paid by the sheriff to the magistrate court and shall be
paid by the magistrate court in the manner provided by
law.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-1. Commencement of civil actions.
§50-4-2. Commencement of criminal actions.
§50-4-3. Appointment of counsel in criminal proceeding.
§50-4-4. Long-arm jurisdiction; manner of service in civil cases.
§50-4-5. Return date in civil action; setting of trial date; failure to appear
or notify.
§50-4-6. Return date in criminal proceedings; setting trial date.
§50-4-7. Transfer to another magistrate.
§50-4-10. Judgment before trial.

§50-4-1. Commencement of civil actions.

1 There shall be one form of civil action in magistrate
court. Civil actions shall be commenced by the payment
of the fees required by article three of this chapter and
by providing any magistrate court clerk, magistrate
court deputy clerk, or magistrate assistant with a
concise statement, either oral or written, of the nature
of the cause of action. Where such statement is filed by
a commercial creditor, the statement shall include, but
not be limited to, a setting forth of the amount of the
original obligation, the portion thereof which constitutes
principal, the portion thereof which represents interest,
the date and amount of payments thereon, the amount,
if any, credited for the sale of repossessed collateral, and
the amount alleged to be due. The magistrate court
clerk, the magistrate court deputy clerk, or magistrate
assistant shall immediately prepare a summons in such
form and containing such information as may be
required by the rules of the supreme court of appeals.
The summons shall be dated the same day the request
therefor is received and the appropriate fees received,
and the action shall be deemed commenced as of that
date. The magistrate assistant shall thereupon forward
the matter to the magistrate court clerk together with
any service of process fees which may have been
collected.

26 Upon receipt of the matter by the magistrate court
clerk, such clerk shall docket the same in a central
docket, and shall sign the summons and forward it,
together with any service of process fees, to the sheriff
for service. Such clerk shall assign the action for trial
in the manner as shall be prescribed by the judge of the
circuit court, or the chief judge thereof if there is more
than one judge of the circuit court, to promote and
secure the convenient and expeditious transaction of the
business of the court.

§50-4-2. Commencement of criminal actions.
Criminal actions shall be commenced by a complaint filed in compliance with the provisions of article one, chapter sixty-two of this code.

§50-4-3. Appointment of counsel in criminal proceeding.

In any criminal proceeding in a magistrate court in which the applicable statutes authorize a sentence of confinement the magistrate shall at the time of the initial appearance advise a defendant of his right to counsel and his right to have counsel appointed if such defendant cannot afford to retain counsel. In the event a defendant requests that counsel be appointed and executes an affidavit that he is unable to afford counsel, the magistrate shall stay further proceedings and shall request the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, to appoint counsel. Such judge shall thereupon appoint counsel. If there is no judge sitting in the county at the time of the request, then the clerk of the circuit court shall appoint counsel from a list of attorneys in accordance with the rules established by such judge of the circuit court. Counsel shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty-nine of this code.

§50-4-4. Long-arm jurisdiction; manner of service in civil cases.

Magistrate courts shall have long-arm jurisdiction as follows: Over domestic and foreign corporations as provided in section fifteen, article one, chapter thirty-one of this code; over nonresident holders of consumer instruments as provided in section one hundred thirty-seven, article two, chapter forty-six-a of this code; over domestic and foreign limited partnerships as provided in section four, article nine, chapter forty-seven of this code; over voluntary associations and business trusts as provided in section five, article nine-a, chapter forty-seven of this code; over nonresident motorists as provided in section thirty-one, article three, chapter fifty-six of this code; and over nonresidents with certain contacts with this state as provided in section thirty-three, article three, chapter fifty-six of this code.
Service of process in civil actions shall be made in the same manner as is provided for service of process in trial courts of record.

§50-4-5. Return date in civil action; setting of trial date; failure to appear or notify.

Except as may otherwise be provided by law, each summons in a civil action shall notify the defendant that he must appear within twenty days after service of the summons upon him or that he must otherwise notify the magistrate court by that time that he wishes to contest the matter.

If the magistrate court is notified by the defendant that he wishes to contest the matter a trial date shall be set in accordance with the supervisory rules of the supreme court of appeals.

If no appearance or other notification is made within twenty days after the service of the summons on the defendant, or within such other time as may be provided by law, judgment by default may be entered in accordance with the provisions of section ten of this article.

At any trial in any matter involving unlawful entry and detainer and in the trial of any case in any way involving the possession, use or control of rental property, it is permissible for a party to plead, prove and obtain judgment for all rent due and owing the party.

§50-4-6. Return date in criminal proceedings; setting trial date.

When a warrant has been duly executed or when a defendant appears in response to a summons, the defendant shall be notified of the return date set by the court. The defendant shall appear before the magistrate on or before the return date. In the event a trial or preliminary examination is not expressly waived by such defendant, the magistrate shall set a date for such trial or preliminary examination and shall notify all parties.
§50-4-7. Transfer to another magistrate.

Any party to a civil or criminal proceeding before a magistrate in any county wherein there is more than one magistrate may file an affidavit that the magistrate before whom the matter is pending has a personal bias or prejudice either against him or in favor of any opposite party or that such magistrate has counseled with any opposite party with respect to the merits of the proceeding. The affidavit shall state the facts and reasons for belief in the truth thereof. Such affidavit must be filed within such time as may be provided by the supervisory rules of the supreme court of appeals. The supreme court of appeals shall provide a form affidavit which shall be made available to all parties and which shall comply with the requirements of this section.

Upon the timely filing of such affidavit, the magistrate shall transfer all matters relating to the case to the magistrate court clerk, who shall thereupon assign and transfer the matter to be heard by some other magistrate within the county upon a basis to be established by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Such transfer and assignment shall be permitted, however, only if there is some other magistrate in the county before whom the matter had not been previously pending. No party shall be entitled to cause such a transfer more than once.

The magistrate to whom the matter is assigned shall set a new return date not more than five days from his receipt of the matter, shall notify all parties thereof, and shall proceed with the matter as if it had been originally assigned to him.


A defendant in a civil action may file a counterclaim and if such counterclaim arises from the same transaction or occurrence that is the subject matter of the initial claim they shall be tried together. The failure to institute a counterclaim permitted by this section shall not preclude the institution of an action on such claim.
The adjudication of the original claim shall not constitute res judicata as to any such permitted counterclaim nor shall it act as an estoppel as to such permitted counterclaim.

§50-4-10. Judgment before trial.

If a defendant in a civil action fails to appear or otherwise notify the magistrate court within the time limits prescribed by section five of this article that he wishes to contest the action, the magistrate may enter judgment as justice may require as follows:

(a) The magistrate shall enter judgment by default only upon affidavit or sworn testimony reflecting the nature of the claim, whether or not it is for a sum certain or for a sum which can by computation be made certain, the defendant's failure to appear or otherwise notify the court within the time limits prescribed by section five of this article that he wishes to contest the action and supporting the relief sought. In the event the plaintiff's claim is not for a sum certain or for a sum which can by computation be made certain, the court shall require such further proof by affidavit or sworn testimony as is necessary to determine the propriety of the relief sought.

(b) No judgment by default shall be rendered against a person who is an infant, incompetent person or incarcerated convict unless such person is represented in the action by a guardian ad litem, guardian, committee, curator or other like fiduciary.

Upon motion made by the defendant within twenty days after the entry of such judgment, the magistrate may, for good cause shown, set aside the judgment and set the matter for trial.

If a defendant offers to confess judgment at any time, the magistrate shall take the same in writing and enter judgment for the amount confessed plus costs. In the event the amount claimed by the plaintiff exceeds the amount confessed by the defendant the plaintiff may request that the matter be set for trial. If the plaintiff's recovery therein does not exceed the amount confessed,
costs shall be assessed against the plaintiff.

ARTICLE 5. TRIALS, HEARING AND APPEALS.


A magistrate may continue the holding of a trial or hearing as provided in the supervisory rules of the supreme court of appeals. In criminal proceedings when the defendant is in custody, the state shall not have the right to a continuance but may be granted a continuance for no more than five days if good cause is shown. In criminal proceedings when the defendant is in custody, the magistrate may continue the matter no more than once on his own motion over the objection of the defendant and such continuance over the objection of the defendant shall not be for more than two days.

§50-5-8. Trial by jury.

Any party to a civil action is entitled to a trial by jury when the amount in controversy exceeds twenty dollars or involves possession to real estate. Any defendant in any criminal action shall be entitled to a trial by jury, and any such verdict must be unanimous. A defendant in a criminal proceeding may waive a jury trial if he is advised of his right to a jury trial and such waiver is made in writing. A magistrate court jury shall consist of six persons, to be selected from a panel of ten persons. The selection and summoning of jurors shall be conducted in accordance with the provisions of article one, chapter fifty-two of this code and with the supervisory rules of the supreme court of appeals. Jurors shall be paid by the state in accordance with such rules.

§50-5-10. Setting aside judgment.

Upon motion made within twenty days after judgment by any party in a civil action or by the defendant in a criminal action, the magistrate who heard the matter or his successor or designee may, upon good
cause shown, set aside judgment and order a new trial.
All parties shall be given notice of such motion and an
opportunity to be heard.


A magistrate may punish for contempt of court a
person guilty of any of the following acts:

(a) Contemptuous or insolent behavior toward such
magistrate while engaged in the trial of a case or in any
other judicial proceeding;

(b) Any breach of the peace, willful disturbance, or
indecent conduct in the presence of such magistrate
while so engaged, or so near as to obstruct or interrupt
the proceedings;

(c) Violence or threats of violence to such magistrate,
or any officer, juror, witness, or party going to,
attending, or returning from, any judicial proceeding
before the court with respect to anything done or to be
done in the course of such proceeding;

(d) Flagrant misbehavior of any officer of the county
acting in his official capacity with respect to any action
or judicial proceeding had or pending before the court,
or any process, judgment, order or notice therein; or

(e) Willful resistance by an officer of the court, juror,
witness, party or other person to any lawful process or
order of the court.

A magistrate may, if necessary, issue a warrant of
arrest for such person, who shall be given an opportuni-
ity to be heard. In the event such person is adjudged
guilty of contempt, the person may be fined not more
than fifty dollars for the first offense. For a second
offense pertaining to the same matter the person may
be fined not more than one hundred dollars. For the
third or any subsequent offense pertaining to the same
matter the person may be fined not more than one
hundred dollars, or imprisoned in the county jail not
more than ten days, or both fined and imprisoned.

An appeal to the circuit court of such conviction shall
lie as in criminal cases.

Any person convicted of an offense in a magistrate court may appeal such conviction to circuit court as a matter of right by requesting such appeal within twenty days of the sentencing for such conviction. The magistrate may require the posting of bond with good security conditioned upon the appearance of the defendant as required in circuit court, but such bond may not exceed the maximum amount of any fine which could be imposed for the offense. Such bond may be upon the defendant's own recognizance. If no appeal is perfected within such twenty-day period, the circuit court of the county may, not later than ninety days after the sentencing, grant an appeal upon a showing of good cause why such appeal was not filed within such twenty-day period. The filing or granting of an appeal shall automatically stay the sentence of the magistrate. Trial in circuit court shall be de novo. Notwithstanding any other provision of this code to the contrary, there shall be no appeal from a plea of guilty where the defendant was represented by counsel at the time the plea was entered: Provided, That the defendant shall have an appeal from a plea of guilty where an extraordinary remedy would lie or where the magistrate court lacked jurisdiction.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

(a) The provisions of articles three, four, five, five-a, five-b and six, chapter thirty-eight of this code, except as the same are in conflict with the provisions of this chapter or are clearly applicable only to courts of record, shall apply to the enforcement of judgments rendered in magistrate court and process therefor shall issue from magistrate court. Process issued in violation of such provisions shall be void. The form of such process shall be in accord with the rules of the supreme court of appeals. No such process shall issue until after twenty days after the judgment is rendered or, if a motion to set aside such judgment is then pending, until after twenty days after the determination of such motion.
(b) A magistrate court clerk, deputy clerk or magistrate assistant before whom a suggestion of salary and wages is instituted pursuant to the provisions of articles five-a and five-b, chapter thirty-eight of this code shall forward all post judgment process directly to the sheriff of any county in the same manner and with the same authority as has been given to circuit clerks, pursuant to section five, article three, chapter fifty-six.

CHAPTER 124
(H. B. 4208—By Delegates Lane and Manuel)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that a magistrate assistant or magistrate court deputy clerk reside in the county where appointed.

Be it enacted by the Legislature of West Virginia:

That sections nine and nine-a, article one, chapter fifty 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. COURTS AND OFFICERS.


§50-1-9a. Magistrate court deputy clerks; salary; duties.


1 In each county there shall be one magistrate assistant for each magistrate. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the state of West
Virginia. For the purpose of this section, "immediate family" means the relationships of mother, father, sister, brother, child or spouse.

A magistrate assistant shall have such duties, clerical or otherwise, as may be assigned by the magistrate and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and be accountable to the magistrate court clerks with respect to the following duties:

1. The preparation of summons in civil actions;
2. The assignment of civil actions to the various magistrates;
3. The collection of all costs, fees, fines, forfeitures and penalties which may be payable to the court;
4. The submission of such moneys, along with an accounting thereof, to appropriate authorities as provided by law;
5. The daily disposition of closed files which are to be located in the magistrate clerk's office;
6. All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court;
7. All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter;
8. All other duties or responsibilities whereby the magistrate assistant is accountable to the magistrate court clerk as the magistrate determines.

Magistrate assistants shall be paid a monthly salary by the state. Magistrate assistants serving magistrates who serve less than ten thousand in population shall be
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paid up to nine hundred sixty-seven dollars per month and magistrate assistants serving magistrates who serve ten thousand or more in population shall be paid up to one thousand two hundred twenty-five dollars per month: Provided, That on and after the first day of January, one thousand nine hundred ninety-two, magistrate assistants serving magistrates who serve ten thousand in population shall be paid up to one thousand five-one dollars per month and magistrate assistants serving magistrates who serve less than ten thousand in population shall be paid up to one thousand fifty-one dollars per month and magistrate assistants serving magistrates who serve ten thousand or more in population shall be paid up to one thousand three hundred nine dollars per month: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-three, magistrate assistants serving magistrates who serve less than eight thousand five hundred in population shall be paid up to one thousand one hundred seventy-six dollars per month and magistrate assistants serving magistrates who serve eight thousand five hundred or more in population shall be paid up to one thousand four hundred thirty-four dollars per month: Provided further, That after the effective date of this section, any general salary increase granted to all state employees, whose salaries are not set by statute, expressed as a percentage increase or an "across-the-board" increase, may also be granted to magistrate assistants. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, the supreme court of appeals may by rule provide for the appointment of magistrate court deputy clerks, not to exceed fifty-two in number. Such magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, with such
appointee to serve at his will and pleasure under the immediate supervision of the magistrate court clerk. Such magistrate court deputy clerk shall have such duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Such magistrate court deputy clerks shall also have authority to exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by such magistrate court clerk.

Such magistrate court deputy clerk shall not be a member of the immediate family of any magistrate, magistrate court clerk, magistrate assistant or circuit court judge within the same county, shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the state of West Virginia. For the purpose of this section, “immediate family” shall mean the relationships of mother, father, sister, brother, child or spouse.

Magistrate court deputy clerks shall be paid a monthly salary by the state. Such salary shall be paid on the same basis and in the same applicable amounts as for magistrate assistants in each county as provided in section nine of this article.
trators and clinical directors of facilities; changing certain terminology consistent with government reorganiza-
tion; defining and redefining certain terms; providing for the appointment of additional mental hygienen
commissioners; providing for the designation of magistrates to hold probable cause and emergency deten-
tion hearings; mandating the supreme court of appeals to conduct a training course and to promulgate rules
providing therefor; requiring the sheriff to maintain custody of individuals prior to and during involuntary hospitalization hearings; provisions for county commissions to pay for security; setting forth duty of the supreme court of appeals to provide forms for proceedings; establishing civil and criminal immunity for health care facilities and professionals; and making provisions gender neutral.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Words and Phrases Defined.
5. Involuntary Hospitalization.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-7. Administrator and clinical director.

§27-1-10. Psychologists and psychiatrists.

§27-1-7. Administrator and clinical director.

1 (a) The administrator of a state-operated treatment facility shall be its chief executive officer and shall have the authority to manage and administer the financial, business and personnel affairs of such facility. All other persons employed at the state-operated treatment facility shall be under the jurisdiction and authority of the administrator of the treatment facility who need not be a physician.

(b) The clinical director shall have the responsibility for decisions involving clinical and medical treatment of
patients in a state-operated mental health facility. The clinical director must be a physician duly licensed to practice medicine in this state who has completed training in an accredited program of post-graduate education in psychiatry.

(c) In any facility designated by the secretary of the department of health and human resources as a facility for the mentally retarded in which programs and services are designed primarily to provide education, training and rehabilitation rather than medical or psychiatric treatment, the duties and responsibilities, other than those directly related to medical treatment services, assigned to the clinical director by this section or elsewhere in this chapter, shall be assigned to and become the responsibility of the administrator of such facility, or of a person with expertise in the field of mental retardation, who need not be a physician, designated by the administrator.

§27-1-10. Psychologists and psychiatrists.

(a) For the purposes of this chapter, “psychologist” means any person licensed under the laws of this state to engage in the practice of psychology, or any other psychologist not a resident of this state who engages in the practice of psychology in this state and who holds a license or certificate to engage in the practice of psychology issued by another state with licensing or certification requirements comparable to the licensing requirements of this state, as may be determined by the state board of examiners of psychologists.

(b) For purposes of this chapter, “psychiatrist” means a physician licensed under the laws of this state to practice medicine who has completed training in an accredited program of post-graduate education in psychiatry.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.
§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.

(a) Appointment of mental hygiene commissioners. — The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in article one, chapter six of this code.

All persons appointed to serve as mental hygiene commissioners and any magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization must attend and complete a course provided by the supreme court of appeals which course shall include, but not be limited to, instruction on the manifestations of mental illness, mental retardation and addiction. Persons attending such courses outside the county of their residence shall be reimbursed out of the budget of the supreme court—general judicial for reasonable expenses incurred. The supreme court shall establish rules for such course, including rules providing for the reimbursement of reasonable expenses as authorized herein.

(b) Duties of mental hygiene commissioners. — Mental hygiene commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to section four, article five of this chapter, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; and may make findings of fact on evidence and may make conclusions of law,
but such findings and conclusions shall not be binding
on the circuit court. The circuit court, by order entered
of record, shall allow the commissioner a reasonable fee
for services rendered in connection with each case.
Mental hygiene commissioners shall discharge their
duties and hold their office at the pleasure of the chief
judge of the judicial circuit in which he or she is
appointed and may be removed at any time by such
chief judge. It shall be the duty of a mental hygiene
commissioner to conduct orderly inquiries into the
mental health of the individual sought to be committed
concerning the advisability of committing the individual
to a mental health facility. The mental hygiene commis-
sioner shall safeguard, at all times, the rights and
interests of the individual as well as the interests of the
state. The mental hygiene commissioner shall make a
written report of his findings to the circuit court. In any
proceedings before any court of record as set forth in
this article, the court of record shall appoint an
interpreter for any individual who is deaf or cannot
speak or who speaks a foreign language and who may
be subject to involuntary commitment to a mental health
facility.

(c) Duties of prosecuting attorney. — It shall be the
duty of the prosecuting attorney or one of his or her
assistants to represent the applicants in all proceedings
filed pursuant to the provisions of this article.

(d) Duties of sheriff. — Upon written order of the
circuit court or of a mental hygiene commissioner in the
county where the individual formally accused of being
mentally incompetent, mentally retarded or addicted is
a resident or is found, the sheriff of that county shall
take said individual into custody and transport him or
her to and from the place of hearing and the mental
health facility. The sheriff shall also maintain custody
and control of the accused individual during the period
of time in which the individual is waiting for the
involuntary commitment hearing to be convened and
while such hearing is being conducted.

(e) Duties of sheriff upon presentment to mental health
care facility. — Where a person is brought to a mental
health care facility for purposes of evaluation for
commitment under the provisions of this article, if he
or she is violent or combative, the sheriff or his or her
designee shall maintain custody of the person in the
facility until the evaluation is completed or the county
commission shall reimburse the mental health care
facility at a reasonable rate for security services
provided by the mental health care facility for the
period of time the person is at the hospital prior to the
determination of mental competence or incompetence.

(f) Duties of supreme court of appeals. — The supreme
court of appeals shall provide uniform petition, proce-
dure and order forms which shall be used in all
involuntary hospitalization proceedings brought in this
state.

§27-5-2. Institution of proceedings for involuntary cus-
tody for examination; custody; probable cause
hearing; examination of individual.

(a) When application for involuntary custody for
examination may be made. — Any adult person may
make application for involuntary hospitalization for
examination of an individual when said person has
reason to believe that:

(1) The individual is addicted, as defined in section
eleven, article one of this chapter: Provided, That for
purposes of this subdivision and the involuntary
hospitalization procedures specified in this article, the
sole issue to be determined is whether the individual is
addicted, which by definition includes the notion of
being incapacitated, causing harm to others or being
unable to prevent harm to himself: Provided, however,
That whenever a provision of this article refers to or
requires a finding of likelihood to cause serious harm,
a finding that an individual is addicted shall be deemed
to satisfy such reference or requirement; or

(2) The individual is mentally ill or mentally retarded
and, because of his or her mental illness or mental
retardation, the individual is likely to cause serious
harm to himself or herself or to others if allowed to
remain at liberty while awaiting an examination and
(b) Oath; to whom application for involuntary custody for examination is made; contents of application; custody; probable cause hearing; examination. —

(1) The person making such application shall do so under oath.

(2) Application for involuntary custody for examination may be made to the circuit court or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found.

(3) The person making such application shall give such information and state such facts therein as may be required, upon the form provided for this purpose by the supreme court of appeals.

(4) The circuit court or the mental hygiene commissioner may thereupon enter an order for the individual named in such action to be detained and taken into custody, for the purpose of holding a probable cause hearing as provided for in subdivision (5) of this subsection and for the purpose of an examination of the individual by a physician or a psychologist. Such examination shall be provided or arranged by a community mental health center designated by the secretary of the department of health and human resources to serve the county in which the action takes place. The said order shall specify that such hearing be held forthwith and shall provide for the appointment of counsel for the individual: Provided, That where a physician or psychologist has performed such examination, the community mental health center may waive this requirement upon approving such examination.

Notwithstanding the provisions of this subsection, subsection (r), section four of this article shall apply regarding payment by the county commission for examinations at hearings.

In the event immediate detention is believed to be necessary for the protection of the individual or others at a time when no circuit court judge or mental hygiene
commissioner is available for immediate presentation of
the application, a magistrate designated by the chief
designated by the chief
judge of the judicial circuit may accept the application
and, upon a finding that such immediate detention is
necessary pending presentation of the application to the
circuit court or mental hygiene commissioner, may
order the individual to be temporarily detained in
custody until the earliest reasonable time that the
application can be presented to the circuit court or
mental hygiene commissioner, which temporary period
of detention may not exceed twenty-four hours.

(5) A probable cause hearing shall be held before a
magistrate designated by the chief judge of the judicial
circuit, the mental hygiene commissioner or circuit
judge of the county of which the individual is a resident
or where he or she was found. If requested by the
individual or his or her counsel, the hearing may be
postponed for a period not to exceed forty-eight hours.

The individual must be present at the hearing and
shall have the right to present evidence, confront all
witnesses and other evidence against him or her and to
examine testimony offered, including testimony by
representatives of the community mental health center
serving the area. The individual shall have the right to
remain silent and to be proceeded against in accordance
with the rules of evidence of the supreme court of
appeals. At the conclusion of the hearing, the magis-
trate, mental hygiene commissioner or circuit court
judge shall find and enter an order stating whether or
not there is probable cause to believe that such individ-
ual, as a result of mental illness, mental retardation or
addiction, is likely to cause serious harm to himself or
herself or to others.

§ 27-5-3. Admission under involuntary hospitalization for
examination; hearing; release.

(a) Admission to a mental health facility for examina-
tion. — Any individual may be admitted to a mental
health facility for examination upon entry of an order
finding probable cause as provided in section two of this
article and upon certification by one physician or one
psychologist that he or she has examined the individual and is of the opinion that the individual is mentally ill, mentally retarded or addicted and because of such mental illness, mental retardation or addiction is likely to cause serious harm to himself or herself or to others if not immediately restrained. The chief medical officer of said mental health facility may, with the approval of the secretary of health and human resources, transfer such individual to a state hospital or to another similar type of mental health facility after determining that no less restrictive treatment alternative is suitable or available. The chief medical officer of the mental health facility admitting the individual shall forthwith make a report thereof to the secretary of the department of health and human resources.

(b) Three-day time limitation on examination. — If said examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill, mentally retarded or addicted, the individual shall be released.

(c) Three-day time limitation on certification. — The certification required in subsection (a) of this section shall be valid for three days. Any individual with respect to whom such certification has been issued may not be admitted on the basis thereof at any time after the expiration of three days from the date of such examination.

(d) Findings and conclusions required for certification. — A certification under this section must include findings and conclusions of the mental examination, the date, time and place thereof and the facts upon which the conclusion of likelihood of causing serious harm is based.

(e) Notice requirements. — When an individual is admitted to a mental health facility pursuant to the provisions of this section, the chief medical officer thereof shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians, or if there be no
such spouse, parents or guardians, to one of the individual's adult next of kin: Provided, That such next of kin shall not be the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual's residence. Such notices other than to the community mental health facility shall be in writing and shall be transmitted to such person or persons at his, her or their last-known address by certified or registered mail, return receipt requested.

(f) Five-day time limitation for examination and certification at mental health facility. — After the individual's admission to a mental health facility, he or she may not be detained more than five days excluding Sundays and holidays, unless, within such period, the individual is examined by a staff physician and such physician certifies that in his or her opinion, the patient is mentally ill, mentally retarded or addicted and is likely to injure himself or herself or others if allowed to be at liberty.

(g) Ten-day time limitation for institution of final commitment proceedings. — If, in the opinion of the examining physician, the patient is mentally ill, mentally retarded or addicted and because of such mental illness, mental retardation or addiction is likely to injure himself or herself or others if allowed to be at liberty, the chief medical officer shall, within ten days from the date of admission, institute final commitment proceedings as provided in section four of this article. If such proceedings are not instituted within such ten-day period, the patient shall be immediately released. After the request for hearing is filed, the hearing shall not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) Thirty-day time limitation for conclusion of all proceedings. — If all proceedings as provided in articles three and four of this chapter are not completed within thirty days from the date of institution of such proceedings, the patient shall be immediately released.
§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) Involuntary commitment. — Except as provided in section three of this article, no individual may be involuntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county wherein such person resides or was found, or if the individual is hospitalized in a mental health facility located in a county other than where he or she resides or was found, in the county of the mental health facility, and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility: Provided, That if said individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) How final commitment proceedings are commenced. — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath and the certificate or affidavit is hereinafter provided with the clerk of the circuit court or mental hygiene commissioner of the county of which the individual is a resident, or where he or she may be found, or the county of the mental health facility, if he or she is hospitalized in a mental health facility located in a county other than where he or she resides or may be found by an adult person having personal knowledge of the facts of the case.

(c) Oath; contents of application; who may inspect application; when application cannot be filed. —

(1) The person making such application shall do so under oath.

(2) The application shall contain statements by the applicant that he or she believes because of symptoms of mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or herself or to others and the grounds for such belief, stating in detail the recent overt acts upon which such belief is based: Provided, That no such statement of
recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself or herself by reason of mental retardation.

(3) The written application, certificate, affidavit and any warrants issued pursuant thereto, including any papers and documents related thereto filed with any circuit court or mental hygiene commissioner for the involuntary hospitalization of any individual shall not be open to inspection by any person other than the individual, except upon authorization of the individual or his or her legal representative or by order of the circuit court, and such records may not be published except upon the authorization of the individual or his or her legal representative.

(4) Applications shall not be accepted for individuals who only have epilepsy, a mental deficiency or senility.

(d) Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.—

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill, mentally retarded or addicted and that because of such mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or herself or to others if he or she is allowed to remain at liberty and therefore he or she should be hospitalized, stating in detail the recent overt acts upon which such conclusion is based: Provided, That no such statement of recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself or herself by reason of mental retardation.

(2) A certificate is not necessary only when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) Notice requirements; eight days' notice required.—
Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for and have the clerk of the circuit court give notice of the hearing: (1) To the individual; (2) to the applicant or applicants; (3) to the individual's spouse, one of the parents or guardians, or if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin: Provided, That such person is not the applicant; (4) to the mental health authorities serving the area; (5) to the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of such individual's residence; and (6) to the prosecuting attorney of the county in which the hearing is to be held. Such notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing, and shall specify the nature of the charges against the individual; the facts underlying and supporting the application of involuntary commitment; the right to have counsel appointed; the right to consult with and be represented by counsel at every stage of the proceedings; and the time and place of the hearing. The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin, or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(f) Examination of individual by court-appointed physician or psychologist; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician or psychologist to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition of the individual and the likelihood of
(2) If the designated physician or psychologist reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to such examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician or psychologist. All such orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After such examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to section three of this article.

(3) If the reports of the appointed physician or psychologist do not confirm that the individual is mentally ill, mentally retarded or addicted and might be harmful to himself or herself or to others, then the proceedings for involuntary hospitalization shall be dismissed.

(g) Rights of the individual at the final commitment hearing; seven days' notice to counsel required.—

(1) The individual shall be present at the final commitment hearing and he or she, the applicant and all persons entitled to notice of such hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) In the event that the individual has not retained counsel, the court or mental hygiene commissioner at least six days prior to hearing shall appoint a competent attorney, and shall inform the individual of the name, address and telephone number of his or her appointed counsel.

(3) The individual shall have the right to have an examination by an independent expert of his or her choice and testimony from such expert as a medical witness on his or her behalf. The cost of such independ-
ent expert shall be borne by the individual unless he or she is indigent.

(4) The individual shall not be compelled to be a witness against himself or herself.

(h) Duties of counsel representing individual; payment of counsel representing indigent.—

(1) The counsel representing an individual shall conduct a timely interview, make investigation and secure appropriate witnesses and shall be present at the hearing and protect the interest of the individual.

(2) Any counsel representing an individual shall be entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code.

(i) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.—

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner shall be bound by the rules of evidence promulgated by the supreme court of appeals except that statements made to physicians or psychologists by the individual may be admitted into evidence by the physician's or psychologist's testimony notwithstanding failure to inform the individual that this statement may be used against him or her. Any psychologist or physician testifying shall bring all records pertaining to said individual to said hearing. Such medical evidence obtained pursuant to an examination under this section,
or section two or three of this article, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript shall be made available to the individual, his or her counsel or the prosecuting attorney within thirty days, if the same is requested for the purpose of further proceedings. In any case wherein an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(j) Requisite findings by the court. —

(1) Upon completion of the final commitment hearing, and the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings as to whether or not the individual is mentally ill, retarded or addicted and because of illness, retardation or addiction is likely to cause serious harm to himself or herself or to others if allowed to remain at liberty and is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in such county.

(2) The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment shall be on the person or persons seeking the commitment of the individual.

(3) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof.

(k) Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order. —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility for an
indeterminate period or for a temporary observatory period not exceeding six months.

(2) The individual shall not be detained in a mental health facility for a period in excess of ten days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(3) If the order pursuant to a final commitment hearing is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization, to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.

(4) An order for an indeterminate period shall expire of its own terms at the expiration of two years from the date of the last order of commitment unless prior to the expiration, the department of health, upon findings based on an examination of the patient by a physician or a psychologist, extends the order for indeterminate hospitalization: Provided, That if the patient or his or her counsel requests a hearing, then a hearing shall be held by the mental hygiene commissioner; or by the circuit court of the county as provided in subsection (a) of this section.

(1) Dismissal of proceedings. — If the circuit court or mental hygiene commissioner finds that the individual is not mentally ill, mentally retarded or addicted, the proceedings shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill, mentally retarded or addicted but is not because of such illness, retardation or addiction likely
to cause serious harm to himself or herself or to others if allowed to remain at liberty, the proceedings shall be dismissed.

(m) **Immediate notification of order of hospitalization.**
- The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry thereof forward a certified copy of same to the clerk of the circuit court of the county of which the individual is a resident.

(n) **Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.**

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held, and the individual is not currently a resident of a mental health facility, a transcript of the evidence adduced at the final commitment hearing of such individual, certified by the clerk of the circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which such individual is a resident, who shall immediately present such transcript to the circuit court or mental hygiene commissioner of said county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in such transcript that such individual should be hospitalized as determined by the standard set forth above, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted forthwith to the clerk of the circuit court of the county in which the hearing was held who shall execute said order promptly.

(o) **Order of custody to responsible person.** — In lieu of ordering the patient to a mental health facility, the
circuit court may order the individual delivered to some
responsible person who will agree to take care of the
individual and the circuit court may take from such
responsible person a bond in an amount to be deter-
mined by the circuit court with condition to restrain and
take proper care of such individual until further order
of the court.

(p) Individual not a resident of this state. — If the
individual found to be mentally ill, mentally retarded or
addicted by the circuit court or mental hygiene commis-
sioner is a resident of another state, this information
shall be forthwith given to the secretary of the depart-
ment of health and human resources, or to his or her
designee, who shall make appropriate arrangements for
transfer of the individual to the state of his or her
residence conditioned on the agreement of the individual
except as qualified by the interstate compact on mental
health.

(q) Report to the secretary of the department of health
and human resources. —

(1) The chief medical officer of a mental health
facility admitting a patient pursuant to proceedings
under this section shall forthwith make a report of such
admission to the secretary of the department of health
and human resources or to his or her designee.

(2) Whenever an individual is released from custody
due to the failure of an employee of a mental health
facility to comply with the time requirements of this
article, the chief medical officer of such mental health
facility shall forthwith after the release of the individual
make a report to the secretary of the department of
health and human resources or to his or her designee
of the failure to comply.

(r) Payment of some expenses by the state; mental
hygiene fund established; expenses paid by the county
commission. —

(1) The state shall pay the commissioner's fee and such
court reporter fees as are not paid and reimbursed
under article twenty-one, chapter twenty-nine of this
code out of a special fund to be established within the
supreme court of appeals to be known as the “mental
hygiene fund”.

(2) The county commission shall pay out of the county
treasury all other expenses incurred in the hearings
conducted under the provisions of this article whether
or not hospitalization is ordered, including any fee
allowed by the circuit court by order entered of record
for any physician, psychologist and witness called by the
indigent individual.

CHAPTER 126
(Com. Sub. for S. B. 297—By Senator Spears)

[Passed March 3, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one,
chapter five-f of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to amend and
reenact section one, article two of said chapter, relating
to the reorganization of the executive branch of state
government; seven departments; changing the name of
the department of public safety to department of
military affairs and public safety; the office of secretary
as the head of each department; transfer to such
departments of numerous state agencies and boards and
their allied, advisory, affiliated and related entities and
funds; removing and correcting transfer references to
certain agencies and boards; retaining the existence,
powers, authority, duties and status of administrators,
agencies and boards; providing for code references
elsewhere; and removing the crime victims compensa-
tion fund from reorganization of the executive branch
of state government.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Transfer of Agencies and Boards.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

1 (a) There are hereby created, within the executive branch of the state government, the following departments:
2 (1) Department of administration;
3 (2) Department of commerce, labor and environmental resources;
4 (3) Department of education and the arts;
5 (4) Department of health and human resources;
6 (5) Department of military affairs and public safety;
7 (6) Department of tax and revenue; and
8 (7) Department of transportation.

(b) Each department shall be headed by a secretary who shall be appointed by the governor by and with the advice and consent of the Senate and who shall serve at the will and pleasure of the governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:
2 (1) Building commission provided for in article six, chapter five of this code;
(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Council of finance and administration provided for in article one, chapter five-a of this code;

(4) Employee suggestion award board provided for in article one-a, chapter five-a of this code;

(5) Governor's mansion advisory committee provided for in article four-a, chapter five-a of this code;

(6) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(7) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen and article six-a, chapter twenty-nine of this code;

(8) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(9) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(10) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(11) Division of personnel provided for in article six, chapter twenty-nine of this code;

(12) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(13) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of commerce, labor and environmental resources:

(1) Forest management review commission provided for in article twenty-four, chapter five of this code;

(2) Division of tourism and parks provided for in
(3) Office of community and industrial development or successor agency provided for in article two, chapter five-b of this code;

(4) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(5) Office of federal procurement assistance provided for in article two-c, chapter five-b of this code;

(6) Labor-management council provided for in article four, chapter five-b of this code;

(7) Public energy authority and board provided for in chapter five-d of this code;

(8) Air pollution control commission provided for in article twenty, chapter sixteen of this code;

(9) Solid waste management board provided for in article twenty-six, chapter sixteen of this code;

(10) Division of forestry and forestry commission provided for in article one-a, chapter nineteen of this code;

(11) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code;

(12) Water resources board provided for in article five, chapter twenty of this code;

(13) Water development authority and board provided for in article five-c, chapter twenty of this code;

(14) Division of labor provided for in article one, chapter twenty-one of this code;

(15) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code;

(16) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(17) Division of environmental protection provided for
in article one, chapter twenty-two of this code;

(18) Reclamation board of review provided for in article four, chapter twenty-two of this code;

(19) Board of appeals provided for in article five, chapter twenty-two of this code;

(20) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two of this code;

(21) Shallow gas well review board provided for in article seven, chapter twenty-two of this code;

(22) Oil and gas conservation commission provided for in article eight, chapter twenty-two of this code;

(23) Board of miner training, education and certification provided for in article nine, chapter twenty-two of this code;

(24) Mine inspectors’ examining board provided for in article eleven, chapter twenty-two of this code;

(25) Oil and gas inspectors’ examining board provided for in article thirteen, chapter twenty-two of this code;

(26) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(27) Blennerhassett historical state park commission provided for in article eight, chapter twenty-nine of this code;

(28) Economic development authority provided for in article fifteen, chapter thirty-one of this code;

(29) Division of banking provided for in article two, chapter thirty-one-a of this code;

(30) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(31) Lending and credit rate board provided for in chapter forty-seven-a of this code; and

(32) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code.
(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) University of West Virginia board of trustees provided for in article two and board of directors of the state college system provided for in article three, chapter eighteen-b of this code; and

(4) Division of culture and history provided for in article one, chapter twenty-nine of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Division of human services provided for in article two, chapter nine of this code;

(3) Division of health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(5) Hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code;

(6) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(7) Structural barriers compliance board provided for
in article ten-f, chapter eighteen of this code;
(8) Commission on aging provided for in article fourteen, chapter twenty-nine of this code;
(9) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code; and
(10) Women’s commission provided for in article twenty, chapter twenty-nine of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:

(1) Adjutant general’s department provided for in article one-a, chapter fifteen of this code;
(2) Armory board provided for in article six, chapter fifteen of this code;
(3) Military awards board provided for in article one-g, chapter fifteen of this code;
(4) Division of public safety provided for in article two, chapter fifteen of this code;
(5) Office of emergency services and disaster recovery board provided for in article five and emergency response commission provided for in article five-a, chapter fifteen of this code;
(6) Sheriffs’ bureau provided for in article eight, chapter fifteen of this code;
(7) Division of corrections provided for in chapter twenty-five of this code;
(8) Fire commission provided for in article three, chapter twenty-nine of this code;
(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;
(10) Board of probation and parole provided for in
article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Appraisal control and review commission provided for in article one-a, chapter eleven of this code;

(3) Municipal bond commission provided for in article three, chapter thirteen of this code;

(4) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(5) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(6) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(7) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven and article two, chapter sixty of this code; and

(8) Division of professional and occupational licenses which may be hereafter created by the Legislature.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:

(1) Road commission provided for in article two, chapter seventeen of this code;
(2) Division of highways provided for in article two-
a, chapter seventeen of this code;

(3) Parkways, economic development and tourism
authority provided for in article sixteen-a, chapter
seventeen of this code;

(4) Division of motor vehicles provided for in article
two, chapter seventeen-a of this code;

(5) Driver's licensing advisory board provided for in
article two, chapter seventeen-b of this code;

(6) Aeronautics commission provided for in article
two-a, chapter twenty-nine of this code;

(7) Railroad maintenance authority provided for in
article eighteen, chapter twenty-nine of this code; and

(8) Port authority provided for in article sixteen-b,
chapter seventeen of this code.

(h) Except for such powers, authority and duties as
have been delegated to the secretaries of the depart-
ments by the provisions of section two of this article, the
existence of the position of administrator and of the
agency and the powers, authority and duties of each
administrator and agency shall not be affected by the
enactment of this chapter.

(i) Except for such powers, authority and duties as
have been delegated to the secretaries of the depart-
ments by the provisions of section two of this article, the
existence, powers, authority and duties of boards and
the membership, terms and qualifications of members
of such boards shall not be affected by the enactment
of this chapter, and all boards which are appellate
bodies or were otherwise established to be independent
decisionmakers shall not have their appellate or
independent decision-making status affected by the
enactment of this chapter.

(j) Any department previously transferred to and
incorporated in a department created in section two,
article one of this chapter by prior enactment of this
section in chapter three, acts of the Legislature, first
extraordinary session, one thousand nine hundred
eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

CHAPTER 127
(Com. Sub. for S. B. 447—By Senator Bailey)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article one-e, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the code of military justice; and authorizing appointment of a member of the bar of a federal court or the highest court of any state to serve as trial counsel or defense counsel at courts-martial.

Be it enacted by the Legislature of West Virginia:

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

PART V. APPPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

ARTICLE 1E. CODE OF MILITARY JUSTICE.

§15-1E-30. Appointment of trial counsel and defense counsel.

1 (a) For each general and special court-martial the authority convening the court shall appoint trial counsel
and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge or court member in any case shall act subsequently as trial counsel, assistant trial counsel or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act later in the same case for the defense, nor shall any person who has acted for the defense act later in the same case for the prosecution.

(b) Any person who is appointed trial counsel or defense counsel in the case of a general or a special court-martial:

(1) Shall be a person who is a member in good standing of the federal bar or the bar of any state of the United States; and

(2) Shall be certified as competent to perform such duties by the state judge advocate.

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CHAPTER 128

(Com. Sub. for S. B. 6—By Senators Wooton, Spears and Felton)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to military leave of absence from educational institutions for members of the national guard and members of a reserve component of the armed forces of the United States called or ordered to active duty.

Be it enacted by the Legislature of West Virginia:

That article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a, to read as follows:
ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.
§15-1F-1a. Educational leave of absence for active duty.

Whenever any member of the national guard or other reserve component of the armed forces of the United States is called or ordered to active duty, other than active duty for training, including, in the case of members of the national guard, active state duty, the educational institution in which the member is enrolled shall grant the member a military leave of absence from their education. Persons on military leave of absence from their educational institution shall be entitled, upon release from military duty, to be restored to the educational status they had attained prior to their being ordered to military duty without loss of academic credits earned, scholarships or grants awarded or tuition and other fees paid prior to the commencement of the military duty. It shall be the duty of the educational institution to refund tuition or fees paid or to credit the tuition and fees to the next semester or term after the termination of the educational military leave of absence at the option of the student. The provisions of this section shall not supercede federal laws, rules and regulations at the time of the military leave of absence.

CHAPTER 129
(S. B. 37—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed February 17, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending reemployment rights to members of the organized militia who perform active state service for less than thirty days.

Be it enacted by the Legislature of West Virginia:

That section eight, article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-8. Reemployment rights of members of the organized militia.

1 Members of the organized militia in the active service of the state shall be entitled to the same reemployment rights granted to members of the reserve components of the armed forces of the United States by applicable federal law.

CHAPTER 130
(Com. Sub. for H. B. 4630—By Delegate Collins)

[Passed March 2, 1992; in effect ninety days from passage. Approved by the Governor.]
representatives of the director to issue notices of violation for noncompliance; specifying the time frame within which operators receiving such notice must submit a revised mine rescue plan; requiring underground mine operators to submit a mine rescue program to the director; requiring the posting of the mine rescue program; and requiring notification to the director of any conditions materially affecting said program.

Be it enacted by the Legislature of West Virginia:

That sections thirty-two and thirty-three, article one-a, chapter twenty-two-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 1A. ADMINISTRATION; ENFORCEMENT.


§22A-1A-33. Mine rescue teams.


The director is hereby authorized to have trained and employed at the rescue stations, operated by the division within the state, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

§22A-1A-33. Mine rescue teams.

(a) It shall be the responsibility of the operator to provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or
(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available shall not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other qualified employees of the division as he deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than seventy mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is
waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training must not have reached his fiftieth birthday, and shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least forty hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

(k) During the recovery work and prior to entering
any mine at the start of each shift, all rescue or recovery
teams shall be properly informed of existing conditions
and work to be performed by the designated company
official in charge.

(1) For every two teams performing rescue or recov-
ery work underground, one six-member team shall be
stationed at the mine portal.

(2) Each rescue or recovery team performing work
with a breathing apparatus shall be provided with a
backup team of equal number, stationed at each fresh
air base.

(3) Two-way communication and a lifeline or its
equivalent shall be provided at each fresh air base for
all mine rescue or recovery teams and no mine rescue
team member shall advance more than one thousand
feet inby the fresh air base: * Provided, That if a life may
possibly be saved and existing conditions do not create
an unreasonable hazard to mine rescue team members,
the rescue team may advance a distance agreed upon by
those persons directing the mine rescue or recovery
operations: * Provided, however, That a lifeline or its
equivalent shall be provided in each fresh air base for
all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately
return to the fresh air base when the atmospheric
pressure of any member’s breathing apparatus depletes
to sixty atmospheres, or its equivalent.

(1) Mine rescue stations shall provide a centralized
storage location for rescue equipment. This storage
location may be either at the mine site, affiliated mines
or a separate mine rescue structure. All mine rescue
teams shall be guided by the mine rescue apparatus and
auxiliary equipment manual. Each mine rescue station
shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing appara-
tuses, each with a minimum of two hours capacity, and
any necessary equipment for testing such breathing
apparatuses;

(2) A portable supply of liquid air, liquid oxygen,
pressurized oxygen, oxygen generating or carbon
dioxide absorbent chemicals, as applicable to the
supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators or two flame safety lamps;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least one thousand feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, he shall
take appropriate corrective action in accordance with section thirteen, article one-a of this chapter.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have twenty-four hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within thirty days of the effective date of this statute: Provided, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

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CHAPTER 131
(Com. Sub. for H. B. 4559—By Delegate Pethtel)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to monuments, tablets and memorials; setting the minimum number of members of county memorial board at five; setting the maximum number of members of county memorial board at eleven; and requiring at least one member be appointed from each magisterial district within the county.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. MONUMENTS, TABLETS AND MEMORIALS.

§10-3-2. Memorials to soldiers and sailors; sale of existing memorials; memorial fund; levies; board of directors; report of board to county commission; use of memorial; itemized report for public inspection; itemized budget estimate.

(a) The county commission of any county shall have the power, upon petition of twenty percent of the voters of such county, based on the number of votes cast at the last general election for governor, to acquire and establish at the county seat, or at any other suitable place within the county, by purchase or otherwise, ground, park or grove, and to erect and maintain thereon a building or buildings, structure or structures, monument or monuments, to remodel, repair, remove or replace existing buildings or structures, or, within its discretion, to contribute money out of the county treasury to aid in the erection or the maintenance, or both, of any building or buildings, structure or structures, where same is to be used with educational institutions operated by the state or any political subdivision thereof, or to aid in the erection or the maintenance, or both, of any memorial hospital owned and operated by a nonprofit corporation incorporated under the laws of this state, as a memorial or memorials, and, also shall have the power to sell any existing building or structure established and owned by the county commission as a war memorial and use the funds realized from the sale thereof together with other funds hereby authorized to create and establish and maintain new memorials, for the use of the public and to render the greatest benefit to the greatest number, in memory and in recognition of the virtues and sacrifices of the soldiers, sailors and marines from the state of West Virginia and each county thereof, and who served in the armed forces of the United States in the world wars. It
is the declared purpose of this section to create or assist in creating memorials to the memory of such soldiers, sailors and marines by aiding all the living, for their health, safety and betterment.

(b) The county commission is authorized to and may lay a tax on all property in the county for the purposes of acquiring and establishing such memorials, remodeling, repairing, removing or replacing existing memorials, or making the initial contribution to memorials, said tax to be not in excess of the following maximum levies on each one hundred dollars' assessed valuation:

- On Class I property, six cents; on Class II property, twelve cents; and on Classes III and IV property, twenty-four cents; and thereafter for maintenance purposes a like tax to be not in excess of the following maximum levies on each one hundred dollars assessed valuation: On Class I property, two cents; on Class II property, four cents; and on Classes III and IV property, eight cents, such tax to be levied and collected in like manner as the general taxes of the county, which shall be kept separate in a fund to be known as the "memorial fund": Provided, That in any county where such memorial has been established and under construction or partly completed the amount of tax for acquiring and establishing the same, or making the initial contribution thereto, shall not be in excess of the following maximum levies on each one hundred dollars assessed valuation:

- On Class I property, three cents; on Class II property, six cents; and on Classes III and IV property, twelve cents; and thereafter for maintenance purposes a like tax to be not in excess of the following maximum levies on each one hundred dollars assessed valuation: On Class I property, two cents; on Class II property, four cents; and on Classes III and IV property, eight cents.

(c) Whenever such memorial is acquired or established wholly by the county commission under this section, the county commission shall appoint a board of directors composed of at least five members with at least one member from each of the magisterial districts of the county not to exceed a total of eleven members. Such directors shall hold office for four years from the first
day of July following their appointment, and until their
successors are appointed. No person shall be ineligible
to appointment by reason of sex. Vacancies in the board
shall be reported to the county commission and filled by
appointment in like manner as original appointments
for the unexpired term. The county commission may
remove any director for misconduct or neglect of duty.
No compensation shall be paid or allowed any director.

The board of directors of each memorial shall,
immediately after their appointment, meet and organize
by electing one of their number as president and one as
secretary; a majority of all the members of any board
shall constitute a quorum for the transaction of business.
They shall make and adopt such bylaws, rules and
regulations from time to time, for their own guidance
and for the government and use of the memorial, as may
be expedient and not inconsistent with this section. Such
board shall have authority to contract for the construc­
tion or purchase of a memorial established under this
section and for repairs thereon or maintenance thereof
and the supervision, care and custody of the ground,
structure or structures: Provided, That all contracts
shall be approved by the county commission and that the
expenditures of all funds shall be subject to the approval
of the county commission, and all moneys belonging to
the memorial fund shall be deposited in the treasury of
such county to the credit of the memorial fund and shall
be drawn therefrom on orders issued by the county
commission. Such orders shall not be drawn except upon
requisition of the memorial board attached to proper
authenticated vouchers. Ground, park or a grove for a
memorial may be acquired by condemnation by such
board in the same manner as the county commission
may acquire other real estate for public uses and
purposes, and the title of all such property shall be and
vest in the county commission. The board shall have
power to appoint a suitable custodian and assistants and
prescribe rules for their conduct, fix their duties and
compensation, and shall have power to remove such
appointees and, in general, to carry out the spirit and
intention of this section.
Each memorial operated by a board of directors as provided hereby shall be free for the use of the inhabitants of the county, subject to such reasonable rules and regulations as the board may adopt, in order to render the use of such building or structure of greatest benefit to the greatest number; and the board may exclude from the use of the building any and all persons who shall wilfully violate such rules. The board of directors may extend the use and privileges of the building and structure to an educational institution or to nonresidents of the county upon such terms and conditions as the board may prescribe.

The board of directors shall, on or before the first day of July in each year, make a report to the county commission, stating the condition of the property, the various sums of money received from the memorial fund, and from all other sources, how much money was expended and for what expended; also an itemized budget estimate of expense of the property for the ensuing year, with such other information and suggestions as they deem of general interest, or that may be required by the county commission.

Any person or persons, including corporations, desiring to make donations of cash or other personal property or real estate for the benefit of the memorial, shall have the right to do so, and shall have the right to vest the title thereof in the county commission, to be held in trust and controlled by such board, the same as the other property owned or acquired, and according to the terms and for the purposes set out in the deed, gift, devise or bequest.

(d) Whenever the county commission contributes money out of the county treasury to aid in the erection or the maintenance, or both, of any building or buildings, structure or structures, where same is or are operated by the state or any political subdivision thereof, or to aid in the erection or the maintenance, or both, of a memorial hospital owned and operated by a nonprofit corporation incorporated under the laws of this state, as such memorial or memorials, there shall be filed with the county commission, on or before the first day of July...
in each year, an annual itemized report, for public
inspection, of the operation, income and expenditures for
the twelve months preceding as of the thirty-first day
of May in each year, and the condition of the property,
by the officials, or board of directors, as the case may
be, in charge thereof, and in the case of such memorial
hospital such report also shall contain a complete
schedule of the rates and charges to the public and the
services rendered free to the indigent and needy unable
to pay therefor; and there also shall be filed with the
county commission, on or before the first day of July in
each year, an itemized budget estimate of the expense
and operation of such memorial or memorials for the
ensuing year, with such other information and sugges-
tions as may be deemed of public interest, or that may
be required by the county commission.

CHAPTER 132
(S. B. 317—By Senators Sharpe, Whitlow, Helmick and Hawse)
[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three,
chapter seventeen-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to motor vehicle registration; increasing from ten to
twenty-five miles the distance that a farm use vehicle
or trailer may be moved along a public highway under
certain circumstances in order to be exempt from motor
vehicle registration and licensing requirements; provid-
ing that a farm use exemption certificate be displayed
on a vehicle otherwise subject to registration; and
providing that farm use exemption certificate be issued
and fee collected by county assessor.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter seventeen-a of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted to read as follows:
ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

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

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lien-holders or nonresidents or under a temporary registration permit issued by the department as hereinafter authorized;

(2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner thereof and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the commissioner of the division of highways from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin: Provided, That the distance between the points shall not exceed twenty-five miles, or for the purpose of taking it or other fixtures thereto attached, to and from a repair shop for repairs. The foregoing exemption from registration and license requirements shall also apply to any vehicle hereinafter described or to any farm trailer owned by the owner or lessee of the farm on which such trailer is used, when such trailer is used by the owner thereof for the purpose of moving farm produce and livestock from such farm along a public highway for a distance not to exceed twenty-five miles to a storage house or packing plant, when such use is a seasonal operation.
(A) The exemptions contained in this section shall also apply to farm machinery and tractors: Provided, That such machinery and tractors may use the highways in going from one tract of land to another tract of land regardless of whether such land be owned by the same or different persons.

(B) Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates and fees therefor shall not be permitted to use the highways between sunset and sunrise.

(C) Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates shall be permitted to use the highways as herein provided whether such exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle for which registration is required.

(D) Any vehicle used as an implement of husbandry exempt hereunder must have the words "farm use" affixed to both sides of the implement in ten inch letters. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm use exemption certificate on the lower driver's side of the windshield.

(i) The farm use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm use exemption certificate upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has been properly assessed as Class I personal property. The assessor shall charge a fee of two dollars for each certificate, one dollar of the fee shall be retained by the assessor and one dollar shall be remitted by the assessor to the commissioner of the division of motor vehicles to be deposited in a special revolving fund to be used in the administration of this section.

(ii) A farm use exemption certificate shall in no way exempt the applicant from maintaining the security as required by chapter seventeen-d of this code on any
vehicle being operated on the roads or highways of this state.

(iii) No person charged with operating a vehicle without a farm use exemption certificate, if required under this section, shall be convicted if he or she produces in court or in the office of the arresting officer a valid farm use exemption certificate for the vehicle in question within five days;

(3) Any vehicle which is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(4) Any vehicle of a type subject to registration owned by the government of the United States;

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

(6) The following recreational vehicles shall be exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but shall be subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles and snowmobiles.

(b) The provisions of this article relating to recreational vehicles shall become effective on the first day of July, one thousand nine hundred eighty-nine.

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, ten and thirteen, article six of said chapter, all relating to automobile dealers and owners; vehicle owners' application for
certificate of title; tax for privilege of certification of title; providing that the division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides proof that the dealership has gone out of business and not paid the fees to the division; providing for transfer of certificates of registration and title among members of the same controlled group; criminal penalty for false swearing; application for license certificate; information required in an application; insurance; requiring an applicant for a new or used motor vehicle dealer's license to disclose on the application form information regarding retail and wholesale sales of motor vehicles during the preceding fiscal year; requiring a license applicant who sold no motor vehicles during the preceding fiscal year to disclose the information regarding anticipated sales during the ensuing fiscal year; authorizing the increase from two thousand dollars to ten thousand dollars the amount of the surety bond to be posted by an applicant for a motor vehicles dealer's license; application and renewal fees; issuance of dealers' plates; changing the formula under which new and used car dealers apply for and receive dealers' plates; limiting the use of dealer plates on courtesy vehicles to one per dealership; and maintenance of records.

Be it enacted by the Legislature of West Virginia:

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

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

6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.

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

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.
(a) Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the division of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle. The application shall be upon a blank form to be furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the division of motor vehicles may require. The application shall be signed and sworn to by the applicant.

(b) A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the 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 imposed by this section has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the 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 the vehicle.
whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever except gifts between husband and wife or between parents and children: *Provided, however, That the husband or wife, or the parents or children previously have paid the tax on the vehicles transferred to the state of West Virginia:*

*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 gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: 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: And provided further, That the division of motor vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control meansownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

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 the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner 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 the 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 is 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 the charge.
The certificate is good for the life of the vehicle, so long as the same is owned or held by the original holder of the certificate, and need not be renewed annually, or any other time, except as provided in this section.

If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid, to the division of motor vehicles, on that vehicle, he or she is not required to pay the tax.

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, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: Provided, That the certification of title of any recreational vehicle owned by the applicant on the thirtieth day of June, one thousand nine hundred eighty-nine, is not subject to the tax imposed by this section: Provided, however, That mobile homes, house trailers, modular homes and similar nonmotive propelled vehicles, except recreational vehicles, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and
(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, that person is guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in the penitentiary for not less than one year nor more than five years or, in the discretion of the court, fined and imprisoned.

(e) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia, or his or her dependents who possess a motor vehicle with valid registration, are exempt from the provisions of this article for a period of nine months from the date that that person returns to this state or the date his or her dependent returns to this state, whichever is later.

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

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

§17A-6-10. Fee required for license certificate; dealer special plates.

§17A-6-13. Use of special plates, records to be maintained by dealer.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by section three of this article shall be made on a form prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in
this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of the vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, the application shall disclose, but not be limited to, the following:

(1) The type of business for which a license certificate is sought;

(2) If the applicant is an individual, the full name and address of the applicant and any trade name under which he or she will engage in the business;

(3) If the applicant is a copartnership, the full name and address of each partner therein, the name of the copartnership, its post-office address and any trade name under which it will engage in the business;

(4) If the applicant is a corporation, its name, the state of its incorporation, its post-office address and the full name and address of each officer and director thereof;

(5) The location of each place in this state at which the applicant will engage in the business and whether the business is owned or leased by the applicant;

(6) Whether the applicant, any partner, officer or director thereof has previously engaged in the business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;
(7) Whether the applicant, any partner, officer, director or employer thereof has previously applied for a license certificate under the provisions of this article or a similar license certificate in this or any other state, and if so, whether the license certificate was issued or refused, and, if issued, whether it was ever suspended or revoked;

(8) A statement of previous general business experience and the past history of the applicant; and

(9) Any other information that the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of the business, and any criminal record of the applicant if an individual, or of each partner if a copartnership, or of each officer and director, if a corporation.

(c) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, the application shall, in addition to the matters outlined in subsection (b) of this section disclose:

(1) The make or makes of new motor vehicles which the applicant will offer for sale in this state during the ensuing fiscal year; and

(2) The exact number of new and used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no new and used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of new and used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(d) In the case of an application for a license certificate to engage in the business of used motor vehicle dealer, the application shall in addition to the matters outlined in subsection (b) of this section, disclose the exact number of used motor vehicles, if any, sold at
(e) In the case of an application for a license certificate to engage in the business of trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker/dismantler/rebuilder, the application shall disclose any information that the commissioner may reasonably require.

(f) The application shall be verified by the oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof, as the case may be. The application must be accompanied by a bond of the applicant in the penal sum of ten thousand dollars, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of his or her business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any purchaser, seller or financial institution or agency, or the state of West Virginia, with a corporate surety thereon authorized to do business in this state, which bond shall be effective as of the date on which the license certificate sought is issued.

(g) Upon receipt of any fully completed application, together with any bond required under subsection (f) of this section, the certificate of insurance as aforesaid and the appropriate fee provided for in section ten of this article, the commissioner may conduct any investigation as he considers necessary to determine the accuracy of any statements contained in the application and the existence of any other facts which he deems relevant in considering such application. To facilitate the investigation, the commissioner may withhold issuance or refusal
of the license certificate for a period not to exceed twenty days.

(h) Any application for a license certificate under the provisions of this article and any information submitted with the application is confidential for the use of the division. No person shall divulge any information contained in any application or any information submitted with the application except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§17A-6-10. Fee required for license certificate; dealer special plates.

(a) The initial application fee for a license certificate to engage in the business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, recreational vehicle dealer or wrecker/dismantler/rebuilder is two hundred fifty dollars: Provided, That if an application for a license certificate is denied or refused in accordance with section six of this article, one hundred twenty-five dollars shall be refunded to the applicant. The initial application fee entitles the licensee to dealer special plates as prescribed by subsections (b), (c), (d) and (e) of this section.

(b) The annual renewal fee required for a license certificate to engage in the business of new motor vehicle dealer is one hundred dollars. This fee shall also entitle the licensee to one dealer's special plate which shall be known as a Class D special plate. Up to two additional Class D special plates shall be issued to the licensee upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D special plate. Any licensee is also entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new and used motor vehicles sold at retail and wholesale by the
licensee or predecessor during the preceding fiscal year, upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D special plate: Provided, That in the case of a licensee who did not own or operate the business during the preceding fiscal year and who has no predecessor who owned or operated a business during the fiscal year, additional Class D plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D plate per twenty new and used motor vehicles which the licensee estimates on his or her application for his or her license certificate he or she will sell at retail and wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of new and used motor vehicles in the initial year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D plate per twenty new and used vehicles in the revised estimate.

(c) The annual renewal fee required for a license certificate to engage in the business of used motor vehicle dealer is one hundred dollars. This fee also entitles the licensee to one dealer's special plate which shall be known as a Class D-U/C special plate. Up to two additional Class D-U/C special plates shall be issued to the licensee upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D-U/C special plate. Any licensee is also entitled to receive additional Class D-U/C special plates on a formula basis, that is, one additional Class D-U/C special plate per twenty used motor vehicles sold at retail and/or wholesale by the licensee or his or her predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate
the business during the preceding fiscal year and who has no predecessor who owned or operated the business during the preceding fiscal year, additional Class D-U/C plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used motor vehicles which the licensee estimates on his or her application for the license certificate he or she will sell at retail and/or wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of used motor vehicles in the ensuing fiscal year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D-U/C plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used vehicles in the revised estimate.

(d) The annual renewal fee required for a license certificate to engage in the business of house trailer dealer or trailer dealer, as the case may be, is twenty-five dollars. This fee also entitles the licensee to four dealer’s special plates which shall be known as Class D-T/R special plates. Additional Class D-T/R special plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-T/R special plate.

(e) The annual renewal fee required for a license certificate to engage in the business of recreational vehicle dealer is one hundred dollars. This fee shall also entitle the licensee to four dealer special plates which shall be known as Class D-R/V special plates. Additional Class D-R/V special plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose on the payment of a fee of twenty-five dollars for each additional Class D-R/V special plate.

(f) The annual renewal fee required for a license certificate to engage in the business of motorcycle dealer is ten dollars. This fee shall also entitle the licensee to
two dealer's special plates which shall be known as Class F special plates. Additional Class F special plates shall be issued to any dealer upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class F special plate.

(g) The annual renewal fee required for a license certificate to engage in the business of wrecker/dismantler/rebuilder is fifteen dollars. Upon payment of the fee for the license certificate, a licensee is entitled to up to four special license plates which shall be known as Class WD special plates. The plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of twenty-five dollars for each plate. The plate issued under the provisions of this subsection shall have the words “Towing Only” affixed thereon. A wrecker/dismantler/rebuilder is entitled to one special plate known as a Class WD/Demo special plate upon payment of a twenty-five dollar fee. This plate shall only be used for demonstrating rebuilt automobiles owned by the wrecker/dismantler/rebuilder.

(h) All of the special plates provided for in this section shall be of such form and design and contain such other distinguishing marks or characteristics as the commissioner may prescribe.

§17A-6-13. Use of special plates; records to be maintained by dealer.

(a) The Class D special plates and the Class D-U/C special plates authorized in this article may be used for any purpose on any motor vehicle owned by the dealer to whom issued and which is being operated with his or her knowledge and consent and not otherwise. Provided, That under no circumstances whatever shall a Class D special plate or Class D-U/C special plate be used on any work or service vehicle owned by a dealer, on any vehicle owned by a dealer and offered for hire or lease, or on any vehicle which has been sold by a
dealer to a customer: *Provided, however, That a dealer is authorized to use a Class D or Class D-U/C special plate on no more than one courtesy vehicle per dealership.

(b) Under no circumstances whatever shall a Class D-T/R special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any house trailer or other trailer owned by a dealer and offered for hire or lease, or on any house trailer or other trailer which has been sold by a dealer to a customer: *Provided, That notwithstanding the sale or any provision of this code to the contrary, a Class D-T/R special plate may be used in moving a house trailer sold by a house trailer dealer to a customer for one trip only from the house trailer dealer's established place of business to a place designated by the customer.

(c) Under no circumstances whatever shall a Class D-R/V special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any recreational vehicle owned by a dealer and offered for hire or lease, or on any recreational vehicle which has been sold by a dealer to a customer: *Provided, That notwithstanding any provision of this code to the contrary, a Class D-R/V special plate may be used upon the streets and highways for demonstration purposes only on those recreational vehicles that are subject to registration under article three of this chapter.

(d) Under no circumstances whatever shall a Class F special plate be used for the purpose of operating any type of motor vehicle other than a motorcycle on the streets and highways, or on a motorcycle owned by a dealer and offered for hire or lease, or on any motorcycle which has been sold by a dealer to a customer.

(e) Every dealer entitled to and issued a special plate or plates under the provisions of this article shall keep a written record of the salesman, mechanic, employee, agent, officer or other person to whom a special plate or plates have been assigned by the dealer. Every record shall be open to inspection by the commissioner or his or her representatives or any law-enforcement officer.
CHAPTER 134
(H. B. 4710—By Delegate Love)
[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special permit and certificate in lieu of registration for nonresident owners of special mobile equipment.

Be it enacted by the Legislature of West Virginia:

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

§17A-5-1. Exemptions from registration of nonresident owners; special permit and certificate in lieu of registration for nonresidents maintaining temporary and recurrent or seasonal residence in state.

(a) A nonresident owner, except as otherwise provided in this section, owning any vehicle registered in a foreign state or country of a Class A type otherwise subject to registration hereunder may operate or permit the operation of such vehicle within this state for a period of thirty days without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in and displays upon it a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner and that such vehicle is not operated for commercial purposes.

(b) Every nonresident, including any foreign corporation, carrying on business within this state and owning and regularly operating in such business any motor vehicle, trailer, semitrailer or special mobile equipment as defined in section one, article one, chapter seventeen-a, within this state, shall be required to register each
such vehicle and pay the same fee therefor as is required
with reference to like vehicles owned by residents of this
state, except as otherwise provided by reciprocal
agreements with other states accomplished pursuant to
sections ten and ten-a, article two of this chapter.

(c) Any nonresident who accepts or engages in
temporary and recurrent or seasonal employment,
business, profession or occupation in this state and
maintains temporary and recurrent or seasonal resi-
dence in this state in connection with such employment,
business, profession or occupation, and any nonresident,
including any corporation carrying on business of a
temporary and recurrent or seasonal nature in this state
and owning and temporarily and recurrently or season-
ally operating in such business any motor vehicle,
trailer, semitrailer or special mobile equipment as
defined in section one, article one, chapter seventeen-a,
within this state, may operate or permit the operation
of such vehicle within this state without causing said
vehicle to be registered as otherwise required by article
three of this chapter: Provided, That such nonresident,
in lieu of registration of such vehicle, shall make
application to the department and receive a special
permit for such vehicle which shall be evidenced by a
metal identification plate and certificate in writing,
which special permit plate and certificate shall together
identify the vehicle for which such special permit and
plate shall issue and such certificate shall bear the name
and address of the owner of such vehicle. Such special
permit shall be issued without previous certification of
title to such vehicle as otherwise required by article
three of this chapter or the provisions of subsection (b)
of this section.

(1) Every owner of a vehicle for which such special
permit is desired shall make a verified application to the
division for such special permit upon the appropriate
form or forms furnished by the division and shall bear
the signature of the owner written with pen and ink and
shall contain the character of information called for by
section three, article three of this chapter, a description
of the employment, residence, business and location of
such business set forth in such manner as to show the
temporary and recurrent or seasonal nature of such
residence, employment, business, profession or occupa-
tion, and that such vehicle is duly registered in the state
of residence of such owner. There shall be an application
for each vehicle for which a special permit is desired.

(2) Any special permit or plate issued by the division
under this section shall be effective and valid for a
period of sixty consecutive days from and including the
date of issuance and, upon similar application by the
owner, the commissioner may renew any such special
permit for immediately ensuing similar period or
periods of sixty days in any fiscal year. The division
shall charge a fee of fifty dollars for each special permit
issued under this section.

(A) A special permit shall be issued for one vehicle
only and no combination of two or more vehicles shall
be operated under fewer special permits than the
number of vehicles in such combination. A special
permit shall not be issued for any vehicle which is not
duly registered in the state of residence of the owner
thereof.

(B) The registration plate issued for such vehicle by
the state of residence of the owner shall not be displayed
on such vehicle while being operated over any highway
during any period for which a special permit shall have
been issued for such vehicle under this section, but there
shall be carried in such vehicle the certificate of
registration issued for such vehicle by the state of
residence of such owner.

(C) Any owner of any vehicle making application to
operate such vehicle upon the highways of this state
pursuant to the provisions of this article shall also be
required to comply with the provisions of chapter
seventeen-d of this code prior to commencing such
operation.

(3) The commissioner shall prescribe the substance,
form, color and context of the certificate or special
permit and the special permit plate, each of which shall
be visually distinguishable from the certificates of
registration and registration plates issued under article three of this chapter.

(4) It is a misdemeanor for any person to drive or move or knowingly to permit to be moved or driven upon any highway any vehicle for which a special permit shall have been issued under this section unless such vehicle shall bear the special plate called for by the certificate evidencing such special permit.

(5) When the employment, business, profession, occupation or residence of the owner of a vehicle for which such special permit shall have been issued shall cease to be temporary and recurrent or seasonal, any special permit issued for such vehicle pursuant to this section shall immediately terminate and become void and such vehicle shall thereupon become subject to registration under article three of this chapter or the provisions of subsection (b) of this section.

(6) Any special permit issued pursuant to this section shall be valid and effective on and after the first day of a month; that is, such special permit issued between the first and fifteenth days of a month shall be effective during sixty consecutive days from and including the first day of the month in which the permit shall issue; and a special permit issued after the fifteenth day of any month shall be effective during sixty consecutive days commencing with and including the first day of the month next following the month in which such special permit shall be issued.

(d) Any other provision of this section notwithstand-ing any nonresident referred to in subsection (c) of this section who is engaged by a public utility, as the later is defined in chapter twenty-four of this code, for the exclusive purpose of restoring the service of said utility as a result of an emergency in which such service is affected shall be permitted to operate such motor vehicle, trailer, semitrailer or special mobile equipment as defined in section one, article one, chapter seventeen-a within this state without causing said motor vehicle, trailer, semitrailer or special mobile equipment as defined in section one, article one, chapter seventeen-a.
141 to be registered as otherwise provided by this section
142 and article three of this chapter for the period actually
143 necessary for such restoration but not to exceed a period
144 of ten consecutive days: Provided, That said motor
145 vehicle, trailer, semitrailer or special mobile equipment
146 shall be registered in another state upon entry into this
147 state. The provisions of this subsection shall not affect
148 the requirements of reciprocal agreements with other
149 states accomplished pursuant to sections ten and ten-a,
150 article two of this chapter.

CHAPTER 135
(Com. Sub. for H. B. 4136—By Delegates Reid and Brum)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensed motor vehicle dealers; and mandating minimum requirements relating to the display area, office space, telephone service and public hours of operation for a motor vehicle dealer's established place of business.

Be it enacted by the Legislature of West Virginia:

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

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

§17A-6-1. Definitions.

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

(1) "New motor vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling five or more new motor vehicles or new and used motor
vehicles in any fiscal year of a type required to be
registered under the provisions of this chapter, except,
for the purposes of this article only, motorcycles.

(2) "Used motor vehicle dealer" means every person
(other than his agents and employees, if any, while
acting within the scope of their authority or employ-
ment), engaged in, or holds himself out to the public to
be engaged in, the business in this state of selling five
or more used motor vehicles in any fiscal year of a type
required to be registered under the provisions of this
chapter, except, for the purposes of this article only,
motorcycles.

(3) "House trailer dealer" means every person (other
than his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself out to the public to be
engaged in, the business in this state of selling new
and/or used house trailers, or new and/or used house
trailers and trailers.

(4) "Trailer dealer" means every person (other than
his agents and employees, if any, while acting within the
scope of their authority or employment), engaged in, or
who holds himself out to the public to be engaged in,
the business in this state of selling new and/or used
trailers.

(5) "Motorcycle dealer" means every person (other
than his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself out to the public to be
engaged in, the business in this state of selling new
and/or used motorcycles.

(6) "Used parts dealer" means every person (other
than his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself out to the public to be
engaged in, the business in this state of selling any used
appliance, accessory, member, portion or other part of
any vehicle.

(7) "Wrecker/dismantler/rebuilder" means every
(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers, but shall not include fold down camping and travel trailers.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers and semitrailers but excluding recreational vehicles.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement or similar document.

(13) "Sell," "sale" or "selling" shall, in addition to the ordinary definitions of such terms, include offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale, or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling" shall, in addition to the ordinary definition of that term, also include buying and exchanging.

(14) " Applicant" means any person making applica-
tion for an original or renewal license certificate under the provisions of this article.

(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" shall, in the case of a new motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him or her, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to motor vehicles sold by him or her, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That each established place of business shall have a display area which may be outside or inside or a combination thereof of at least twelve hundred square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office space of at least one hundred forty-four square feet, and a telephone listed in the name
of the dealership. Each established place of business shall be open to the public a minimum of twenty hours per week at least forty weeks per calendar year with at least ten of those hours being between the hours of nine-thirty a.m. and eight-thirty p.m., Monday through Saturday: Provided, however, That the requirement of exclusive use shall be met even though (i) some new and any used motor vehicles sold or to be sold by such dealer or sold or are to be sold at a different location or locations not meeting the definition of an established place of business of a new motor vehicle dealer, if each such location is or is to be served by other facilities and space of such dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each such location used for the sale of some new and any used motor vehicles otherwise meets the definition of an established place of business of a used motor vehicle dealer; (ii) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (iii) farm machinery is sold thereat; and (iv) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(18) "Farm machinery" means all machines and tools used in the production, harvesting or care of farm products.

(19) "Established place of business" shall, in the case of a used motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling used motor vehicles, which shall have facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable
to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to used motor vehicles sold by him or her, which shall be easily accessible to the public, shall conform to all applicable laws of the state of West Virginia, and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That each established place of business shall have a display area which may be outside or inside or a combination thereof of at least twelve hundred square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office space of at least one hundred forty-four square feet, and a telephone listed in the name of the dealership. Each established place of business shall be open to the public a minimum of twenty hours per week at least forty weeks per calendar year with at least ten of those hours being between the hours of nine-thirty a.m. and eight-thirty p.m., Monday through Saturday: Provided, however, That if a used motor vehicle dealer has entered into a written agreement or agreements with a person or persons owning or operating a servicing and repair facility or facilities adequate and suitable as aforesaid, the effect of which agreement or agreements is to provide such servicing and repair services and space in like manner as if said servicing and repair facilities and space were located in or on said dealer's place of business, then, so long as such an agreement or agreements are in effect, it shall not be necessary for such dealer to maintain such servicing and repair facilities and space at the place of business in order for such place of business to be an established place of business as herein defined: Provided further, That the requirement of exclusive use shall be met even
though (i) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (ii) farm machinery is sold thereat; and (iii) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(20) "Established place of business" shall, in the case of a house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times.

(21) "Manufacturer" means every person engaged in the business of reconstructing, assembling or reassembling vehicles with a special type body required by the purchaser if said vehicle is subject to the title and registration provision of the code.

(22) "Transporter" means every person engaged in the business of transporting vehicles to or from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer, or purchasers.

(23) "Recreational vehicle dealer" means every person (other than his agents and employees, if any, while
acting within the scope of their authority or employ-
ment), engaged in, or who holds himself out to the public
to be engaged in, the business in this state of selling new
and/or used recreational vehicles.

(24) “Motorboat” means any vessel propelled by an
electrical, steam, gas, diesel or other fuel propelled or
driven motor, whether or not such motor is the principal
source of propulsion, but shall not include a vessel which
has a valid marine document issued by the bureau of
customs of the United States government or any federal
agency successor thereto.

(25) “Motorboat trailer” means every vehicle designed
for or ordinarily used for the transportation of a
motorboat.

(26) “All-terrain vehicle” (ATV) means any motor
vehicle designed for off-highway use and designed for
operator use only with no passengers, having a seat or
saddle designed to be straddled by the operator, and
handlebars for steering control.

(27) “Travel trailer” means every vehicle, mounted on
wheels, designed to provide temporary living quarters
for recreational, camping or travel use of such size or
weight as not to require special highway movement
permits when towed by a motor vehicle and of gross
trailer area less than four hundred square feet.

(28) “Fold down camping trailer” means every vehicle
consisting of a portable unit mounted on wheels and
constructed with collapsible partial sidewalls which fold
for towing by another vehicle and unfold at the camp
site to provide temporary living quarters for recrea-
tional, camping or travel use.

(29) “Motor home” means every vehicle, designed to
provide temporary living quarters, built into an integral
part of or permanently attached to a self-propelled
motor vehicle, chassis or van including: (1) Type A
motor home built on an incomplete truck chassis with
the truck cab constructed by the second stage manufac-
turer; (2) Type B motor home consisting of a van-type
vehicle which has been altered to provide temporary
living quarters; and (3) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

(30) "Snowmobile" means a self-propelled vehicle intended for travel primarily on snow and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(31) "Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold down camping trailer, motor home or snowmobile.

(32) "Major component" means any one of the following subassemblies of a motor vehicle: (i) Front clip assembly consisting of fenders, grille, hood, bumper and related parts; (ii) engine; (iii) transmission; (iv) rear clip assembly consisting of quarter panels and floor panel assembly; or (v) two or more doors.

(b) Under no circumstances whatever shall the terms "new motor vehicle dealer," "used motor vehicle dealer," "house trailer dealer," "trailer dealer," "recreational vehicle dealer," "motorcycle dealer," "used parts dealer" or "wrecker/dismantler/rebuilder" be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or shall come in possession or ownership of, or acquire contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and shall sell such vehicle or vehicles or any part thereof for purposes other than engaging in and holding himself or itself out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term "trailer" or "trailers" is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term "trailer" or "trailers" is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only, the term "trailers" shall have the meaning ascribed to it in subsection (a) of this section.
AN ACT to amend article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-c, relating to special demonstration plates for motor vehicle dealers which sell trailers, truck-tractors, road-tractors or trucks; application requirements; fees; record keeping; prohibitions; and certificates of insurance.

Be it enacted by the Legislature of West Virginia:

That article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-c, to read as follows:

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

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§17A-6-10c. Special demonstration plates for dealers in trailers, truck-tractors, road-tractors and trucks; application; fee.

(a) Notwithstanding any other provisions of this code, any new motor vehicle dealer or used motor vehicle dealer engaged in the business of selling trailers, truck-tractors, road-tractors or trucks who demonstrates the motor vehicles under actual work conditions to potential purchasers shall obtain a special demonstration plate from the division of motor vehicles. The motor vehicle dealer may obtain special demonstration plates without first titling or registering each vehicle.

(b) The commissioner shall prescribe the application form for these special demonstration plates and shall require the applicant to submit proof of the applicant’s status as a bona fide dealer in motor vehicles and to certify that the applicant needs special demonstration
The commissioner, upon approving any application, shall issue to the new motor vehicle dealer or used motor vehicle dealer up to four special demonstration plates which shall display the term "demonstration" or "demo" and a distinguishing number assigned to the motor vehicle dealer.

(c) The annual fee for special demonstration plates is one hundred dollars for the first plate and fifty dollars for each additional plate, not to exceed a total of four plates per dealer.

(d) Each motor vehicle dealer who is issued special demonstration plates shall keep a written record, on a form approved by the commissioner, containing the following information: Identification of the motor vehicles upon which the special demonstration plates are used; the times and dates during which each special demonstration plate is used; the name and address of the company or individual using a motor vehicle on which a special demonstration plate is used; and any other information considered necessary by the commissioner. This record shall be open to inspection by any police officer or employee of the division.

(e) Each motor vehicle operated under the provisions of this section is considered to be registered at the maximum vehicle weights allowable under article seventeen, chapter seventeen-c of this code.

(f) A motor vehicle dealer shall not: (1) Use any special demonstration plates issued under the provisions of this section on any motor vehicle which is not being demonstrated; (2) use any special demonstration plates to demonstrate any single motor vehicle for more than seven calendar days in any calendar year for any single customer; (3) use any special demonstration plates on any motor vehicle leased or rented to any customer; or (4) use any special demonstration plates in any way other than to demonstrate the on-the-job capabilities of a motor vehicle to a potential purchaser.

(g) The motor vehicle dealer is required to furnish a certificate of insurance in the amount required by
CHAPTER 137
(H. B. 4499—By Delegate J. Martin)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration of antique motor vehicles, providing for restricted and general use of antique motor vehicles, providing a system of numbering license plates with the model year of the antique motor vehicle and authorizing the commissioner to promulgate certain rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles.

The annual registration fee for any antique motor vehicle as defined in this section is two dollars. "Antique motor vehicle" means any motor vehicle which is over twenty-five years old, and is owned solely as a collector’s item.

(a) Except as otherwise provided in this section, antique motor vehicles may not be used for general transportation but may only be used for:

(1) Participation in club activities, exhibits, tours, parades and similar events;

(2) The purpose of testing their operation, obtaining repairs or maintenance, and transportation to and from events as described in subdivision (1); and
(3) Recreational purposes on Saturdays, Sundays and holidays.

(b) A West Virginia motor vehicle displaying license plates of the same year of issue as the model year of the antique motor vehicle, as authorized in this section, may be used for general transportation purposes if the following conditions are met:

(1) The license plate's physical condition has been inspected and approved by the division of motor vehicles;

(2) The license plate is registered to the specific motor vehicle by the division of motor vehicles;

(3) The owner of the motor vehicle annually registers the motor vehicle and pays an annual registration fee for the motor vehicle equal to that charged to obtain regular state license plates;

(4) The motor vehicle passes an annual safety inspection; and

(5) The motor vehicle displays a sticker attached to the license plate, issued by the division, indicating that the motor vehicle may be used for general transportation.

If more than one request is made for license plates having the same number, the division shall accept only the first application.

The commissioner may promulgate rules necessary or convenient for the carrying out of the provisions of this section.
chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article three of said chapter seventeen-b; to amend and reenact section five, article two-a, chapter seventeen-d; and to amend and reenact sections twelve and fourteen, article one, chapter seventeen-e of said code, all relating to driver's licenses generally; classification of driver's licenses; nonoperator identification cards and fees therefor; surrender of driver's licenses issued by other states; removal of lawful authority to retain certain commercial driver's licenses issued by another state; persons exempt from requirement of driver's license; persons to whom the issuance of driver's licenses are prohibited and exceptions; persons prohibited from driving school buses or transporting persons or property for compensation; instruction permits; applications; examinations and legislative rules therefor; motorcycle examinations and endorsements; window for receiving motorcycle endorsement without examination; motorcycle license examination fund; issuance and contents of driver's licenses and fees therefor; removal of requirement that division of motor vehicles mark reissued driver's licenses with information of prior suspensions; requirement that driver's licenses be in the immediate possession of operator of motor vehicle and that the same be displayed upon demand; restricted licenses; duplicate permits and licenses; expiration of driver's licenses; renewals of driver's licenses and fees therefor; notice of change of name or address; records to be kept by the division of motor vehicles; removal of requirement that the division of motor vehicles file all accident reports; legislative rules necessary to implement certain provisions of chapter; suspension of driver's licenses for failure to pay municipal or magistrate court fines or costs; cancellations of insurance policy; suspension of registration; minimum policy term; classifications of commercial driver's licenses and endorsements or restrictions thereon; and criminal penalties for persons who, having been issued a commercial driver's license, operate a commercial motor vehicle while having any measurable alcohol in such person's system or while having an
alcohol concentration of blood, breath or urine of four hundredths of one percent or more, or who refuse to take a breath test.

Be it enacted by the Legislature of West Virginia:

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

Chapter
17B. Motor Vehicle Operators' and Chauffeurs' Licenses.
17D. Motor Vehicle Safety Responsibility Law.
17E. Uniform Commercial Driver's License Act.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article
2. Issuance of License, Expiration and Renewal.
3. Cancellation, Suspension or Revocation of Licenses.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2.1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

§17B-2-2. Persons exempt from license.

§17B-2-3. What persons shall not be licensed; exceptions.

§17B-2-4. Persons prohibited from driving school buses or transporting persons or property for compensation.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

§17B-2-7. Examination of applicants.

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

§17B-2-7c. Motorcycle license examination fund.
§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

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

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

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

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

(1) Class A, B, or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal commercial motor vehicle safety act of 1986, Title XII of public law 99-870 and subsequent rules, and have paid the required fee.
(2) Class D license shall be issued to those persons eighteen years and older with one year driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule for the transportation of persons or property for compensation and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule.

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

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

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

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

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;
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(B) Does not have a valid driver's license;
(C) Has reached the age of sixteen years;
(D) Has paid the required fee of ten dollars: Provided, that such fee is not required if the applicant is sixty-five years or older or is legally blind; and
(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

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

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

§17B-2-la. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

The division of motor vehicles shall not issue a driver's license to a person who holds a valid license to operate a motor vehicle issued by another state or jurisdiction unless or until the applicant shall surrender to the division the foreign license, or such person has signed and submitted to the division an affidavit to the effect that such person has surrendered all valid licenses issued to him or her by other states or jurisdictions. Any surrendered license issued by any other state or jurisdiction shall be returned to the division of motor vehicles or similar agency in that state or jurisdiction together with a notice that the person who surrendered the license has been licensed in this state. It shall be unlawful for a person to possess more than one valid driver's license at any time.
All other applicable provisions of this article relating to issuance, fees, expiration and renewal of licenses, and driver examination of applicants shall also apply to this section.

§17B-2-2. Persons exempt from license.

The following persons are exempt from license hereunder:

(1) Any person while operating a motor vehicle in the armed services of the United States while in the performance of his official duties;

(2) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid driver’s license issued to such person in such person’s home state or country may operate a motor vehicle in this state only as an operator for a period not to exceed ninety days in any one calendar year;

(3) A nonresident who is at least sixteen years of age, who has in such person’s immediate possession a valid driver’s license issued to such person in such person’s home state or country and who is employed in this state, or owns, maintains or operates a place or places of business in this state, or engages in any trade, profession or occupation in this state, in addition to the driving privileges extended under subdivision (2) of this section, may operate a motor vehicle in this state only as an operator in traveling to and from such person’s place or places of employment, place or places of business or place or places at which such person engages in such trade, profession or occupation and in the discharge of the duties of such person’s employment, business, trade, profession or occupation if such duties are such that, if performed by a resident of the state of West Virginia over the age of eighteen years of age, such resident would not be required under the provisions of this chapter to obtain a Class A, B, C or D driver’s license;

(4) A nonresident who is at least eighteen years of age and who has in such person’s immediate possession a valid commercial driver’s license issued to such person in such person’s home state or country may operate a
motor vehicle in this state either as a commercial
operator subject to the age limits applicable to commer-
cial operators in this state, or as an operator subject to
the limitations imposed on nonresident operators in
subdivisions (2) and (3) of this section;

(5) Any person who is a student, properly enrolled and
registered in an accredited school, college or university
in this state, who is at least sixteen years of age and who
has in such person’s immediate possession a valid
driver’s license issued to such person in such person’s
home state, notwithstanding the limitations of subdivi-
sions (2) and (3) of this section may operate a motor
vehicle in this state only as an operator: Provided, That
the state of which such person is a resident shall extend
the same privileges to residents of this state. This
exemption shall be cancelled immediately when such
student is graduated from school, college or university
or is expelled or ceases to be a student.

§17B-2-3. What persons shall not be licensed; exceptions.

The division shall not issue any license hereunder:

(1) To any person, as an operator, who is under the
age of eighteen years: Provided, That under rules and
regulations to be established by the commissioner and
in accordance with the provisions hereinafter set forth
in this subdivision (1), a junior driver’s license may be
issued to any person between the ages of sixteen and
eighteen years, who complies with section eleven, article
eight, chapter eighteen of this code and is not otherwise
disqualified by law, upon application therefor on a form
prescribed by the commissioner and successful comple-
tion of all examinations and driving tests required by
law for the issuance of a driver’s license to a person
eighteen years of age or older. The commissioner may
impose reasonable conditions or restrictions on the
operation of a motor vehicle by a person holding such
junior driver’s license, which conditions or restrictions
shall be printed on each such license. In addition to all
other provisions of this chapter for which a driver’s
license may be revoked, suspended or cancelled, when-
ever a person holding such a junior driver’s license (A)
does not comply with the provisions of section eleven, article eight, chapter eighteen of this code, (B) operates a motor vehicle in violation of the conditions or restrictions set forth on such license, or (C) has a record of two convictions for moving violations of the traffic regulations and laws of the road, which convictions have become final, the junior driver's license of such person shall be permanently revoked, with like effect as if such person had never held a junior driver's license: Provided, That a junior driver's license shall be suspended for noncompliance with the provisions of section eleven, article eight, chapter eighteen of this code, and may be reinstated upon compliance: Provided, however, That such junior driver's license shall be revoked upon one final conviction for any offense specified in section five, article three of this chapter. Under no circumstances shall such a license be revoked for convictions of offenses in violation of any regulation or law governing the standing or parking of motor vehicles. A person whose junior driver's license has been revoked shall not thereafter receive a junior driver's license, but such person, upon attaining the age of eighteen, shall be eligible, unless otherwise disqualified by law, for examination and driver testing for a regular driver's license. No person shall receive a junior driver's license unless the application therefor is accompanied by a writing, duly acknowledged, consenting to the issuance of such junior driver's license and executed by the parents of the applicant; or if only one parent is living, then by such parent; or if the parents be living separate and apart, by the one to whom the custody of the applicant was awarded; or if there is a guardian entitled to the custody of the applicant, then by such guardian. Upon attaining the age of eighteen years, a person holding an unrevoked junior driver's license shall, upon payment of the prescribed fee, be entitled to receive a regular driver's license without further examination or driver testing;

(2) To any person, as a Class A, B, C or D driver, who is under the age of eighteen years;

(3) To any person, whose license has been suspended,
(4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

(5) To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon the certificate of the superintendent of such institution that such person is competent, and not then unless the commissioner is satisfied that such person is competent to operate a motor vehicle with a sufficient degree of care for the safety of persons or property;

(6) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(7) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare.

§17B-2-4. Persons prohibited from driving school buses or transporting persons or property for compensation.

No person who is under the age of eighteen years and no person who has been convicted of an offense described in section two, article five, chapter seventeen-c of this code, and which conviction has become final shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation nor in either event until such person has been licensed as a Class A, B, C or D driver for either such purpose and the license so indicates.

§17B-2-5. Qualifications, issuance and fee for instruction permits.
Any person who is at least fifteen years of age may apply to the division for an instruction permit. The division may, in its discretion, after the applicant has appeared before the department of public safety and successfully passed all parts of the examination other than the driving test and presented documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code, issue to the applicant an instruction permit which shall entitle the applicant while having such permit in such person's immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed driver of at least twenty-one years of age or a driver's education or driving school instructor that is acting in an official capacity as an instructor, who is occupying a seat beside the driver, except in the event the permittee is operating a motorcycle, but in no event shall the permittee be allowed to operate a motorcycle upon a public highway until reaching sixteen years of age. Any such instruction permit issued to a person under the age of sixteen years shall expire sixty days after the permittee reaches sixteen years of age: Provided, That only permittees who have reached their sixteenth birthday are eligible to take the driving examination as provided in section six of this article. The instruction permit may be renewed for one additional period of sixty days. Any such permit issued to a person who has reached the age of sixteen years shall be valid for a period of sixty days and may be renewed for an additional period of sixty days or a new permit issued. The fee for such instruction permit shall be four dollars, one dollar of which shall be paid into the state treasury and credited to the state road fund, and the other three dollars of which shall be paid into the state treasury and credited to the general fund to be appropriated to the department of public safety for application in the enforcement of the road law.

Any person sixteen years of age or older may apply to the division for a motorcycle instruction permit. The division of motor vehicles may, in its discretion, after the applicant has appeared before the division of public safety and successfully passed all parts of the motorcycle examination other than the driving test, and presented
documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code, issue to the applicant an instruction permit which entitles the applicant while having such permit in such person's immediate possession to drive a motorcycle upon the public streets or highways for a period of sixty days, during the daylight hours between sunrise and sunset only. No holder of a motorcycle instruction permit shall operate a motorcycle while carrying any passenger on the vehicle. A motorcycle instruction permit is not renewable, but a qualified applicant may apply for a new permit. The fee for a motorcycle instruction permit shall be five dollars, which shall be paid into a special fund in the state treasury known as the motorcycle license examination fund as established in section seven-c, article two of this chapter.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of sixty days from the date of application, except that no applicant may be examined twice within a period of one week.

Every said application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been a licensed driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked within the five years next preceding the date of application, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal, and such other pertinent information as the commissioner may require.

§17B-2-7. Examination of applicants.

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

(b) The commissioner and superintendent of public safety shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code concerning the examination of applicants for licenses and the qualifications required of such applicants, and the examination of such applicants by the division of public safety shall be in accordance with such rules. Such rules shall provide for the viewing of educational material or films on the effects of alcohol upon persons and the dangers of driving a motor vehicle while under the influence of alcohol.

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

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

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

Any person who already holds a valid driver's license on or before the first day of April, one thousand nine hundred ninety-two, upon application and payment of the required fee to the division of motor vehicles at any time between the first day of April, one thousand nine hundred ninety-two, and the thirtieth day of June, one thousand nine hundred ninety-two, may be issued a motorcycle endorsement without being required to take the examination specified in this section. On or after the first day of July, one thousand nine hundred ninety-two, every person, including those holding a valid driver's license, shall be required to take the examination specified in this section to obtain a motorcycle license or endorsement.

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

There is hereby created a special revolving fund in the state treasury which shall be designated as the "motorcycle license examination fund". The fund shall consist of all moneys received from fees collected for motorcycle instruction permits under this article and
any other moneys specifically allocated to the fund. The fund shall not be treated by the auditor or treasurer as part of the general revenue of the state. The fund shall be a special revolving fund to be used and paid out upon order of the superintendent of public safety solely for the purposes specified in this article.

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

§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, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter, or chapter seventeen-e of this code, 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: Provided, That the commissioner may issue a valid without-photo license for applicants temporarily out of state. 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 Class E driver's license shall be ten dollars and fifty cents. The fee for issuance of a Class D driver's license shall be twenty-five 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.

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

Every licensee shall have his or her driver's license in such person's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate, municipal judge, circuit court judge, peace officer, or an employee of the division. However, no person charged with violating this section shall be convicted if such person produces in court or the office of the arresting officer a driver's license theretofore issued to such person and valid at the time of such person's arrest.

§17B-2-10. Restricted licenses.

The division upon issuing a driver's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

The division may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.
18 It is a misdemeanor for any person to operate a motor
19 vehicle in any manner in violation of the restrictions
20 imposed in a restricted license issued to such person.

§17B-2-11. Duplicate permits and licenses.
1 In the event that an instruction permit or driver's
2 license issued under the provisions of this chapter is lost
3 or destroyed, the person to whom such permit or license
4 was issued may upon making proper application and
5 upon payment of a fee of five dollars obtain a duplicate
6 thereof upon furnishing proof satisfactory to the division
7 that such permit or license has been lost or destroyed.

§17B-2-12. Expiration of licenses; renewal; renewal fees.
1 (a) Every driver's license shall expire four years from
2 the date of its issuance, except that the driver's license
3 of any person in the armed forces shall be extended for
4 a period of six months from the date the person is
5 separated under honorable circumstances from active
6 duty in the armed forces.
7
8 (b) A person who allows such person's driver's license
9 to expire may apply to the division for renewal thereof.
10 Application shall be made upon a form furnished by the
11 division and shall be accompanied by payment of the fee
12 required by section eight of this article plus an
13 additional fee of five dollars. The commissioner shall
14 determine whether such person qualifies for a renewed
15 license and may, in the commissioner's discretion, renew
16 any expired license without examination of the
17 applicant.
18
19 (c) Each renewal of a driver's license shall contain a
20 new color photograph of the licensee. By first class mail
21 to the address last known to the division, the commis-
22 sioner shall notify each person who holds a valid driver's
23 license of the expiration date of the license. The notice
24 shall be mailed at least thirty days prior to the
25 expiration date of the license and shall include a
26 renewal application form.

§17B-2-13. Notice of change of address or name.
1 Whenever any person after applying for or receiving
a driver's license moves from the address named in such
application or in the license issued to such person, or
when the name of a licensee is changed by marriage or
otherwise, such person shall within twenty days thereaf-

§17B-2-14. Records and indexes to be kept by the
division.

The division shall file every application for a license
received by it and shall maintain suitable indexes
containing, in alphabetical order:

(1) All applications denied and on each a notation of
the reasons for such denial;

(2) All applications granted; and

(3) The name of every licensee whose license has been
suspended or revoked by the division and after each
such name a notation of the reasons for such action.

The division shall also file all abstracts of court
records of convictions received by it under the laws of
this state and in connection therewith maintain conve-
nient records or make suitable notations in order that
an individual record of each licensee showing the
convictions of such licensee shall be readily ascertaina-
ble and available for the consideration of the division
upon any application for renewal of license and at other
suitable times.

§17B-2-15. Authority for regulations.

(a) The commissioner of the division of motor vehicles
is authorized to promulgate such legislative rules as are
necessary to carry out the license and endorsement
provisions of this chapter and the provisions regarding
motor vehicle registration in accordance with the
provisions of chapter twenty-nine-a of this code.

(b) The superintendent of the division of public safety
is authorized to promulgate such legislative rules as are
necessary to carry out the provisions relating to the
issuance of an instruction permit and conducting the license qualifying examinations provided for in this chapter in accordance with the provisions of chapter twenty-nine-a of this code.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-3a. Suspending license for failure to pay fines or penalties imposed by magistrate court or municipal court.

The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or municipal court of this state, pursuant to subsection (b), section two-a, article three, chapter fifty or subsection (b), section two-a, article ten, chapter eight of this code, that such person has defaulted on the payment of costs, fines, forfeitures or penalties, which were imposed on the person by the magistrate court or municipal court upon conviction of any motor vehicle violation, after ninety days following such conviction, or that such person has failed to appear in court when charged with a motor vehicle violation. For the purposes of this section, section two-a, article three, chapter fifty and section two-a, article ten, chapter eight, "motor vehicle violation" shall be defined as any violation designated in chapter seventeen-a, seventeen-b, seventeen-c, seventeen-d or seventeen-e of this code, or the violation of any municipal ordinance relating to the operation of a motor vehicle for which the violation thereof would result in a fine or penalty: Provided, That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a motor vehicle violation for the purposes of this section, section two-a, article three, chapter fifty or section two-a, article ten, chapter eight of this code.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.
§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

1 (a) An insurance company shall provide the division of motor vehicles with a cancellation notice within ten days of the effective date of cancellation whenever the company issues or causes to be issued a cancellation under the provisions of subsections (b) through (e), section one, article six-a, chapter thirty-three of this code. Unless the division of motor vehicles by legislative rule allows for an alternative to suspension, the division shall then suspend the driver license of the owner of such vehicle for a period of thirty days and shall suspend the motor vehicle registration until proof of insurance is presented to the division. If, within the thirty-day period a license or registration is suspended, the owner shows proof of insurance, the owner's license and registration shall be immediately removed from suspension. If a license or registration is not suspended as result of the cancellation of insurance, the owner of the motor vehicle shall submit a statement under penalty of false swearing, that the cancellation will not result in the operation of an uninsured motor vehicle upon the highways of this state, and this verification shall be sent to the commissioner within twenty days of the notice of cancellation.

24 (b) On or before the fifteenth day of January, one thousand nine hundred eighty-five, the commissioner of motor vehicles shall report to the Legislature upon proceedings pursuant to this section. The report shall include the total number of statements selected for verification as required by section three, article three, chapter seventeen-a, the total number of notices received from insurers, the total number of notices of pending suspensions issued and the total number of cases in which cancellation was found to have resulted in a lapse of coverage upon a vehicle operated upon the highways of this state during the prior year.

36 (c) No policy of motor vehicle liability insurance issued or delivered for issuance in this state shall be contracted for a period of less than ninety days: Provided, That the insurance commissioner may estab-
CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-12. Classifications, endorsements and restrictions.

Commercial driver’s licenses may be issued, with the following classifications, endorsements, and restrictions; the holder of a valid commercial driver’s license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles and vehicles which require an endorsement, unless the proper endorsement appears on the license:

(1) Classifications:

(A) Class A - Any combination of vehicles with a gross combined vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle(s) being towed is in excess of ten thousand pounds.

(B) Class B - Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more, and any such vehicle towing a vehicle not in excess of ten thousand pounds.

(C) Class C - Any single vehicle or combination vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds comprising:

(i) Vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Vehicles used in the transportation of hazardous
26 materials which requires the vehicle to be placarded
27 under 49 C.F.R., part 172, sub-part F.
28
29 (2) Endorsements and restrictions:
30
31 The commissioner upon issuing a commercial driver's
32 license shall have the authority to impose such endor-
33 sements or restrictions as the commissioner may
determine to be appropriate to assure the safe operation
34 of a motor vehicle, and to comply with the Federal
35 Motor Vehicle Act of 1986 and Federal Rules imple-
36 menting such act.
37
38 (3) Applicant record check. — Before issuing a
39 commercial driver's license, the commissioner must
40 obtain driving record information through the commer-
41 cial driver's license information system, the national
deriver register and from each state in which the person
42 has been commercially licensed.
43
44 (4) Notification of license issuance. — Within ten days
45 after issuing a commercial driver's license, the commis-
46 sioner shall notify the commercial driver's license
47 information system of that fact, providing all informa-
48 tion required to ensure identification of the person.
49
50 (5) Expiration of license. — The commercial driver's
51 license shall expire four years from date of issuance.
52
53 Commercial driver's licenses held by any person in
54 the armed forces which expire while that person is on
55 active duty shall remain valid for thirty days from the
56 date on which that person reestablishes residence in
57 West Virginia.
58
59 Any person applying to renew a commercial driver's
60 license which has been expired for two years or more
61 must follow the procedures for an initial issuance of a
62 commercial driver's license, including the testing
63 provisions.
64
65 (6) License renewal procedures. — When applying for
66 renewal of a commercial driver's license, the applicant
67 must complete the application form, and provide
68 updated information and required certifications. If the
69 applicant wishes to retain a hazardous materials
endorsement, the written test for a hazardous materials endorsement must be taken and passed.

§17E-1-14. Commercial drivers prohibited from operating with any alcohol in system; driving with blood alcohol concentration of four hundredths of one percent or more; refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.

(a) In addition to any other penalties provided by this code, any person who:

(1) Drives, operates or is in physical control of a commercial motor vehicle while having any measurable alcohol in his or her system; or

(2) Drives, operates, or is in physical control of a commercial motor vehicle while having an alcohol concentration of his or her blood, breath or urine of four hundredths of one percent or more, by weight; or

(b) Upon conviction of an offense described in subsection (a) of this section:

(1) For a violation of subdivision (1) thereof, such person shall be fined not more than one hundred dollars; for a second offense of subdivision (1) thereof, such person shall be fined not less than one hundred dollars nor more than three hundred dollars or confined in the county jail for a period not to exceed thirty days, and, for a third or any subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars and shall be confined in the county jail for a period of time of not less than twenty-four hours and not more than thirty days.

(2) For a violation of subdivision (2) thereof, such person shall be imprisoned in the county jail for not less than twenty-four hours nor more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person violating the provisions of subdivision (2) thereof shall be, for the second or any subsequent offense, guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for a period of not less than six months.
nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars.

(c) A person who violates the provisions of subdivision (2), subsection (a) of this section shall be taken immediately before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense.

(d) In addition to any other penalties provided by this code, a person who drives, operates or is in physical control of a commercial motor vehicle having any measurable alcohol in such person's system or who refuses to take a preliminary breath test to determine such person's blood alcohol content as provided by section fifteen of this article must be placed out of service for twenty-four hours.

CHAPTER 139
(Com. Sub. for H. B. 4131—By Delegate Kessel)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five-a by adding thereto a new section, designated section three-a, all relating to revocation of driver's licenses for conduct related to alcohol or drugs; enhancement of periods of revocation for prior suspensions or revocations occurring within the ten years preceding the arrest date; revocation periods for persons under twenty-one years of age; establishment of motor vehicle alcohol test and lock program; users fee; legislative rules; definition of motor vehicle alcohol test and lock system; eligibility to participate in program; minimum revocation periods; restricted driver's licenses; restoration of driver's licenses; and criminal penalties.
Be it enacted by the Legislature of West Virginia:

That section two, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five-a be further amended by adding thereto a new section, designated section three-a, all 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-2. Hearing; revocation; review.
§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.

§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of motor vehicles shall extend the temporary license issued under section one of this article, if applicable, and afford the person an opportunity to be heard. Such written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of revocation. The hearing shall be before said commissioner or a hearing examiner retained by the commissioner who shall rule on evidentiary issues and submit proposed findings of fact and conclusions of law for the consideration of said commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply: Provided, That in the case of a resident of this state the hearing shall be held in the county wherein the arrest was made in this state unless the commissioner or the commissioner’s authorized deputy or agent and such person agree that the hearing may be held in some other county.

(b) Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may
postpone or continue any hearing on the commissioner's own motion, or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on the commissioner's own motion or for the benefit of any law-enforcement officer or any person requesting such hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code: Provided, That the notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, shall constitute a subpoena to appear at such hearing without the necessity of payment of fees by the division of motor vehicles. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(c) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the commissioner by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(d) The principal question at such hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of ten hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test.

The commissioner may propose a legislative rule in
compliance with the provisions of article three, chapter twenty-nine-a of this code, which rule may provide that if a person accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of ten hundredths of one percent or more, by weight, intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, the person shall, within an appropriate period of time prior to the hearing, notify the commissioner in writing of such intention. Such rule may provide that when there is a failure to comply with the notice requirement, the results of the secondary test, if any, shall be admissible as though the person and the commissioner had stipulated the admissibility of such evidence. Any such rule shall provide that the rule shall not be invoked in the case of a person who is not represented by counsel unless the communication from the commissioner to the person establishing a time and place for the hearing also informed the person of the consequences of the person's failure to timely notify the commissioner of the person's intention to challenge the results of the secondary chemical test or cross-examine the individual or individuals who administered the test or performed the chemical analysis.

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, the commissioner shall make specific findings as to (1) whether the arresting law-enforcement officer had reasonable grounds to believe such person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, (2) whether such person was lawfully placed under arrest for an offense involv-
ing driving under the influence of alcohol, controlled
substances or drugs, and (3) whether the tests, if any,
were administered in accordance with the provisions of
this article and article five of this chapter.

(f) If, in addition to a finding that the person did drive
a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or did drive a motor
vehicle while having an alcoholic concentration in the
person's blood of ten hundredths of one percent or more,
by weight, the commissioner also finds by a preponder-
ance of the evidence that the person when so driving did
an act forbidden by law or failed to perform a duty
imposed by law, which act or failure proximately caused
the death of a person and was committed in reckless
disregard of the safety of others, and if the commis-
sioner further finds that the influence of alcohol,
controlled substances or drugs or the alcoholic concen-
tration in the blood was a contributing cause to the
death, the commissioner shall revoke the person's license
for a period of ten years: Provided, That if the commis-
sioner has previously suspended or revoked the person's
license under the provisions of this section or section one
of this article within the ten years immediately preced-
ing the date of arrest, the period of revocation shall be
for the life of such person.

(g) If, in addition to a finding that the person did
drive a motor vehicle while under the influence of
alcohol, controlled substances or drugs, or did drive a
motor vehicle while having an alcoholic concentration in
the person's blood of ten hundredths of one percent or
more, by weight, the commissioner also finds by a
preponderance of the evidence that the person when so
driving did an act forbidden by law or failed to perform
a duty imposed by law, which act or failure proximately
causd the death of a person, the commissioner shall
revoke the person's license for a period of five years:
Provided, That if the commissioner has previously
suspended or revoked the person's license under the
provisions of this section or section one of this article
within the ten years immediately preceding the date of
arrest, the period of revocation shall be for the life of such person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of such person.

(i) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, or finds that the person, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, did drive a motor vehicle, or finds that the person knowingly permitted the person's vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcoholic concentration in his or her blood of ten hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of six months: Provided, That if the commissioner
has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of such person.

(j) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest.

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(3) Any revocation under the provisions of section seven, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(k) In the case of a hearing wherein a person is accused of refusing to submit to a designated secondary test, the commissioner shall make specific findings as to (1) whether the arresting law-enforcement officer had reasonable grounds to believe such person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (2) whether such person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this
state while under the influence of alcohol, controlled substances or drugs, (3) whether such person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter, and (4) whether such person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least one year and up to life if the person refused to submit to the test finally designated in the manner provided in section four, article five of this chapter.

(l) If the commissioner finds by a preponderance of the evidence that (1) the arresting law-enforcement officer had reasonable grounds to believe such person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (2) such person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (3) such person refused to submit to the secondary chemical test finally designated, and (4) such person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for a period of at least one year and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter.

(m) If the commissioner finds to the contrary with respect to the above issues, the commissioner shall rescind the commissioner's earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section, or section seven, article five of this chapter.

A copy of the commissioner's order made and entered following the hearing shall be served upon such person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.
If the commissioner shall after hearing make and enter an order affirming the commissioner's earlier order of revocation, such person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code, except that the commissioner shall not stay enforcement of the order; and, pending such appeal, the court may grant a stay or supersedeas of such order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits, and the appellant will suffer irreparable harm if such order is not stayed: Provided, That in no event shall the stay or supersedeas of such order exceed thirty days.

(n) In any revocation pursuant to this section, if the driver whose license is revoked had not reached the driver's twenty-first birthday at the time of the conduct for which the license is revoked, the driver's license shall be revoked until the driver's twenty-first birthday, or the applicable statutory period of revocation prescribed by this section, whichever is longer.

(o) Funds for this section's hearing and appeal process may be provided from the drunk driving prevention fund, as created by section sixteen, article fifteen, chapter eleven of this code, upon application for such funds to the commission on drunk driving prevention.

§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.

(a) On or before the first day of January, one thousand nine hundred ninety-three, the division of motor vehicles shall establish a motor vehicle alcohol test and lock program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter. Such program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the driver's rehabilitation fund. Except where specified otherwise, the use of the term "program" in this section refers to the motor vehicle alcohol test and
lock program. The commissioner of the division of motor vehicles shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section. Such rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner’s approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a “motor vehicle alcohol test and lock system” means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system’s assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, such person is determined to be under the influence of alcohol.

(b) (1) Any person whose license has been revoked pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when such person’s minimum revocation period as specified by subsection (c) of this section has expired and such person is enrolled in or has successfully completed the safety and treatment program: Provided, That no person whose license has been revoked pursuant to the provisions of subsection (f) or (g), section two of this article shall be eligible for participation in the program: Provided, however, That any person whose license is revoked pursuant to this article or pursuant to article five of this chapter for an act which occurred either while participating in or after successfully completing the program shall not again be eligible to participate in such program.

(2) Notwithstanding the provisions of this section to the contrary, no person eligible to participate in the program shall operate a motor vehicle unless approved to do so by the commissioner.

(c) For purposes of this section, “minimum revocation period” means the portion which has actually expired of the period of revocation imposed by the commissioner.
53 pursuant to this article or the provisions of article five
54 of this chapter upon a person eligible for participation
55 in the program as follows:

56 (1) For a person whose license has been revoked for
57 six months pursuant to subsection (i), section two of this
58 article, the minimum period of revocation is thirty days;

59 (2) For a person whose license has been revoked for
60 one year pursuant to section seven, article five of this
61 chapter, the minimum period of revocation is ninety
62 days;

63 (3) For a person whose license has been revoked for
64 any other period of time pursuant to section two of this
65 article or pursuant to section seven, article five of this
66 chapter, the minimum period of revocation is one year.

67 (d) Upon permitting an eligible person to participate
68 in the program, the commissioner shall issue to such
69 person, and such person shall be required to exhibit on
70 demand, a driver's license which shall reflect that such
71 person is restricted to the operation of a motor vehicle
72 which is equipped with an approved motor vehicle
73 alcohol test and lock system.

74 (e) Any person who has completed the safety and
75 treatment program and who has not violated the terms
76 required by the commissioner of such person's partici-
77 pation in the motor vehicle alcohol test and lock
78 program shall be entitled to the restoration of such
79 person's driver's license upon the expiration of:

80 (1) One hundred eighty days of the full revocation
81 period imposed by the commissioner for a person
82 described in subdivision (1), subsection (c) of this section;

83 (2) The full revocation period imposed by the commis-
84 sioner for a person described in subdivision (2), subsec-
85 tion (c) of this section;

86 (3) One year from the date a person described in
87 subdivision (3), subsection (c) of this section is permitted
88 to operate a motor vehicle by the commissioner.

89 (f) In addition to any other penalty imposed by this
90 code, any person who operates a motor vehicle not
equipped with an approved motor vehicle alcohol test and lock system during such person's participation in the motor vehicle alcohol test and lock program is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars. Any person who assists another person required by the terms of such other person's participation in the motor vehicle alcohol test and lock program to use a motor vehicle alcohol test and lock system in any effort to bypass the system, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than six months and fined not less than one hundred dollars nor more than one thousand dollars.

(g) No person shall be eligible to participate in the motor vehicle alcohol test and lock program prior to the first day of July, one thousand nine hundred ninety-three.

CHAPTER 140
(H. B. 2102—By Delegate D. Cook)
[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring lighted headlights during fog, smoke or rain.

Be it enacted by the Legislature of West Virginia:

That section two, 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-15-2. When lighted lamps are required.
Every vehicle other than a motorcycle, motor-driven cycle or moped operated upon a highway within this state at any time from sunset to sunrise, or during fog, smoke, rain or other unfavorable atmospheric conditions, or at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated. Every motorcycle, motor-driven cycle and moped shall display lighted head lamps at all times when upon the highway.

CHAPTER 141
(Com. Sub. for H. B. 4070—By Delegates Mezzatesta and Schoonover)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special restrictions on motor vehicle lamps; removing language requiring all firefighting vehicles to be designated by the fire chief and state fire marshal’s office; requiring the fire chief and state fire marshal’s office to authorize all fire department vehicles; requiring the squad chief, the sheriff and the department of health and human resources to authorize all rescue squad vehicles not operating out of a fire department; removing language requiring county sheriffs to authorize the use of certain lamps on school buses; and requiring the division of highways to authorize the use of certain lamps on snow removal equipment.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in section nineteen, flashing lights are prohibited on motor vehicles, except on an authorized emergency vehicle, school bus, snow removal equipment or on any vehicle as a means for indicating 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, firefighting 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
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 resources and the sheriff of the county of residence.

Authorization for all fire department vehicles shall be designated by the fire chief and the state fire marshal's office.

Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the department of health and human resources.

Authorization for school buses shall be designated as set out in section twelve, article fourteen, chapter seventeen-c.

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 resources and the sheriff of the county of residence.

Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the department of health and human resources.

(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, and postal service vehicles shall be designated by the sheriff of the county of residence. Authorization for snow removal equipment shall be designated by the commissioner of the division of highways.

(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 and reenact section forty-four, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring motorcycle helmets, safety glasses, goggles and windscreens to meet current performance safety standards; abolishing motorcycle safety standards and specifications board; removing requirement that commissioner of motor vehicles approve safety equipment for motorcycles; and authorizing the superintendent of the department of public safety to approve safety equipment for motorcyclists.

Be it enacted by the Legislature of West Virginia:
That section forty-four, 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:

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and specifications board.

(a) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing securely fastened on his head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing safety, shatter-resistant eyeglasses (excluding contact lenses), or eyegoggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped be equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by the Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person shall operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven
cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator shall carry any other person nor shall any other person ride on such a vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No more than two persons, the operator and one passenger, shall ride the same vehicle at the same time.

No person shall ride sidesaddle on a seat.

(e) Every motorcycle, motor-driven cycle and moped shall be equipped with a rearview mirror affixed to the handlebars and adjusted so that the operator shall have a clear view of the road and condition of traffic behind him for a distance of at least two hundred feet.

The superintendent of public safety is hereby authorized to approve or disapprove types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person.
permitting reinstatement of permits, upon application, for persons whose permits were previously permanently revoked upon a first finding of violation.

Be it enacted by the Legislature of West Virginia:

That section five, 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-16-5. Permit for official inspection stations; fees for and certificate of inspection.

The superintendent of the department of public safety shall be responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He or she shall select and designate such stations and shall issue permits therefor and furnish instructions and all necessary forms thereto for the inspection of vehicles as herein required and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered and shall properly identify the official inspection station by which issued. A charge of one dollar per sticker shall be charged by the department of public safety to the inspection station, and the funds so received shall be deposited into the state treasury and credited to the account of the department of public safety for application in the administration and enforcement of the provisions of this article. Any balance remaining in the fund on the last day of June of each fiscal year, not required for operating expenses, construction, repairs or alterations of police barracks for the ensuing fiscal year and for the administration and enforcement of the provisions of this article, shall be transferred to the state road fund. The superintendent is authorized to exchange stickers or to make refunds to official inspection stations for stickers on hand when permits are revoked or when, for any reason, the stickers become obsolete.
Application for permit shall be made upon an official form prescribed by the superintendent and permits shall be granted only when the superintendent is satisfied that the station is properly equipped, and has competent personnel to make such inspections and adjustments and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of such station operator or employees thereof.

The superintendent shall properly supervise and cause inspections to be made of such stations. Upon finding that a station is not properly equipped or conducted, the superintendent may, upon a first violation, suspend the permit for a period of up to one year. Upon a second or subsequent finding that a station is not properly equipped or conducted, the superintendent shall permanently revoke and require the surrender of the permit. The superintendent may reinstate the permit of any person whose permit was permanently revoked prior to the effective date of this section upon a first finding that a station was not properly equipped or conducted, upon application, at any time after the expiration of six months from the time of revocation, and shall reinstate such permit, upon application, after the expiration of one year. He or she shall maintain and post at his office and at such other places as he or she may select lists of all stations holding permits and of those whose permits have been suspended or revoked.
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.

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 said subsection: 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
18 otherwise routinely driven on the highways or roads of 
19 this state.

20 Unless another penalty is by the laws of this state 
21 provided, every person convicted of a misdemeanor for 
22 operating a vehicle without having displayed thereon a 
23 current and valid certificate of inspection and approval 
24 or for failure to produce such certificate upon demand 
25 of an authorized person shall be punished by a fine of 
26 not more than one hundred dollars: Provided, That any 
27 person who obtains an inspection and a current and 
28 valid certificate of inspection and who, within five days 
29 of the issuance of a citation for a violation of the 
30 provisions of this section, provides a receipt of inspection 
31 to and makes the vehicle so operated available for 
32 examination by a court of competent jurisdiction, shall 
33 not be guilty of a violation of the provisions of this 
34 section: Provided, however, That the misdemeanor 
35 penalty shall be imposed if the certificate of inspection 
36 has not been valid for a period exceeding three months 
37 prior to the date of the issuance of a citation.

CHAPTER 145
(H. B. 4730—By Delegates Leggett and Higgins)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, 
chapter seventeen-c of the code of West Virginia, one 
thousand nine hundred thirty-one, as amended, requir­
ing the commissioner of the division of motor vehicles, 
superintendent of the division of public safety, and the 
commissioner of the division of highways to approve 
traffic citation forms.

Be it enacted by the Legislature of West Virginia:

That section six, article nineteen, 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:
§17C-19-6. Form for and records of books of traffic
citations.

(a) Every traffic-enforcement agency in this state
shall provide in appropriate form approved by the
commissioner, the superintendent of the division of
public safety and the commissioner of the division of
highways, traffic citations containing notices to appear
which shall be issued in books with citations in
quadruplicate and meeting the requirements of this
article.

(b) The chief administrative officer of every such
traffic-enforcement agency shall be responsible for the
issuance of such books and shall maintain a record of
every such book and each citation contained therein
issued to individual members of the traffic-enforcement
agency and shall require and retain a receipt for every
book so issued.

CHAPTER 146

(Com. Sub. for S. B. 383—By Senator Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article twelve,
chapter eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
building permits issued by municipalities; exempting
structures and equipment owned by the state, a county
or other governmental entity from such permits; and
providing an exemption from such permits for certain
buildings purchased from the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND
ALLIED RELATIONS OF MUNICIPALITIES,
GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST
MUNICIPALITIES.
§8-12-14. Permits for construction and alteration.

1 The governing body of every municipality has plenary power and authority to require a permit as a condition precedent to the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance: Provided, That no such permits may be required of the state, a county or other governmental entity, its contractors, agents or employees for the erection, construction, repair or alteration of any structure or of any equipment or part of a structure designated for use by the state, a county or other governmental entity.

CHAPTER 147

(Com. Sub. for H. B. 2916—By Delegate Pettit)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section four, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bond financing for municipal and county waterworks and electric power systems; providing that electric power systems are exempt from certain taxation under specified circumstances; and providing that any payments in lieu of tax be distributed in a specified manner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.
Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may by ordinance or order specify. All such bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by such municipality or county: Provided, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for such real and personal property (1) physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed such electric power system and there was in place prior to the effective date of the amendments to this section made in the year one thousand nine hundred ninety-two an agreement between the municipality and the county commission for payments in lieu of tax, or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power
system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commis­sion and any municipal authority within whose jurisdicti­on the electric power system is or is to be physically situate: *Provided, however,* That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad valorem property taxation. Such bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal at such times, not exceeding fifty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commis­sion shall otherwise determine, such ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or
electric power system, and to provide an adequate
depreciation fund, and to make any other payments
which shall be required or provided for in the ordinance
or order authorizing the issuance of said bonds.

CHAPTER 148
(Com. Sub. for H. B. 4185—By Delegate Kiss)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article
twenty-two, chapter eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to disability, retirement and death benefits for
paid police or fire departments; and removing the
provision that restricts credits to continuous service
members who enter the armed services of the United
States or the national guard during hostilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE-
MEN'S PENSION AND RELIEF FUND; FIRE-
MEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.

§8-22-27. General provisions concerning disability pen-
sions, retirement pensions and death
benefits.

(a) In determining the years of service of a member
in a paid police or fire department for the purpose of
ascertaining certain disability pension benefits, all
retirement pension benefits and certain death benefits,
the following provisions shall be applicable:

(1) Absence from the service because of sickness or
injury for a period of two years or less shall not be
construed as time out of service; and

(2) Any member of any paid police or fire department
covered by the provisions of sections sixteen through
twenty-eight of this article who has been required to or
shall at any future time be required to enter the armed
forces of the United States by conscription, by reason
of being a member of some reserve unit of the armed
forces or a member of the West Virginia national guard
or air national guard, whose reserve unit or guard unit
is called into active duty for one year or more, or who
enlists in one of the armed forces of the United States,
and who upon receipt of an honorable discharge from
such armed forces presents himself for resumption of
duty to his appointing municipal official within six
months from his date of discharge, and is accepted by
the pension board's board of medical examiners as being
mentally and physically capable of performing his
required duties as a member of such paid police or fire
department, shall be given credit for continuous service
in said paid police or fire department, and his rights
shall be governed as herein provided. No member of a
paid police or fire department shall be required to pay
the monthly assessment as now required by law, during
his period of service in the armed forces of the United
States.

(b) As to any former member of a paid police or fire
department receiving disability pension benefits or
retirement pension benefits from a policemen's or
firemen's pension and relief fund, on the first day of
July, one thousand nine hundred eighty-five, the
following provisions shall govern and control the amount
of such pension benefits:

(1) A former member who on June thirtieth, one
thousand nine hundred sixty-two, was receiving disabil-
ity pension benefits or retirement pension benefits from
a policemen's or firemen's pension and relief fund, shall
continue to receive pension benefits, but on and after
July one, one thousand nine hundred eighty-five, such
pension benefits shall be no less than the amount of five
hundred dollars per month; and
(2) A former member who became entitled to disabil-
ity pension benefits or retirement pension benefits on or
after July one, one thousand nine hundred sixty-two,
shall continue to receive pension benefits, but on and
after July one, one thousand nine hundred eighty-five,
shall receive the disability pension benefits, or retire-
ment pension benefits provided for in section twenty-
four or section twenty-five of this article, as the case
may be.

(c) As to any surviving spouse, dependent child or
children, or dependent father or mother, or dependent
brothers or sisters, of any former member of a paid
police or fire department, receiving any death benefits
from a policemen's pension and relief fund or firemen's
pension and relief fund, on the first day of July, one
thousand nine hundred eighty-five, the following
provisions shall govern and control the amount of such
death benefits:

(1) A surviving spouse, dependent child or children,
or dependent father or mother, or dependent brothers
or sisters, of any former member, who on June thirty,
one thousand nine hundred sixty-two, was receiving any
death benefits from a policemen's pension and relief
fund or firemen's pension and relief fund, shall continue
to receive death benefits, but on and after July one, one
thousand nine hundred eighty-five, such death benefits
shall be no less than the following amounts: To a
surviving spouse, until death or remarriage, the sum of
three hundred dollars per month, to each dependent
child the sum of thirty dollars per month, until such
child shall attain the age of eighteen years or marries,
whichever first occurs; to each dependent orphaned
child, the sum of forty-five dollars per month, until such
child attains the age of eighteen years or marries,
whichever first occurs; to each dependent father and
mother the sum of thirty dollars per month for each; to
each 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; and

(2) A surviving spouse, dependent child or children,
or dependent father or mother, or dependent brothers
or sisters, of any former member, who became eligible
for death benefits on or after July one, one thousand nine
hundred sixty-two, shall continue to receive death
benefits, but on and after July one, one thousand nine
hundred eighty-five, shall receive the death benefits
provided for in section twenty-six of this article.

(d) A former member who is receiving disability
pension benefits on the first day of July, one thousand
nine hundred eighty-five, shall continue to receive
disability pension benefits provided for in section
twenty-four of this article.

CHAPTER 149
(Com. Sub. for H. B. 4021—By Delegate Burk)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-nine-a, chapter eight of the code of West Virginia, one
two thousand nine hundred thirty-one, as amended, relating
to the qualifications of members of county airport
authorities; and providing certain exceptions.

Be it enacted by the Legislature of West Virginia:

That section two, 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-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 impleaded, 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 establish-
ment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as members of said board: Provided,

That nothing herein shall be construed to prevent or make unlawful under this chapter or any other chapter of the code of West Virginia the appointment to the board of any person whose only interest in any property under the control of the board is that the person in a noncommercial manner leases hangar space, purchases fuel or contracts for any other goods or service provided by said airport authority subject to the control and management of the 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.
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 thirteen-b, relating to the West Virginia Community Improvement Act; providing definitions; authorizing counties and municipalities to create assessment districts and providing other powers with respect to flood relief, wastewater and water projects; requiring determination of necessity and economic feasibility of creating an assessment district and constructing a project therein, and notice to public, prior to creation of assessment district, and requiring public hearing with respect thereto; requiring petition of property owners prior to creation of assessment district and establishing minimum number of property owners who must sign petition with respect to each type of project in order for assessment district to be created; requiring that owners of property to be affected by certain flood relief projects be provided at least thirty days to elect not to have the project undertaken with respect to their property; providing that assessment districts be public corporations and setting forth powers thereof; providing for creation of community improvement boards to administer assessment districts and setting forth powers thereof; providing for appointment of board and organization thereof; setting forth procedures for construction of projects; providing for levying of assessments and requiring notice to affected property owners and other procedures relating thereto; providing that assessment district may levy assessments on property improved or protected by a project and establishing procedures for determining the amount of assessments and the apportionment thereof; allowing assessments of public and charitable institutions; providing methods of paying for the costs of a
project; providing for issuance of assessment certificates and payment of assessments, and creation of liens on property improved or protected by a project and that lien will be prior to all other liens except tax liens and other preexisting, special assessment liens; requiring designation of registrar for assessment certificates; requiring payment of assessment fees to sheriff of county in which assessment district located; providing that state, counties and municipalities not liable for debt of assessment district or for payment of any assessment fees, and that assessment district not liable for payment of any assessment fees; providing for reassessments and addition of territory to assessment districts; addressing operation and maintenance of wastewater and water projects and requiring, upon payment of all assessment fees applicable to such a project, that assessment district transfer its right, title and interest in the project to utility or governmental agency operating same; and requiring liberal construction of article.

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 thirteen-b, to read as follows:

ARTICLE 13B. WEST VIRGINIA COMMUNITY IMPROVEMENT ACT.

§16-13B-1. Short title.
§16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.
§16-13B-4. Determination of need and feasibility of creating an assessment district.
§16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication.
§16-13B-6. Petition of property owners for creation of assessment district.
§16-13B-7. Receipt of petition of property owners; ordinance or order authorizing creation of assessment district and construction of project.
§16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.
§16-13B-10. Notice to property owners of assessments; hearings correcting and laying assessments; report on project completion; permits.
§16-13B-11. Construction of projects; assessments; corner lots, etc.
§16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.
§16-13B-14. Method of paying for cost of project; how assessments may be evidenced.
§16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.
§16-13B-16. No liability of state, county, municipality and assessment district.
§16-13B-17. Payment of assessment fees; releases.
§16-13B-18. Liens; recording notice of liens; suit for enforcement; priority.
§16-13B-19. Reassessment for void, irregular or omitted assessments.
§16-13B-20. How additional territory may be added to assessment district.
§16-13B-21. Operation and maintenance of wastewater and water projects; rates and charges therefor.
§16-13B-22. Liberal construction.

§16-13B-1. Short title.

This article shall be known and may be cited as the "West Virginia Community Improvement Act."


For purposes of this article:

(a) “Assessment certificate” means a certificate issued by a board pursuant to section fifteen of this article to evidence an assessment levied against property abutting a wastewater or water project, or on which a flood relief project is completed or protects.

(b) “Assessment district” means a community improvement assessment district created by a governing body pursuant to section seven of this article.

(c) “Assessment fee” means the fee paid by a person or governmental agency owning property located within an assessment district, based on the assessment levied against the property pursuant to section ten of this article, to pay for the cost of a project abutting, constructed upon or protecting such property.

(d) “Board” means the community improvement board of each assessment district provided under section eight of this article.

(e) “Code” means the code of West Virginia, one
thousand nine hundred thirty-one, as amended.

(f) "Cost" means, as applied to each wastewater, water or flood relief project financed, in whole or in part, with the proceeds from assessment certificates, all costs and expenses incurred by a county or municipality, and the respective assessment districts created under this article, that are reasonable and necessary for the planning, development, construction and carrying out of all works and undertakings necessary or incident to the completion of a project, including, without limitation, the cost and expense of all labor, work, supervision, inspection, equipment leased and materials furnished and used in completing the project, any interest charged on funds borrowed to finance the construction of a project, advertising expenses, and any engineering, legal, surveying, accounting or other professional fees incurred in connection with or otherwise relating to a project.

(g) "Flood relief project" means a project involving one or more of the following activities: (1) The moving, removing, renovating, relocation or demolition of, or any other actions taken to provide protection from flooding to, one or more buildings, structures and other permanent improvements located on property owned by any person, which the governing body of the county or municipality in which the project is completed, or any other governmental agency, has determined is within an area threatened by flooding; or (2) the acquisition of property which is located outside of an area threatened by flooding to serve as a site on which one or more buildings, structures and other permanent improvements which are located within an area that is threatened by flooding may be relocated, or on which new buildings, structures and other permanent improvements may be constructed, and the construction of such new buildings, structures and improvements if relocating existing buildings, structures and improvements is not feasible; or (3) the construction of levees or stream channel improvements to provide flood protection to specifically identified lots or parcels of land located within an area which a governing body or other
61 governmental agency has determined is threatened by
62 flooding, all so as to protect the health and safety of
63 persons residing or engaged in business on such
64 threatened property and to eliminate or minimize the
65 risk of damage caused by flooding to such buildings,
66 structures and permanent improvements.
67
68 (h) "Governing body" means, in the case of a county,
69 the county commission, and in the case of a municipality,
70 the mayor and council together, the council, the
71 board of directors or other board or body of any
72 municipality, by whatever name called, as the case may
73 be, charged with the responsibility of enacting ordinan-
74 ces and determining the public policy of such
75 municipality.
76
77 (i) "Governmental agency" means the state govern-
78 ment or any agency, department, division or unit
79 thereof; counties; municipalities; any watershed im-
80 provement districts, soil conservation districts, sanitary
81 districts, public service districts, drainage districts,
82 urban renewal authorities or regional governmental
83 authorities established pursuant to this code and any
84 other governmental agency, entity, political subdivision,
85 public corporation or agency having the authority to
86 acquire, construct, maintain or operate wastewater
87 facilities; the United States government or any agency,
88 department, division or unit thereof; and any agency,
89 commission or authority established pursuant to an
90 interstate compact or agreement.
91
92 (j) "Municipality" means a municipality as defined in
93 section two, article one, chapter eight of this code.
94
95 (k) "Person" means an individual, firm, partnership,
96 corporation, voluntary association or any other type of
97 entity.
98
99 (l) "Project" means a flood relief project, wastewater
100 project, water project or any combination thereof.
101
102 (m) "Public way" means any street, alley, right-of-
103 way, easement or other interest in real estate, or any
104 portion or combination thereof, along or across which a
105 wastewater or water project is constructed.
(n) "Public service commission" means the public service commission established under article one, chapter twenty-four of this code.

(o) "Recorder" means the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records.

(p) "Utility" means a public utility as defined in article one, chapter twenty-four of this code.

(q) "Wastewater project" means the planning, acquisition, construction, improvement or extension of new or existing sewer lines, pumps and related equipment and facilities, and any land, public ways or other interests in real estate, whether located within or outside of an assessment district, necessary or incident to the transportation of sewage, industrial wastes or other wastes, wastewater, and the residue thereof, from property located within an assessment district to a wastewater facility located within or outside of an assessment district.

(r) "Wastewater facility" means all facilities used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, wastewater, and the residue thereof, facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor.

(s) "Water project" means the planning, acquisition, construction, improvement or extension of water lines, pumps and related equipment and facilities, and any land, public ways or other interests in real estate, whether located within or outside of an assessment district.
district, necessary or incident to the transportation and distribution of water from a water facility located within or outside of an assessment district to property located within an assessment district, all for the purpose of providing potable, sanitary water suitable for human consumption and use.

(t) "Water facility" means all facilities, land and equipment used for or in connection with the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.

(a) Every county and municipality is hereby empowered and authorized, in addition to any other rights, powers and authority conferred upon it elsewhere in this code, to:

(1) Create, modify and expand assessment districts in the manner hereinafter set forth in such county or municipality, and to develop, construct, extend or improve, or assist in the development, construction, extension or improvement of, a project located in such county or municipality;

(2) Acquire, by purchase, lease, right of eminent domain, gift or otherwise, such lands, public ways and other interests in real estate, or any other property, as may be necessary or incident to the completion of a project, and to convey such real estate and other property to an assessment district;

(3) Appoint the members of the community improvement board for each assessment district created by it hereunder;

(4) Enter into agreements with any person or governmental agency necessary or incident to the development, planning, construction or improvement of a project, or for the operation, maintenance or disposition of a project or for any other services required by a project;
(5) Expend funds to acquire, or construct part of a project on, property located outside of an assessment district but within the boundaries of such county or municipality, as the case may be, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(6) Enter into agreements with one or more counties or municipalities to plan, develop, construct or improve a project jointly;

(7) Merge two or more assessment districts into one assessment district: Provided, That all such districts are located within the boundaries of the county or municipality, as the case may be; and

(8) Take any and all other actions consistent with the purpose of this article and not in violation of the constitution of this state, as may be necessary or incident to the construction and completion of a project.

(b) Unless agreed to by a municipality, the power and authority hereby conferred on a county shall not extend into territory within the boundaries of any municipality: Provided, That notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on counties may extend within the territory of a public service district created under section two, article thirteen-a of this chapter.

§16-13B-4. Determination of need and feasibility of creating an assessment district.

(a) The governing body of any county or municipality, on its own motion or upon the receipt of a petition signed by at least twenty-five percent of the total number of persons owning property located within the boundaries of an area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, and which requests that the area be constituted as an assessment district in accordance with this article, may authorize and cause at any time, or from time to time, a study to be prepared to determine the necessity and economic feasibility of creating an assessment district for such area and of developing, constructing,
extending or improving a project within such proposed assessment district. All such studies shall be prepared or reviewed under the supervision of a professional engineer or such other person or governmental agency charged by the governing body to prepare or review the study. The study shall describe the boundaries of the proposed assessment district and the nature of the project proposed therefore; list the names and address of all owner of property located within the proposed assessment district; set forth the necessity and economic feasibility of the project and the findings in support of such determinations; and also include plans, drawings and specifications with respect to the project, an estimate of the cost of the project and the amount of the assessments required to be levied against each lot or parcel of land located within the assessment district to pay for the cost of the project. The estimate shall specify the interest rate used in the calculation of the assessments and such other data as may be necessary for owners of property within the proposed assessment district to estimate the proportionate part of the cost of the project that may be assessed against their property.

(b) In the case of an assessment district created, in whole or in part, to construct a wastewater or water project, the study shall also identify the utility or governmental agency operating the wastewater or water facility, as the case may be, which would serve the assessment district upon completion of the project, and confirm that such wastewater or water facility has the capacity to serve the proposed project.

(c) In the case of an assessment district created, in whole or in part, to construct a flood relief project as defined in subparagraph (1) or (2), subsection (g), section two of this article, the study shall also set forth the minimum number of property owners who must elect to have the cost of the proposed project assessed against their property for the project to be economically feasible, and an estimate of the assessments which may be levied against the property owned by such persons if only the minimum number of property owners elect to have the project completed.
(d) After reviewing the study prepared pursuant to this section and considering alternative methods of financing the proposed project, the governing body may by order or ordinance determine the necessity and economic feasibility of creating an assessment district and developing, constructing, improving or extending a project therein. If the governing body determines that the creation of an assessment district and construction of the project is necessary and economically feasible, it shall set a date for the public meeting required under section five of this article and shall cause the study to be filed with the clerk of the county commission or the recorder of the municipality, as the case may be, and with the executive secretary of the public service commission, and made available for inspection by interested persons before the hearing.

(e) In determining the necessity and economic feasibility of an assessment district and the construction of a project, the governing body may rely, in whole or in part, on studies or reports prepared by or for any other governmental agency.

§16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication.

(a) Before the adoption or enactment of an order or ordinance creating an assessment district, the governing body shall cause notice to be given to the owners of property abutting a proposed wastewater or water project, or to the owners of property to be protected by a proposed flood relief project, that such ordinance or order will be considered for adoption or enactment, as the case may be, at a public meeting of the governing body at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption, enactment or rejection of the order or ordinance. At or after the meeting the governing body may amend, revise or otherwise modify the plans, drawings and specifications for the assessment district and project as it may deem appropriate.
after taking into account any comments received at such meeting.

(b) The notice required in this section shall be published at least thirty days prior to the date of the meeting as a Class II-O 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 or municipality in which the proposed assessment district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

"NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN _____________ (here describe the boundaries of the proposed assessment district) IN THE _______________ (county or municipality) OF _______________ (name of county or municipality):

A proposal has been made to the _______________ (county commission, city council or other governing body) of the _______________ (county or municipality) of _______________ (name of county or municipality) to establish a community improvement assessment district under chapter sixteen, article thirteen-b of the code of West Virginia to permanently improve _______________ (here describe the portion of the public ways both within and outside of the proposed assessment district to be improved, in the case of wastewater or water project, or the lots or parcels of land which may be protected, in the case of a flood relief project) in _______________ (name of county or municipality) by _______________ (here provide general description of the project) as the _______________ (county commission, city council or other governing body) may deem proper, and to assess the total cost (or, if the assessments are only necessary to pay for part of the total cost, the approximate percentage of the total cost) of such improvement on _______________ (in the case of a wastewater or water project, the property abutting said portion of the public ways within the proposed assessment district, or, in the case of a flood relief project, the lots or parcels..."
of land on which the project may be constructed or may
protect).

The proposal to create an assessment district and to
make such improvements, and the plans, drawings,
specifications and estimates therefor, will be considered
by the ______________ (county commission, city
council or other governing body) at a public meeting to
be held on the ______________ day of
____________, ____________, at __ m.

Any owner of property who may
be affected by the creation of the above-described
assessment district, and any person whose property is
not located within said assessment district but wishes
his property to be included, will be given an opportunity
to protest or be heard at said meeting or any adjourn-
ment thereof:

____________________ (name of clerk or recorder)
____________________ (official position)."

(c) An affidavit of publication of the notice made by
the newspaper publisher, or a person authorized to do
so on behalf of such publisher, and a copy of the notice
shall be made part of the minutes of the governing body
and spread on its records of the meeting described in
the notice. The service of said notice upon all persons
owning any interest in any property located within the
proposed assessment district shall conclusively be
deemed to have been given upon the completion of such
newspaper publication.

§16-13B-6. Petition of property owners for creation of
assessment district.

(a) After the meeting described in section five of this
article, and before the governing body may adopt or
enact an order or ordinance creating an assessment
district, the governing body shall receive, within ninety
days after the meeting, a petition in writing of (1)
persons owning, in the case of a wastewater or water
project, or both, not less than sixty percent of the
frontage of the lots abutting on both sides of that portion
of the public way located within the proposed assess-
ment district on which the wastewater or water project
or any part thereof may be constructed; (2) in the case
of a flood relief project as defined in subparagraph (1)
or (2), subsection (g), section two of this article, such
percentage of property owners as the governing body
shall have previously determined is necessary for such
project to be economically feasible; or (3) in the case of
a flood relief project as defined in subparagraph (3),
subsection (g), section two of this article, persons owning
not less than sixty percent of the lots which may receive
flood relief protection from such a project, in each case
requesting the creation of the assessment district and
the completion of the project according to the plans,
drawings and specifications submitted at the meeting,
and agreeing to have their property assessed with the
total cost of the project (or, if the governing body has
previously determined that the assessments are only
necessary to pay for part of the total cost, agreeing to
have their property assessed with that part of the cost).
The governing body may prescribe the form of the
petition as it may deem appropriate, and the petition
shall be held at all times in the office of the county clerk
or the recorder, as the case may be, and shall be open
to the public for inspection and execution during the
normal business hours of such office.

(b) Upon receipt of the petition required under
subdivision (2), subsection (a) of this section, and before
the governing body may adopt or enact an order or
ordinance creating an assessment district, the governing
body shall establish, solely in the case of a proposed flood
relief project as defined in subparagraph (1) or (2),
subsection (g), section two of this article, a period which
may not be less than thirty days or more than sixty days,
during which any owner of property to be affected
thereby may elect not to have the project undertaken
with respect to his property, in which event the project
shall not be undertaken on such property and such
property shall not be subject to any assessments
thereafter levied or any lien created pursuant to this
article. Such election shall be submitted in writing to
the governing body prior to the expiration of the election
period so established.
(c) The governing body shall provide notice of the election period required in subsection (b) of this section to those persons whose property may be affected by such flood relief projects and shall set forth in the notice the property owner’s election rights with respect thereto and an estimate of the assessments which may be levied against each lot or parcel of land so affected, based on the number of persons who signed the petition described in subsection (a) of this section, and shall also set forth the minimum number of persons who must elect to have the project completed to make the project economically feasible and the assessments which may be levied if not more than the minimum number of persons so elect. The notice shall be published as a Class II-O 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 assessment district. After the expiration of the election period, if the number of property owners not opting out of the flood relief project is less than the minimum number of property owners necessary for the project to be economically feasible, the governing body may, by ordinance or order, terminate any further actions concerning the proposed flood relief project and assessment district.

§16-13B-7. Receipt of petition of property owners; ordinance or order authorizing creation of assessment district and construction of project.

Upon receipt of the petition required under section six of this article and, solely in the case of a flood relief project as defined in subparagraph (1) or (2), subsection (g), section two of this article, not earlier than the expiration of the election period required under section six of this article, the governing body, by ordinance or order, may create a community improvement assessment district and shall set forth in such ordinance or order, as the case may be, the boundaries of the assessment district and authorize the completion of the project therein in accordance with the study described in section four of this article.
§16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.

(a) From and after the date of the adoption or enactment of the order or ordinance creating an assessment district, it shall thereafter be a public corporation and political subdivision of this state, but without any power to levy or collect ad valorem taxes.

Each assessment district is hereby empowered and authorized, in addition to any other rights, powers and authorities conferred upon it in this article or elsewhere in this code, to:

1. Acquire, own and hold, in its corporate name, by purchase, lease, right of eminent domain, gift or otherwise, such property, both real and personal, public ways and other interests in real estate, or any other property, whether tangible or intangible, as may be necessary or incident to the construction and completion of a project;

2. Construct and complete one or more projects, and assess the cost of all or any portion of a project on abutting property located in the assessment district, in the case of a wastewater or water project, or on the property protected by a flood relief project;

3. Sue or be sued;

4. Establish a bank account or accounts in its name;

5. Enter into agreements or other transactions with any person or governmental agency necessary or incident to the development, planning, construction or improvement of a project, or for the operation, maintenance or disposition of a project or for any other services required by a project;

6. Provide grants to any person owning property abutting a wastewater or water project, or on which a flood relief project is undertaken, in consideration of the completion by such person of a portion of the work necessary or incident to the completion of the project;
(7) Expend funds to acquire, or construct part of a project on property located outside of an assessment district, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(8) Enter into agreements with one or more counties, municipalities or assessment districts to plan, develop, construct or improve a project jointly;

(9) Accept appropriations, gifts, grants, bequests and devises, and use or dispose of the same to carry out its corporate purpose;

(10) Make and execute contracts, releases, assignments, compromises, and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(11) Have a seal and alter the same;

(12) Issue assessment certificates to carry out and effectuate the purpose of this article;

(13) Borrow money to carry out and effectuate the purpose of this article and to issue its notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate powers;

(14) Obtain options to acquire real property, or any interest therein, by purchase, lease or otherwise, which is found by the board to be suitable as a site, or part of a site, for the construction of a project; and

(15) Take any and all other actions consistent with the purpose of this article and not in violation of the Constitution of this state, as may be necessary or incident to the construction and completion of a project.

(b) The powers of each assessment district shall be vested in and exercised by a community improvement board which shall be composed of five members, four of whom shall be appointed by the governing body of the county or municipality in which the assessment district is located, and one of whom shall be the sheriff of the county or the treasurer of the municipality (or
such other person serving in an equivalent capacity if there is no treasurer), as the case may be, in which the assessment district is located. At least one member of the board shall be a professional engineer and at least three members of the board shall be residents of the assessment district. No more than three members of the board may be from the same political party.

(c) The provisions of this subsection apply to the four members appointed by the governing body. They shall be appointed for overlapping terms of four years each and until their respective successors have been appointed and have qualified, except for the original appointments. For the purpose of original appointments, one member shall be appointed for a term of four years and until his or her successor has been appointed and qualified; one member shall be appointed for a term of three years and until his or her successor has been appointed and qualified; one member shall be appointed for a term of two years and until his or her successor has been appointed and qualified; and one member shall be appointed for a term of one year and until his or her successor has been appointed and qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article four of the constitution of this state. Vacancies shall be filled by appointment by the governing body of the county or municipality creating the assessment district for the unexpired term of the member whose office shall be vacant and such appointment shall be made within thirty days of the occurrence of such vacancy. Any such member may be removed by the governing body which appointed such member in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall not be entitled to any compensation for their services.

(d) The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as
chairman, one to serve as treasurer and one to serve as secretary. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records, and the treasurer shall maintain records of all financial matters relating to the assessment district, which shall also be available for inspection as other public records. Duplicate records shall be filed with the clerk or recorder, as the case may be, of the county or municipality which created the assessment district and shall include the minutes of all board meetings. The secretary and treasurer shall perform such other duties pertaining to the affairs of the assessment district as shall be prescribed by the board.

(e) The members of the board, and the chairman, secretary and treasurer thereof, shall make available to the governing body responsible for appointing the board, at all times, all of its books and records pertaining to the assessment district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

(f) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

(g) Staff, office facilities and costs of operation of the board shall be provided by the county or municipality which created the assessment district.

(h) The chairman shall preside at all meetings of the board and may vote as any other members of the board, but if he should be absent from any meeting the remaining members may select a temporary chairman, and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organizational meeting.

(i) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. The members of the board shall not be personally liable or responsible for any obligations of the assess-
ment district or the board but are answerable only for willful misconduct in the performance of their duties.

(j) The official name of an assessment district created under the provisions of this article may contain the name of the county or municipality, as the case may be, in which it is located.

(k) Notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on assessment districts may extend within the territory of a public service district created under section two, article thirteen-a of this chapter.


(a) After the creation of an assessment district and the appointment of the board thereof, the board shall provide by resolution for the construction of the project, and shall also provide in the same or subsequent resolutions for the supervision of such work by a professional engineer, governmental agency or any other person designated by the board. The board may provide for the construction of the project by one of the two following methods, or any combination thereof:

(1) If there exists another governmental agency with the experience, knowledge and authority to construct the project, the board may elect to enter into a contract with such agency for the construction of all or part of the project or for any other service necessary or incident to the construction of the project, in which case such governmental agency shall be responsible for entering into contracts, subject to the board's approval, with such other persons as may be necessary or incident to the construction of the project; or

(2) The board may elect to enter into one or more contracts with such contractors and other persons as may be necessary or incident to the construction of the project, in which case it shall provide notice to the public and appropriate contractor associations of the general nature of the project, and shall designate in such notice the place where detailed plans, drawings and
specifications of the project may be reviewed, and call for sealed proposals for construction of the project by a date not earlier than ten days after the last of such publications. Such notice shall be published as a Class II-O 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 assessment district. All contracts for work on any project, the expense of which will exceed five hundred dollars, shall be let to the lowest responsible bidder therefor, and the board may impose such conditions as it may deem necessary upon the bidders with regard to bond and surety, guaranteeing the good faith and responsibility of such bidders, and the faithful performance of such work according to contract, or for any other purpose. The board may reject any and all bids, and if it rejects all bids notices shall be published as originally required before any other bids may be received. The board may let portions of the work necessary to complete a project under different contracts.

(b) The resolution described in subsection (a) of this section shall also provide for payment of the cost of the project. The board shall provide in such resolution for the payment by (1) persons owning property abutting a wastewater or water project, in the case of such a project; (2) persons owning property on which a flood relief project, as defined in subparagraph (1) or (2), subsection (g), section two of this article, is constructed, in the case of such a project; or (3) persons owning property protected by a flood relief project, as defined in subparagraph (3), subsection (g), section two of this article, in the case of such a project, of the cost of the work in equal installments payable over a period of not less than five years nor more than ten years from the date of assessment, with interest payable from the date of assessment at such rate or rates as the board may determine are necessary or appropriate, and shall fix the number of installments in which the amounts assessed shall be payable: Provided, That upon failure of the owner of the property assessed to pay any installment as and when due, and if such default
continues for sixty days after receipt of written notice of the default, then at the option of the holder of the assessment certificates applicable to such property, the entire balance due may be declared immediately due and payable and the holder of the certificates may forthwith proceed to enforce the collection thereof in accordance with this article. Delivery of notice of default shall be deemed complete upon the delivery of such notice by certified mail, return receipt requested, directed to the address of the property owner in default as shown on the face of the assessment certificate, or such other address provided in writing to the holder of the certificate subsequent to the issuance thereof.

§16-13B-10. Notice to property owners of assessments; hearings, correcting and laying assessments; report on project completion; permits.

(a) After the execution of an agreement or agreements for the construction of a project with another governmental agency or the acceptance by the board of a bid by one or more contractors as contemplated by section nine of this article, but prior to the commencement of construction, the board shall cause the engineer, governmental agency or person charged by the board with the supervision of the project, to prepare a report describing each lot or parcel of land abutting the project in the case of a wastewater or water project, or each lot or parcel on which a flood relief project shall be undertaken or shall protect in the case of such a project; and setting forth the total cost of the project based on the contract with the governmental agency, or the accepted bid or bids, and all other costs incurred prior to the commencement of construction, and the respective amounts chargeable upon each lot or parcel of land which may be assessed and the proper amount to be assessed against the respective lots or parcels of land in accordance with sections eleven and twelve of this article, with a description of the lots and parcels of land as to ownership, frontage and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to
each respective project. The board shall thereupon give notice to the owners of property to be assessed that on or after a date specified in the notice an assessment may be levied against the property: Provided, That construction of a project shall not commence until the assessment district has laid all assessments on the property to be benefitted by the project and has issued all assessment certificates necessary to evidence the assessments in accordance with section fifteen of this article. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment, and shall show the total cost of the project, whether the assessments will pay for all or part of the total cost of the project, and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to ownership, frontage and location. The notice shall be published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area for such publication shall be the assessment district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to lay the assessments as corrected and verified.

(b) Upon completion of a project, or the completion of that portion of a project that provides water, wastewater or flood protection benefits to the property subject to the assessments, the board shall cause the engineer or committee charged by the board with the supervision of the project, to prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is less or greater than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of land pursuant to subsection (a) of this section to reflect the total cost of the project as completed, and in so doing shall, in the case of an assessment increase only, (1) follow the same procedure with regard to notice and
providing each owner of assessed property the right to appear before the board to move for the revision or correction of such proposed reassessment as required for the original assessment, and (2) issue such additional assessment certificates as may be necessary to evidence the amount by which the assessment applicable to each lot or parcel of land has increased. If an assessment is decreased, the board shall, by resolution and written notice to the sheriff of the county in which the assessment district is located, cause the next installment or installments of assessment fees then due and payable by each affected property owner to be reduced pro rata, and shall provide written notice to such property owners of the amount of such decrease by the deposit of such notice in the United States mail, postage prepaid. In such cases the board shall also transmit to the sheriff an amount of funds equal to the difference between the cost of the project upon which the assessments were originally laid and the cost of the project as completed, and the sheriff shall disburse such funds to the holders of the assessment certificates issued in connection with the project on a pro rata basis.

(c) Prior to the construction of a project, the board shall obtain all permits and licenses required by law for the construction and operation of the project: Provided, That the board shall not be required to obtain a certificate of public convenience from the public service commission under article two, chapter twenty-four of this code: Provided, however, That prior to the construction of each project, the board shall apply to the public service commission for authorization enabling the construction and shall submit with said application any certificate required by the division of public health, any certification or permit required by the division of natural resources, the contract for utility service, if a utility will be involved, a copy of the utility’s applicable, existing rate tariff, a copy of the order or ordinance creating the board and a certificate of a qualified professional engineer that the utility providing service has the capacity to provide or treat, as the case may be. The public service commission shall render its final
decision on any application filed under the provisions of this section within (i) ninety days in the case of a project serving twenty-five or fewer residential customers, or (ii) one hundred twenty days in the case projects serving commercial customers or more than twenty-five residential customers, following the submission of such application and all information herein required.

§16-13B-11. Construction of projects; assessments; corner lots, etc.

(a) Each board is hereby empowered and authorized to order and cause to be constructed, within its respective assessment district, any project for the benefit of said assessment district or any part thereof. Upon the completion of a project or any part thereof, (1) the property located within the assessment district abutting on a wastewater or water project or abutting upon that portion of a public way within the assessment district in which such wastewater or water project shall be constructed, or (2) the property protected by the flood relief project, may be charged by the assessment district in which the project is located with all or any part of the cost thereof, including the cost of such wastewater or water project across public ways. No lot or parcel of land abutting any portion of a project which is located outside of an assessment district shall be subject to any assessment unless and until the owner of such lot or parcel receives any services provided by the project, in which event such lot or parcel may be subject to assessment under section twenty of this article.

(b) Assessments made with respect to wastewater or water projects shall be subject to the restrictions set forth in this subsection and subsection (c) of this section. In case of a corner lot, or acreage which has not been divided into lots, frontage which may be assessed shall be measured along the longest dimension thereof abutting on each public way in which a wastewater or water project is constructed, but if the project is constructed on two or more sides then such corner lot, or acreage which has not been divided into lots, shall be charged only with the side on which the project is
first completed unless such lot or acreage is two hundred feet or more in depth measured from such first side, in which event the corner lot, or acreage which has not been divided into lots, shall be charged only with the footage in excess of two hundred feet. Any lot, or any acreage which has not been divided into lots, having a depth of two hundred feet or more and abutting on two or more public ways, one on the front and one in the rear of said lot, or said acreage which has not been divided into lots, shall be assessed on both of said public ways, if a project is constructed on both such public ways. Where a corner lot, or any acreage which has not been divided into lots, has been assessed on both ends, it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on either end.

(c) In case of corner lots, or any acreage which has not been divided into lots, where the cost of a wastewater or water project along one dimension is not assessed against the owner thereof, and in the case of lots, or acreage, less than two hundred feet deep abutting at each end on a public way in which a project is completed, the cost of the project along the dimension or end not assessed against the property owner shall in every case be apportioned and assessed against the other property abutting on the public way within the assessment district being improved, in the manner of apportionment of the cost of improvements in intersections.


(a) The cost of a wastewater or water project, including the cost of all improvements at and within intersections and the cost attributable to any portion of the project located outside an assessment district, shall be apportioned to, and assessed against and borne by the properties abutting upon all public ways located within the assessment district, in or upon which the improvements involved in the project shall have been made. Each lot or parcel of land located within the assessment district so abutting shall be assessed, subject to the provisions of section eleven of this article respecting
assessment for improvements of corner lots, acreage not
divided into lots and lots or acreage improved on more
than one side or end, with that portion of the cost of the
entire project, located both within and outside the
assessment district, which is represented by the propor­
tion which the abutting frontage in feet of such lot or
parcel of land bears to the total abutting frontage in feet
of all the lots or parcels of land abutting on the public
ways so improved within the assessment district:
Provided, That if the character of the improvements
shall be substantially different upon different public
ways or portions thereof, the cost may be equitably
apportioned to the respective public ways, or portions
thereof, in proportion to the character and cost of the
respective improvements thereon and the part of the
cost so apportioned to each respective public way, or
portion thereof, shall be apportioned to and assessed
against the respective lots or parcels of land abutting
thereupon in the proportion as hereinabove provided:
Provided, however, That property shall be assessed only
to the extent it is benefited and if there is any property
abutting on the portion of the public way located within
the assessment district, so improved which the board in
the resolution authorizing the project has determined
will not be specially benefited by the improvements, or
will not be specially benefited to the full extent of the
cost of the project, or for other reasons which would not
be liable to assessment for any of, or for some part of,
the cost of the project, then the cost of such project
abutting such part of said public way, or so much
thereof as is so determined to be nonassessable, shall be
apportioned among, assessed against and borne by the
remaining property abutting upon the public ways
located within the assessment district, improved in
proportion, subject to the aforesaid provisions of section
eleven of this article, to the frontendage of such remaining
abutting property as hereinabove provided: Provided
further, That if there be property abutting the public
way located in the assessment district, so improved,
which is owned by the United States of America, and,
for that reason, not legally subject to assessment, then
the county or municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned property.

(b) Solely in the case of a flood relief project as defined in subparagraph (1) or (2), subsection (g), section two of this article, that portion of the cost of the project incurred in the preparation of the studies and reports required under this article prior to the construction of the project and all other costs relating to the development and planning of the project and which are incurred prior to the commencement of construction of the project on or protecting one lot or parcel of land, shall be apportioned equally to each lot or parcel of land benefited and protected by the project, and all construction costs and any development costs incurred solely in completing a flood relief project benefiting and protecting a specific lot or parcel of land, shall be apportioned solely to such parcel or lot.

(c) Solely in the case of a flood relief project as defined in subparagraph (3), subsection (g), section two of this article, the cost of the project shall be apportioned pro rata to each lot or parcel of land benefited and protected by the project on which a house, building or other structure is situate, based on the ratio which the total square footage of protected space in such house, building or other structure bears to the total square footage of space in all houses, buildings and other structures located on property benefited and protected by the project.

(d) In apportioning the cost of any project to any lot or parcel of land in any circumstances not expressly covered in this article, the cost shall be apportioned equitably, as determined by the board, in keeping with the concepts and principles expressed in this article and the special benefit to the property in question from the improvements made.
§16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.

1 When any of the lots or parcels of land within an assessment district abutting the portion of the public way improved by a wastewater or water project consist of property owned or controlled by this state, any municipality, county, board of education or other public body, or consist of property owned by, or used for, a church, or a religious, charitable, educational or eleemosynary institution, for purposes not subject to taxation, such property shall nevertheless be assessed with its proper proportion of the cost of said improvement, and it shall be the duty of those persons having charge of the fiscal affairs of such owner or the management of any such property or institution to make proper arrangements for the payment of, and cause to be paid, such assessments as and when due and payable.

§16-13B-14. Method of paying for cost of project; how assessments may be evidenced.

1 The board shall determine and provide in the resolution laying the assessments, adopted in accordance with section ten of this article, the method of financing the cost of a project, for the cost of which assessments are levied as in this article provided, and such method may include the receipt of gifts, grants from any governmental agency or appropriations from the county or municipality in which the assessment district is located, or borrowing funds from any person or governmental agency, or any combination thereof: Provided, That any funds borrowed by an assessment district, including any interest accruing thereon, shall be repaid solely from the proceeds of the assessment certificates issued pursuant to section fifteen of this article and from the assessments evidenced thereby.

§16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.
(a) All assessments levied under this article shall be evidenced by assessment certificates issued by the assessment district in accordance with this section. The board may issue assessment certificates to any person or governmental agency financing the cost of a project, and may also issue assessment certificates in the name of the assessment district, on behalf of itself or as agent for any other person or governmental agency. The board shall issue the assessment certificates as soon as practicable after it has determined the method of financing the cost of the project and laid the assessments against the property, as provided in section ten of this article. The assessment certificates shall evidence on their face the assessments applicable to the property for which each such certificate has been issued and each installment of principal and interest payable, and a copy of each assessment certificate shall be provided to the owner of the property against which the assessment evidenced by the assessment certificate has been laid. Each assessment certificate shall be issued in registered form and shall show on the face thereof the name and address of the owner of the property to which the assessment certificate applies, the name and address of the person serving as the registrar for such certificate in accordance with subsection (c) of this section, and the name and address of the person to whom the certificate is issued. Assessment certificates shall be signed by the chairman and secretary of the board of the assessment district issuing the certificates, shall refer to the resolution laying the assessments and shall show the amount and date of the assessment and describe the property against which the assessment is laid, describing the same as to ownership, amount, frontage (solely in case of a wastewater and water project) and briefly as to location, and the mailing address of the owner thereof. Assessment certificates shall also show the dates on which principal and interest payments are due, shall set forth that the payment of all such installments shall be made to the sheriff of the county in which the assessment district is located, as provided in section seventeen of this article, and shall contain a provision
that in the event there is default in the payment of any one of such installments and such default continues for a period of sixty days after written notice of such default, then all unpaid installments shall become due and payable at the election of the certificate holder and the holder may proceed to collect all of the unpaid balances of installments, with interest until paid.

(b) Each assessment certificate issued under this article shall be enforceable by the holder thereof, and shall be assignable by endorsement and delivery of the certificate and upon delivery to the registrar of the assessment certificates of a written notice of such assignment executed by the assignor and assignee, each of whose signatures shall be duly notarized.

(c) Prior to the issuance of any assessment certificates, the board shall, by resolution, designate a financial institution located in this state as the registrar for such certificates, who shall maintain a complete and accurate record of the names and addresses of the persons or governmental agencies to whom the assessment certificates are issued. Within ten days of the issuance of an assessment certificate or any revised assessment certificates in lieu thereof, the board of the assessment district issuing the same shall provide to such registrar a list of the names and addresses of the person or governmental agency to whom the certificates were issued, which shall be certified by the secretary of the board. The record of certificate holders maintained by the registrar shall be open to inspection by the sheriff of the county in which the assessment district is located and may be relied upon by the sheriff for purposes of disbursing assessment fees in accordance with section seventeen of this article or in otherwise determining the lawful holders of the assessment certificates.

§16-13B-16. No liability of state, county, municipality and assessment district.

Neither the state nor any county or municipality shall be liable on notes or other evidences of indebtedness of an assessment district or for the payment of any assessment fees evidenced by any assessment certificate,
and such notes or other evidences of indebtedness and
assessment certificates shall not be a debt of the state
or any county or municipality, and such notes or other
evidences of indebtedness and assessment certificates
shall contain on the face thereof a statement to such
effect. No assessment district shall be liable for the
payment of any assessment fees evidenced by any
assessment certificates issued pursuant to this article
and assessment certificates shall contain on the face
thereof a statement to such effect.

§16-13B-17. Payment of assessment fees; releases.

(a) Payments of assessment fees or any installment
thereof shall be made to the sheriff of the county in
which the assessment district is located, who shall hold
and disburse all such fees as agent for the assessment
district in accordance with this section. The sheriff shall
promptly deposit all assessment fees upon receipt
thereof in a segregated account established by the
sheriff for such purpose and shall maintain a record of
the assessment fees so received. Within thirty days of
receipt of assessment fees from any person or govern-
mental agency, the sheriff shall disburse the assessment
fees to the holder of the assessment certificate pursuant
to which such assessment fees were paid, and within
sixty days after the receipt of all assessment fees due
for the calendar year in question, but in no event later
than the first day of October of such year, prepare and
deliver to the board of each assessment district located
in the county, a statement setting forth the aggregate
amount of assessment fees received for such district and
the name of any property owner who failed to pay the
assessment fees due and payable for the period in
question.

(b) On or before the thirtieth day of April of each
year in which assessments are owed with respect to any
lot or parcel of property within an assessment district
located in a county, the sheriff of the county shall send
a notice to the person owning such lot or parcel setting
forth the assessment fee due for such period and that
such assessment fee shall be due and payable on or
before the first day of June of such year. In preparing
and mailing such notices, the sheriff may rely on the
information contained in the records maintained by the
registrar of each assessment district, as provided in
section fifteen of this article.

(c) If payment in full is made to the holder of a
certificate, the holder shall deliver the certificate to the
assessment district marked "paid" to evidence the
payments made of principal and interest, and the
assessment district shall thereupon deliver the certifi-
cate to the payor. On presentation to the board for
cancellation of all certificates for the full assessment
made against a specific lot or parcel of property
assessed, the chairman of the board shall on request
execute and deliver a release of the lien of such
assessment.

§16-13B-18. Liens; recording notice of liens; suit for
enforcement; priority.

1 The property abutting the portion of the public way
located within the assessment district, so improved, in
the case of a wastewater or water project, or the
property improved or protected by a flood relief project,
against which properties an assessment has been laid as
herein provided, shall be subject to a lien, from the date
of the resolution laying the assessment, for the payment
of that portion of the cost of the project assessed against
said property. A notice of the liens of said assessments
referring to the assessing resolution, and setting forth
a list of the property assessed, described respectively as
to amounts of assessment and ownership, frontage
(solely in case of a wastewater or water project) and
location of the property, shall be certified, by the
chairman and secretary of the board, to the clerk of the
county commission of the county wherein the project is
located. The county clerk shall record the notice of such
lien in the appropriate trust deed book or other
appropriate county lien book and index the same in the
name of each owner of property assessed. From the date
of an assessment, the holder of the assessment certificate
shall have such lien and shall be entitled to enforce the
same in its, his or their name to the extent of the
amount, including principal and interest and any
penalty due for any failure to pay an installment when
due, of such assessments and against the property to
which the assessment certificate applies, as to any
assessment not paid as and when due. Such assessments
shall be and constitute liens in the hands of the holders
of said certificates upon the respective lots and parcels
of land assessed and shall have priority over all other
liens except those for land taxes due the state, county
and municipality and except any liens for preexisting
special assessments provided under this code. If any
assessment is revised in accordance with section ten or
twenty of this article, the lien created by this section
shall extend to the assessment so revised and shall have
the same priority as the priority of the lien created upon
the laying of the original assessment. Such assessments
and interest thereon shall be paid by the owners of the
property assessed as and when the installments are due.
The holders of any such assessment certificates may
enforce the lien thereof in any proper suit, and when
default in the payment, as and when due, of any
assessment, principal or interest, or installment thereof,
shall occur and such default shall have continued for
more than sixty days after the receipt by the property
owner of written notice of such default from the sheriff
of the county in which the assessment district which
issued the certificates is located, the holders of any such
certificates may declare the whole unpaid balance due
and payable and by proper civil action enforce the lien
thereof, upon process issued and served according to law
upon the owner or owners of the lots or parcels of land
subject to said lien at the time such suit may be brought
as shown by the records of the clerk of the county
commission of the county in which said lots or parcels
of land are located. The notice required under this
section shall be complete when such notice is mailed by
certified mail, return receipt requested, directed to the
address shown on the records maintained by the
registrar under section fifteen of this article.

§16-13B-19. Reassessment for void, irregular or omitted
assessments.
In the case of the construction of any permanent improvements where an assessment has heretofore been laid or may hereafter be laid for the cost thereof, which said assessment is or shall be void or voidable by reason of errors, irregularities or defects in the proceedings under which such improvements were made, or in case such assessment shall have been made against the wrong person or property, or shall have been omitted to be made in a case where the same was proper, it shall be the duty of the board within five years after the completion of such improvements, or after any court shall have declared such assessment invalid, to cause notice to be given to any person or persons against whom the cost of said improvements might properly be or have been assessed, of its intention to lay such assessment and fixing a date, time and place at which the owner or owners may appeal and show case against the same. Said notice shall be served in the manner provided in this article for the giving of notices in assessment proceedings, or in any other manner provided by law. At the time and place specified in the notice aforesaid or at any time thereafter, the board shall proceed to lay and levy an assessment or assessments for the cost of such improvements as would have been lawful under proper proceedings at the time said improvements were completed, unless the owner or owners so notified shall show good cause against the same. The reassessment or reassessments so laid shall be a lien upon the property liable therefor in the manner hereinabove provided from the date of the original assessment, with interest therefrom, and proper assessment certificate may be issued, recordation had, and the payment thereof and the lien thereof may be enforced in the same manner and upon the same terms as would have been proper at the time of the completion of the said improvements had the assessments therefor been then properly laid and levied.

§16-13B-20. How additional territory may be added to assessment district.

(a) A governing body may, with respect to any assessment district created by it, modify, expand or
extend the boundaries of the assessment district to
develop, construct, improve or extend any project, or to
enable persons residing or engaged in business on
property located outside the assessment district to
obtain the services provided by a wastewater or water
facility, (1) by satisfying the same requirements
provided in this article for the creation of the assessment
district, or (2) upon the unanimous written agreement
of persons owning all of the property to be added to the
assessment district that such property be added to the
district and assessed in accordance with subsection (b)
of this section: Provided, That no property may be added
to an assessment district for connection to a wastewater
or water project unless it abuts the assessment district.

(b) Any property added to an assessment district
shall be assessed for and bear a proportionate share of
the cost of the project then remaining unpaid, consistent
with the concepts and principles set forth in sections
eleven and twelve of this article and the assessment so
laid shall be a lien upon the property in the same
manner hereinabove provided from the date such
assessment is laid. Contemporaneously with the resolu-
tion laying the assessment against such property, all
other property located in the assessment district shall
be reassessed to reflect the addition of such property to
the assessment district. In all such cases, the assessment
district shall be the holder of the assessment certificates
issued to evidence the assessments laid upon the added
property, and all assessment fees received by the sheriff
from such assessment certificates shall be applied, pro-
rata, to reduce the final installment of principal and
interest due from the owners of all other property
located in the assessment district as it existed prior to
the addition of property to the district.

(c) If any property is connected to a wastewater or
water project after the cost of the project has been paid
in full and the transfer of the project to a utility or
governmental agency pursuant to section twenty-one of
this article, the owner of such property shall pay to the
utility or governmental agency the same rates and
charges paid by other customers of the utility or
§16-13B-21. Operation and maintenance of wastewater and water projects; rates and charges therefor.

(a) Prior to the construction of a wastewater or water project, the assessment district in which the project shall be located shall enter into one or more agreements with a utility or governmental agency operating a wastewater or water facility within the service area covered by the assessment district for the operation and maintenance of the project and for the provision of wastewater or water services, as the case may be, and such utility or governmental agency shall thereupon be authorized and empowered to charge and collect from each person connected to the project such rates and charges customarily paid by customers of such utility or governmental agency for similar wastewater or water services. All such agreements shall have terms of duration equal to or greater than the period necessary for the cost of the project to be paid in full, and may otherwise contain such terms and conditions as may be mutually agreed to by the parties, and shall be presented as part of the application to the public service commission required by section ten (c) hereof.

(b) Immediately upon the final payment of all assessment fees due under all assessment certificates issued in connection with a wastewater or water project constructed within an assessment district, the assessment district shall transfer and convey all of its right, title and interest in and to such project to the utility or governmental agency providing wastewater or water services, as the case may be.

§16-13B-22. Liberal construction.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose hereof.
AN ACT to amend article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to real estate management; and procedure of the public land corporation authorizing the transfer of certain properties from the division of natural resources to any governmental agency of the state, the federal government or any political subdivision of the state.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight, to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-8. Authorization to transfer from the division of natural resources to the division of tourism and parks the Stump lands located on the west bank of the south branch of the Potomac River, Romney District, Hampshire County, West Virginia, which contains 216.81 acres, more or less.

The public land corporation is hereby authorized and empowered to transfer to any governmental agency, the federal government or any political subdivision of the state all those certain tracts or parcels of real estate known as "Fort Mill Ridge", situate near Romney, Romney District of Hampshire County, West Virginia, containing 216.81 acres, more or less, including the civil war historical site, with all trenches, gun im plantations, fort locations and appurtenances, all being of historical
significance, as well as all of the timber, minerals, mineral rights, all roads, rights-of-way, easements and appurtenances thereunto belonging: Provided, That the transfer comply with the regulations contained in 50 CFR, Part 80, Sections 80.4(a) and 80.4(b) of the federal register and that the division of natural resources shall be reimbursed by said agency, the federal government or any political subdivision of the state in an amount equal to the amount of the purchase price or the current market value of the property, whichever is greater.

This is the same real estate surveyed by David G. Vanscoy, professional engineer and which was conveyed by James A. Stump III, and others to the state of West Virginia for the use and benefit of the West Virginia division of natural resources by deed dated the twenty-seventh day of January, one thousand nine hundred eighty-nine, and recorded in the office of the clerk of the county commission of Hampshire County in deed book 306, at page 693, reference to which survey plat is here made for a more particular description of the property to be transferred hereby.

CHAPTER 152
(S. B. 543—By Senators Craigo and Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to weapon restrictions for persons attempting to kill wildlife under crop damage permits.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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.
§20-2-15. Permit to kill deer or other wildlife causing damage to cultivated crops, fruit trees or commercial nurseries; weapon restrictions.

(a) Whenever it shall be found that deer or other wildlife are causing damage to cultivated crops, fruit trees or commercial nurseries, the owner or lessee of the lands on which such damage is done may report such finding to the conservation officer or biologist of the county in which such lands are located or to the director. The director shall then investigate the reported damage and if found substantial, shall issue a permit to the owner or lessee to kill one or more deer or other wildlife in the manner prescribed by the director.

(b) In addition to the foregoing, the director shall establish procedures for the issuance of permits or other authorization necessary to control deer or other wildlife causing property damage.

(c) All persons attempting to kill deer or other wildlife pursuant to this section are subject to the same minimum caliber restrictions and other firearm restrictions and the same minimum bow poundage and other bow and arrow restrictions that apply when hunting the same animal species during the regular hunting seasons.

CHAPTER 153
(Com. Sub. for H. B. 4542—By Delegate Love)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transporting the carcass or fresh skin and head of a deer; requiring that the fresh skin and head or carcass of a deer be checked before it is transported across certain county boundaries.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, 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.

§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

Each person killing a deer or wild turkey found in a wild state shall immediately after removing the entrails, but in any event within one hour and before transporting or removing the carcass in any manner from where it was killed, complete and attach thereto the game tag supplied with his or her hunting license. The game tag shall remain on the carcass until it is dressed for consumption.

If such wild turkey or deer has been lawfully killed by a person not required to secure a license, or by a person who has previously killed another species of game bird or game animal for which a game tag is required, or by a person who has lost the tag supplied with his or her license, such person shall make and attach a tag to the carcass within the time specified after such killing. The tag shall bear in plain English the name and address of the hunter, and the date of killing, or, if holding a license, the license number and the date and county where the game was killed.

The carcass of such wild turkey shall be delivered to a conservation officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

The fresh skin and head or carcass of the deer shall be delivered to a conservation officer or an official checking station for checking and retagging before it is transported beyond the boundaries of the county adjacent to that in which the kill was made.

Every failure to have said tag or tags attached, or removing or transporting such animal in any manner, or failure to deliver the carcass or fresh skin and head to a conservation officer or to an official checking station for checking, as herein provided, shall subject the person so neglecting to the penalties provided in this article.
AN ACT to amend and reenact section seven, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the wildlife endowment fund; and providing that full-time nonresident students who attend in-state colleges and universities are not eligible to purchase lifetime hunting, fishing and trapping licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

Pursuant to section three of this article the following lifetime hunting, fishing and trapping licenses are hereby created and, for the lifetime of the licensee, shall serve in lieu of the equivalent annual license: Provided, That a full-time nonresident student who attends an in-state college or university is not eligible to purchase any of these lifetime licenses:

(a) A Class A-L lifetime resident statewide hunting and trapping license, the fee for which shall be two hundred dollars: Provided, That the fee shall be one hundred dollars for any resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application;

(b) A Class AB-L lifetime resident combination statewide hunting, fishing and trapping license, the fee for which shall be three hundred dollars: Provided, That the fee shall be one hundred fifty dollars for any
resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application;

(c) A Class B-L lifetime resident statewide fishing license, the fee for which shall be two hundred dollars: Provided, That the fee shall be one hundred dollars for any resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application; and

(d) A Class O-L lifetime resident trout fishing license, the fee for which shall be one hundred dollars: Provided, That the fee shall be fifty dollars for any resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application.

CHAPTER 155
(H. B. 4631—By Delegates Reid and Staton)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the specified eighteen-month extension for a permit; and to allow extension periods to be at the discretion of the chief of the water resources section of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.
(a) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the division of sanitary engineering of the state department of health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section five of this article, the chief shall consult with the director of the state geological and economic survey and the deputy director of the oil and gas division of the department of mines, and all such persons shall cooperate with the chief and assist him in carrying out the duties and responsibilities imposed upon him under the provisions of this article and the rules and regulations of the board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules and regulations of the board.

(b) The department's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits and disposition of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any effluent limitations or any rules and regulations of the board: Provided, That the chief may issue a permit whenever in his judgment the water quality standards of the state may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the state; and (2) in
cases wherein it is required, such applicant shall include the name and address of the responsible agent as set forth in section eight-b of this article.

(c) Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That when the applicant, in accordance with agency rules, has made a timely and complete application for permit reissuance, the permit term may be extended by the chief, at his discretion, for a period not to exceed one hundred twenty months beyond its expiration date. Upon expiration of a permit, a new permit may be issued by the chief upon condition that the discharges or releases, escapes, deposits and disposition thereunder meet or will meet all applicable state and federal water quality standards, effluent limitations and all other requirements of this article.

(d) An application for a permit incident to remedial action in accordance with the provisions of section eleven of this article shall be processed and decided as any other application for a permit required under the provisions of section five of this article.

(e) A complete application for any permit shall be acted upon by the chief, and the department's permit delivered or mailed, or a copy of any order of the chief denying any such application delivered or mailed to the applicant by the chief, within a reasonable time period as prescribed by rules and regulations of the board.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with a copy of such order, which notice shall advise the applicant of his right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which the applicant received the copy of such order. However, an applicant may alter the plans and specifications for the
proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) A permit shall be transferable to another person upon proper notification to the division and in accordance with applicable regulations. Such transfer shall not become effective until it is reflected in the records of the division of water resources.

(h) All permits for the discharge of sewage, industrial wastes or other wastes into any waters of the state issued by the water resources board prior to July one, one thousand nine hundred sixty-four, and all permits heretofore issued under the provisions of this article, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules and regulations promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a copy of a notice of the right to appeal to the board as provided for in section eight of this article, to be served upon the permit holder as specified in said section eight.

CHAPTER 156
(H. B. 4712—By Delegates Roop and Pethtel)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to power of the West Virginia water development authority to enter into trust agree-
ments when acting in the capacity of fiscal agent, authorizing authority or other capacity for an agency, department, instrumentality or public corporation of the state which is issuing or purchasing bonds or notes; and providing for reimbursement to the West Virginia water development authority of expenses incurred with respect thereto.

Be it enacted by the Legislature of West Virginia:

That article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine-a, to read as follows:

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

§20-5C-9a. Trust agreements for related responsibilities; reimbursements.

1 Notwithstanding any other provision of this code to the contrary, when the authority acts in the capacity of fiscal agent, authorizing authority or some other capacity for any agency, department, instrumentality or public corporation of the state which is issuing or purchasing bonds or notes, the authority may, in the exercise of its responsibilities, enter into trust agreements with one or more trust companies or banking institutions having trust powers, located within or without the state, with respect to the receipt, investment, handling, payment and delivery of funds of such agency, department, instrumentality or public corporation. The authority shall be entitled to reimbursement for the expenses of the authority incident to performing such services, including the fees and expenses of third parties providing services to the authority with respect thereto, from the proceeds of bonds or notes or of the revenues derived by such agency, department, instrumentality or public corporation.
CHAPTER 157
(Com. Sub. for S. B. 498—By Senator Brackenrich)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dam control and safety act; legislative findings; intent and purpose of the act; defining terms; general powers and duties of director; maximum fee established for certificates of approval and annual registration; exempting soil conservation service from assessment of fees; prohibiting persons from placing, constructing, enlarging, altering, repairing, removing or abandoning any dam without filing an application for certificate of approval with the division and excluding certain routine repairs; requiring registered professional engineer to prepare plans and specifications; granting and rejecting applications for certificates of approval; publication of notice of application; hearing upon application; content of certificates of approval; revocation or suspension of certificates; inspections during work progress and certain exemptions; corrections of deficiencies; certificates of completion to director from soil conservation service for certain dams; procedures for handling emergencies involving dams; remedial actions; payment of costs of remedial actions; requirements for dams completed prior to effective date of section; legal responsibilities of dam owners; criminal penalties; enforcement orders; hearings; civil penalties; injunctive relief; establishing schedule of application and annual registration fees; creating dam safety fund; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That article five-d, 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 5D. DAM CONTROL AND SAFETY ACT.
§20-5D-1. Short title.

§20-5D-2. Legislative findings; intent and purpose of article.

§20-5D-3. Definition of terms used in article.

§20-5D-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.

§20-5D-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.

§20-5D-6. Plans and specifications for dams to be in charge of registered professional engineer.

§20-5D-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.

§20-5D-8. Content of certificates of approval for dams; revocation or suspension of certificates.

§20-5D-9. Inspection during progress of work on dam.

§20-5D-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.

§20-5D-11. Requirements for dams completed prior to effective date of this section.

§20-5D-12. Dam owner not relieved of legal responsibilities by any provision of article.

§20-5D-13. Offenses and penalties.

§20-5D-14. Enforcement orders; hearings.

§20-5D-15. Civil penalties and injunctive relief.

§20-5D-16. Schedule of application fees established.

§20-5D-17. Schedule of annual registration fees established.

§20-5D-18. Creation of dam safety fund; components of fund.

§20-5D-19. Effective date.

§20-5D-1. Short title.

1 This article shall be known and cited as the “Dam Control and Safety Act”.

§20-5D-2. Legislative findings; intent and purpose of article.

1 The Legislature finds that dams may constitute a potential hazard to people and property; therefore, dams in this state must be properly regulated and controlled to protect the health, safety and welfare of people and property in this state. It is the intent of the Legislature by this article to provide for the regulation and supervision of dams in this state to the extent necessary to protect the public health, safety and welfare. The Legislature has ordained this article to fulfill its responsibilities to the people of this state and to protect
their lives and private and public property from the
danger of a potential or actual dam failure. The
Legislature finds and declares that in light of the
limited state resources available for the purposes of this
article, and in view of the high standards to which the
United States soil conservation service designs dams,
independent state review of the plans and specifications
for dams designed by the soil conservation service and
construction oversight should not be required. The
Legislature further finds and declares that dams
designed and constructed by the soil conservation
service but not owned or operated by it should be subject
to the same provisions of inspection, after construction
and certification by the soil conservation service, as
other dams covered by this article, so long as any dam
under the soil conservation service program is designed
with standards equal to or exceeding state requirements
under this article.

§20-5D-3. Definition of terms used in article.

As used in this article, unless used in a context that
clearly requires a different meaning, the term:

(a) “Alterations” or “repairs” means only those
changes in the structure or integrity of a dam which
may affect its safety, which determination shall be made
by the director.

(b) “Application for a certificate of approval” means
the request in writing by a person to the director
requesting that person be issued a certificate of
approval.

(c) “Appurtenant works” means any structure or
facility which is an adjunct of, or connected, appended
or annexed to a dam, including, but not limited to,
spillways, a reservoir and its rim, low level outlet works
or water conduits such as tunnels, pipelines and
penstocks either through the dam or its abutments.

(d) “Certificate of approval” means the approval in
writing issued by the director to a person who has
applied to the director for a certificate of approval
which authorizes the person to place, construct, enlarge,
alter, repair or remove a dam and specifies the
conditions or limitations under which the work is to be
performed by that person.

(e) "Director" means the director of the division of
natural resources or his or her authorized agents.

(f) "Division" means the division of natural resources.

g) "Dam" means an artificial barrier or obstruction,
including any works appurtenant to it and any reservoir
created by it, which is or will be placed, constructed,
 enlarged, altered or repaired so that it does or will
impound or divert water and: (1) Is or will be twenty-
five feet or more in height from the natural bed of the
stream or watercourse measured at the downstream toe
of the barrier and which does or can impound fifteen
acre-feet or more of water; or (2) is or will be six feet
more in height from the natural bed of the stream
or watercourse measured at the downstream toe of the
barrier and which does or can impound fifty acre-feet
or more of water: Provided, That the term "dam" shall
not include: (A) Any dam owned by the federal govern-
ment; (B) any dam for which the operation and main-
tenance thereof is the responsibility of the federal
government; (C) slack-water dams constructed and
maintained in connection with public highways, streets,
bridges, culverts or viaducts, which shall continue to be
regulated and controlled as provided in article five of
this chapter; (D) farm ponds constructed and used
primarily for agricultural purposes, including, but not
limited to, livestock watering, irrigation, retention of
animal wastes and fish culture, and which have no
potential to cause loss of human life in the event of
embankment failure; or (E) structures which do not or
will not impound water under normal conditions and
which have a designed culvert or similar conveyance or
such capacity as would be used under a highway at the
same location: Provided, however, That the director may
apply the provisions of section ten of this article for
hazardous, nonimpounding structures which are
brought to his or her attention.

(h) "Enlargement" means any change in or addition
to an existing dam which: (1) Raises the height of the
dam; (2) raises or may raise the water storage elevation
of the water impounded by the dam; (3) increases or may
increase the amount of water impounded by the dam;
or (4) increases or may increase the watershed area from
which water is impounded by the dam.

(i) "Person" means any public or private corporation,
institution, association, society, firm, organization or
company organized or existing under the laws of this or
any other state or country; the state of West Virginia;
any state governmental agency; any political subdivision
of the state or of its counties or municipalities; sanitary
district; public service district; drainage district; soil
conservation district; watershed improvement district;
partnership; trust; estate; person or individual; group of
persons or individuals acting individually or as a group;
or any other legal entity whatever. The term "person",
when used in this article, includes and refers to any
authorized agent, lessee or trustee of any of the
foregoing or receiver or trustee appointed by any court
for any of the foregoing.

(j) "Reservoir" means any basin which contains or
will contain impounded water.

(k) "Soil conservation service" means the soil conserv-
vation service of the United States department of
agriculture or any successor agency.

(l) "Water" means any liquid, including any solids or
other matter which may be contained therein, which is
or may be impounded by a dam.

(m) "Water storage elevation" means the maximum
elevation that water can reach behind a dam without
encroaching on the freeboard approved for the dam
under flood conditions.

§20-5D-4. General powers and duties of director; maxi-
mum fee established for certificates of
approval and annual registration.

1 The director shall have the following powers and
duties:

3 (a) To control and exercise regulatory jurisdiction
over dams as provided for in this article;

(b) To review all applications for a certificate of approval for the placement, construction, enlargement, alteration, repair or removal of any dam;

(c) To grant, modify, amend, revoke, restrict or refuse to grant any certificate of approval if proper or necessary to protect life and property as provided in this article;

(d) To adopt, modify, repeal and enforce rules and issue orders, in such manner as the director may otherwise do, to implement and make effective the powers and duties vested in it by the provisions of this article;

(e) To take any lawful action considered necessary for the effective enforcement of the provisions of this article;

(f) To establish and charge reasonable fees not to exceed three hundred dollars for the review of applications for certificates of approval and the issuance thereof and for assessment of an annual registration fee not to exceed one hundred dollars for persons holding a certificate of approval for existing dams. The director shall promulgate rules to establish a schedule of application fees and to establish annual registration fees: Provided, That no fee shall be assessed for dams designed and constructed by the soil conservation service for soil conservation districts;

(g) To employ qualified consultants or additional persons as necessary to review applications for certificates of approval and to recommend whether they should be approved, to inspect dams and to enforce the provisions of this article;

(h) To cooperate and coordinate with agencies of the federal government, this state and counties and municipalities of this state to improve, secure, study and enforce dam safety and dam technology within this state;

(i) To investigate and inspect dams as is necessary to implement or enforce the provisions of this article and
when necessary to enter the public or private property of any dam owner. The director may investigate, inspect or enter private or public property after notifying the dam owner or other person in charge of the dam of an intent to investigate, inspect or enter: Provided, That where the owner or person in charge of the dam is not available, the director may investigate, inspect and enter without notice; and

(j) To prepare and publish within a reasonable time, criteria to govern the design, construction, repair, inspection and maintenance of proposed dams herein defined, and to review these criteria annually in order to consider improved technology for inclusion in such criteria.

§20-5D-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.

It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any dam under the jurisdiction of the director until he or she has first: (a) Filed an application for a certificate of approval with the division; and (b) obtained from the division a certificate of approval: Provided, That routine repairs which do not affect the safety of a dam are not subject to the application and approval requirements. A separate application for a certificate of approval must be submitted by a person for each dam he or she desires to place, construct, enlarge, alter, repair, remove or abandon. One application may be valid for more than one dam involved in a single project or in the formation of a reservoir.

Each application for a certificate of approval shall be made in writing on a form prescribed by the director and shall be signed and verified by the applicant. The application shall contain and provide information which may be reasonably required by the director to administer the provisions of this article.

In the case of dams designed by the soil conservation service for transfer to any political subdivision, the
director shall, within sixty days after receipt of a completed application therefor, issue a certificate of approval without review of the plans and specifications.

§20-5D-6. Plans and specifications for dams to be in charge of registered professional engineer.

Plans and specifications for the placement, construction, enlargement, alteration, repair or removal of dams shall be in the charge of a registered professional engineer licensed to practice in West Virginia. Any plans or specifications submitted to the division shall bear the seal of a registered professional engineer.

§20-5D-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.

Upon receipt of an application for a certificate of approval and the fee required under the provisions of this article, the director shall proceed to consider the application for sufficiency. The director shall approve or disapprove the application within sixty days after receipt.

If an application is defective, it shall be returned to the applicant by certified or registered mail, return receipt requested, in order that the applicant may correct any defect: Provided, That a defective application must be returned to the division by the applicant within thirty days after it has been returned to the applicant or it shall be treated as a new application: Provided, however, That for good cause shown, the director may extend the thirty-day period.

Upon approval by the director of the sufficiency of the application, the applicant shall immediately publish the application 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 the publication shall be the county in which the proposed dam is to be located or in which the existing dam is located. The notice shall include, but not be limited to, the name and address of the owner of the dam and the
Any person who may be adversely affected by the issuance of a certificate of approval has a right to a hearing before the director if the person demands the hearing in writing within fifteen days of publication of the certificate of approval. The written request for hearing shall include specific objections to the certificate of approval.

Upon receipt by the director of the written request for hearing, the director shall immediately set a date for the hearing and shall notify the person or persons demanding a hearing. The hearing shall be held within ten days after receipt of the written request. The director shall hear evidence from all interested parties and shall either: (1) Refuse to issue a certificate of approval; or (2) issue a certificate of approval which shall be subject to terms, conditions and limitations as the director may consider necessary to protect life and property.

Unless otherwise extended by the director, a certificate of approval is valid for a period of not more than one year.

§20-5D-8. Content of certificates of approval for dams; revocation or suspension of certificates.

Each certificate of approval issued by the director under the provisions of this article may contain other terms and conditions as the director may prescribe.

The director may revoke or suspend any certificate of approval whenever it is determined that the dam for which the certificate was issued constitutes a danger to life and property. If necessary to safeguard life and property, the director may also amend the terms and conditions of any certificate by issuing a new certificate containing the revised terms and conditions.

Before any certificate of approval is amended or revoked by the director, the director shall hold a hearing in accordance with the provisions of article five, chapter twenty-nine-a of this code.
Any person adversely affected by an order entered following the hearing has the right of judicial review of the order in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

§20-5D-9. Inspections during progress of work on dam.

During the placement, construction, enlargement, repair, alteration or removal of any dam, the director shall, either with the division's own engineers or by consulting engineers or engineering organizations, make periodic inspections for the purpose of ascertaining compliance with the certificate of approval. The director shall require the owner at his or her expense to perform work or tests as necessary and to provide adequate supervision during the placement, construction, enlargement, repair, alteration or removal of a dam: Provided, that with respect to dams designed by and constructed under the supervision of the soil conservation service, as to such dams no state inspections shall be required.

If at any time during placement, construction, enlargement, repair, alteration or removal of any dam, the director finds that the work is not being done in accordance with the provisions of the original or revised certificate of approval, the director shall notify the owner by certified or registered mail, return receipt requested, to correct the deficiency, cease and desist work or to show cause as to why the certificate of approval should not be revoked.

The notice shall state the reason or reasons why the work is not in accordance with the certificate of approval. The director may order that work on the dam cease until the owner has complied with the notice.

If the director finds that amendments, modifications or changes are necessary to ensure the safety of the dam, the director may order the owner to revise his or her plans and specifications. If conditions are revealed which will not permit the placement, construction, enlargement, repair, alteration or removal of the dam in a safe manner, the certificate of approval may be revoked.
Immediately upon completion of a new dam or enlargement, repair or alteration of a dam, the owner shall notify the director: Provided, That immediately upon completion of a dam constructed under the supervision of the soil conservation service, a certification of completion shall be sent to the director by the soil conservation service, and a complete set of design documents “as built” plans, and specifications and safety plan of evacuation shall be provided to the director within ninety days after completion of the dam.

§20-5D-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.

The owner of a dam has the primary responsibility for determining when an emergency involving a dam exists. When the owner of a dam determines an emergency does exist, the owner shall take necessary remedial action and shall notify the director and the owner shall also notify any persons who may be endangered if the dam should fail.

The director shall notify any persons, not otherwise notified, who may be endangered if the dam should fail. The director may take any remedial action necessary to protect life and property if: (a) The condition of the dam so endangers life and property that time is not sufficient to permit the issuance and enforcement of an order for the owner to correct the condition; or (b) passing or imminent floods or other conditions threaten the safety of the dam. Remedial actions may include, but are not limited to:

1. Taking full charge and control of the dam.
2. Lowering the level of water impounded by the dam by releasing such impounded water.
3. Completely releasing all water impounded by the dam.
4. Performing any necessary remedial or protective work at the site of the dam.
(5) Taking any other steps necessary to safeguard life and property.

Once the director has taken full charge of the dam, the director shall remain in charge and control until in the director's opinion it has been rendered safe or the emergency occasioning the action has ceased and the director concludes that the owner is competent to reassume control of the dam and its operation. The assumption of control of the dam will not relieve the owner of a dam of liability for any negligent act or acts of the owner or the owner's agent or employee.

When the director declares that making repairs to the dam or breaching the dam is necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner, or by the director at the owner's expense, if the owner fails to do so. The owner shall notify the director at once of any emergency repairs or breaching the owner proposes to undertake and of work he or she has under way to alleviate the emergency. The proposed repairs, breaching and work shall be made to conform with orders of the director. The director may obtain equipment and personnel for emergency work from any person as is necessary and expedient to accomplish the required work. Any person undertaking work at the request of the division shall be paid by the division and shall be immune from civil liability under the provisions of section fifteen, article seven, chapter fifty-five of this code.

The costs reasonably incurred in any remedial action taken by the director shall be paid out of funds appropriated to the division. All costs incurred by the division shall be promptly repaid by the owner upon request or, if not repaid, the division may recover costs and damages from the owner by appropriate civil action.

§20-5D-11. Requirements for dams completed prior to effective date of this section.

The director shall give notice to file an application for a certificate of approval to every owner of a dam which was completed prior to the effective date of this section:
Provided, That no such notice need be given to a person who has applied for and obtained a certificate of approval on or after the first day of July, one thousand nine hundred seventy-three, in accordance with the provisions of the prior enactment of section five of this article. Such notice shall be given by certified or registered mail, return receipt requested, to the owner at his last address of record in the office of the county assessor of the county in which the dam is located and such mailing shall constitute service. A separate application for each dam a person owns shall be filed with the director in writing upon forms supplied by him and shall include or be accompanied by appropriate information concerning the dam as the director requires.

The director shall make inspections of such dams or reservoirs at state expense. The director shall require owners of such dams to perform at their expense such work or tests as may reasonably be required to disclose information sufficient to enable the director to determine whether to issue a certificate of approval or to issue an order directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the director may require an owner to lower the water level of, or to empty, water impounded by the dam adjudged by the director to be unsafe. If, upon inspection or upon completion to the satisfaction of the director of all work that he ordered, the director finds that the dam is safe to impound water, a certificate of approval shall be issued.

§20-5D-12. Dam owner not relieved of legal responsibilities by any provision of article.

Nothing in this article shall be construed to relieve the owner of a dam of the legal duties, obligations or liabilities incident to the ownership or operation of a dam.

§20-5D-13. Offenses and penalties.

(a) Any person who violates any of the provisions of this article or any certificate of approval, order, rule or requirement of the director or division is guilty of a
misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(b) Any person who willfully obstructs, hinders or prevents the director or division or its agents or employees from performing the duties imposed on them by the provisions of this article or who willfully resists the exercise of the control and supervision conferred by the provisions of this article upon the director or division or its agents or employees or any owner or any person acting as a director, officer, agent or employee of an owner, or any contractor or agent or employee of a contractor who engages in the placement, construction, enlargement, repair, alteration, maintenance or removal of any dam who knowingly does work or permits work to be executed on the dam without a certificate of approval or in violation of or contrary to any approval as provided for by the provisions of this article; and any inspector, agent or employee of the division who has knowledge of and who fails to notify the director of unapproved modifications to a dam is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§20-5D-14. Enforcement orders; hearings.

(a) If the director, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any certificate of approval, notice, order or rules or regulations issued or promulgated hereunder, he or she 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 under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or amending certificates of approval, orders requiring a person to take remedial action or cease and desist orders;
(2) Seek an injunction in accordance with subsection (c), section fifteen of this article;

(3) Institute a civil action in accordance with subsection (c), section fifteen of this article; or

(4) Request the attorney general, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section twelve of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the director not more than seven days from the issuance of the order and shall have a hearing before the director contesting the terms and conditions of the order within ten days of the filing of the notice of a request for reconsideration. The filing of a notice of request for reconsideration shall not stay or suspend the execution or enforcement of the cease and desist order.

§20-5D-15. Civil penalties and injunctive relief.

(a) Any person who violates any provision of this article, any certificate of approval or any rule, regulation, notice or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than two hundred dollars for each day of the violation, not to exceed a maximum of four hundred dollars. In assessing any penalty, the director 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 rules and regulations promulgated by the director. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, notice, order or statement of the certificate of approval’s terms 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 has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration date of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing. Within thirty days following the informal hearing, the director shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator shall exceed four hundred dollars per day of each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this subsection is not subject to a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. Civil administrative penalties shall be levied in accordance with the rules and regulations promulgated under the authority of section four of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the dam safety fund established pursuant to section seventeen of this article. Any person adversely affected by the assessment of a civil administrative penalty has the right of judicial review of the assessment in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(b) No assessment levied pursuant to subsection (a) of this section is due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(c) The director may seek an injunction, or may institute a civil action against any person in violation of
any provisions of this article or any certificate of approval, rule, regulation, notice or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond on or to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under 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 the relief is sought.

(d) Upon request of the director, the attorney general or the prosecuting attorney of the county in which the violation occurs, shall assist the director in any civil action under this section.

(e) 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.

§20-5D-16. Schedule of application fees established.

The director shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of application fees for which the appropriate fee shall be submitted by the applicant to the division together with the application for a certificate of approval filed pursuant to this article. The schedule of application fees shall be designed to establish reasonable categories of certificate application fees based upon the complexity of the permit application review process required by the director pursuant to the provisions of this article and the rules promulgated under this article. The director shall not process any certificate application pursuant to this article until the certificate application fee has been received.

§20-5D-17. Schedule of annual registration fees established.

The director shall promulgate rules in accordance
with the provisions of section four of this article, to
establish a schedule of annual registration fees which
shall be assessed annually upon each person holding a
certificate of approval issued pursuant to this article.
Each person holding a certificate of approval shall pay
the prescribed annual registration fee to the division
pursuant to the rules and regulations promulgated
under this article. The schedule of annual registration
fees shall be designed to establish reasonable categories
of annual registration fees, including, but not limited to,
the size of the dam and its classification. Any certificate
of approval issued pursuant to this article shall become
void without notification to the person holding a
certificate of approval when the annual registration fee
is more than one hundred eighty days past due pursuant
to the rules promulgated under this section.

§20-5D-18. Creation of dam safety fund; components of
fund.

(a) A special fund designated “The Dam Safety
Fund” hereinafter referred to as “the fund” shall be
established in the state treasury on the thirtieth day of
September, one thousand nine hundred ninety-two.
(b) All certificate application fees and annual regis-
tration fee assessments, any interest or surcharge
assessed and collected by the division, interest accruing
on investments and deposits of the fund, and any other
moneys designated by the division shall be paid into the
fund. Accrual of funds shall not exceed three hundred
thousand dollars per year, exclusive of application fees.
The division shall expend the proceeds of the fund for
the review of applications, inspection of dams, payment
of costs of remedial emergency actions and enforcement
of the provisions of this article.

§20-5D-19. Effective date.

The provisions of this article take effect on the
thirtieth day of September, one thousand nine hundred
ninety-two.
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 seventeen-c, relating to providing a discount card for state campground rental fees for West Virginia residents who are totally and permanently disabled; requiring the commissioner to promulgate rules for documentation of residency and disability; and specifying the time of year during which the discount applies.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen-c, to read as follows:

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-17c. Discounts for West Virginia residents who are totally and permanently disabled.

1 The commissioner shall issue a discount card to West Virginia residents who are totally and permanently disabled which would provide a fifty percent reduction in campground rental fees for each campsite to be used exclusively by the eligible camper: Provided, That in order to be eligible for the reduction, that person shall document that he or she is a resident of this state and that he or she has a total and permanent disability. The commissioner shall promulgate rules in accordance with article three, chapter twenty-nine of this code setting forth the documentation which is necessary to prove residency and total and permanent disability: Provided, however, That the fifty percent reduction in campground rental fees applies only to those rentals occurring during the period of time beginning on the day after Labor Day and ending four days prior to Memorial Day.
AN ACT to amend and reenact sections two, three, four, five, six and eight, article three-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the supervision of electricians; changing the structure of electrician licensing requirements; reciprocity; and providing for specialty electrician licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-2. Necessity of license; definitions.

After the effective date of this article, no electrical work may be performed, offered or engaged in for compensation or hire within the state of West Virginia by any person, firm or corporation unless such person, firm or corporation possesses a license and a certificate therefor issued by the state fire marshal in accordance with this article, and a copy of such license is posted on any job in which electrical work is being performed for hire.

As used in this article:
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(a) "Apprentice electrician" means a person with interest in and an aptitude for performing electrical work but who alone is not capable of installing wires, conduits, apparatus, equipment, fixtures and other appliances.

(b) "Electrical contractor" means a person, firm or corporation who engages in the business of electrical work or employs master electricians, electricians, apprentice electricians or helpers for the construction, alteration or repair of any electrical wiring, equipment or systems for the purposes of controlling or furnishing heat, light or power.

(c) "Electrical work" means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment or systems for transmitting, carrying, controlling or using electricity for light, heat or power purposes.

(d) "Journeyman electrician" means a person qualified by at least four years of electrical work experience to do any work installing wires, conduits, apparatus, equipment, fixtures and other appliances subject to supervision by a master electrician.

(e) "License" means a valid and current certificate of competency issued by the state fire marshal.

(f) "Master electrician" means a person with at least five years of electrical work experience, including experience in all phases of electrical wiring and installation, who is competent to instruct and supervise the electrical work of journeyman electricians and apprentice electricians.

(g) "Specialty electrician" means a person qualified to perform electrical work in a limited or specialized area.

§29-3B-3. Exemptions; nonapplicability of license requirements.

This article does not apply to and no license may be required for (a) a person who performs electrical work with respect to any property owned or leased by such person; (b) a person who performs electrical work at any
manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating such plant or establishment; (c) a person who performs electrical work while employed by an employer who engages in the business of selling appliances at retail, so long as such electrical work is performed incident to the installation or repair of appliances sold by the employer; (d) a person who, while employed by a public utility or its affiliate, performs electrical work in connection with the furnishing of public utility service; or (e) any government employee performing electrical work on government property.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal; reciprocity.

(a) The following four classes of license may be issued by the state fire marshal: "Master electrician license," "journeyman electrician's license," "apprentice electrician license" and "temporary electrician license." Additional classes of specialty electrician license may be issued by the state fire marshal.

(b) The state fire marshal shall issue the appropriate class of license to a person, firm or corporation upon a finding that such person, firm or corporation possesses the qualifications for the class of license to be issued.

(c) The qualifications for each class of license to be issued are as follows:

(1) For a "master electrician license" a person must have five years of experience in electrical work of such breadth, independence and quality that such work indicates that the applicant is competent to perform all types of electrical work and can direct and instruct journeyman electricians and apprentice electricians in the performance of electrical work. Such applicant, or a member of a firm or an officer of a corporation if the applicant be a firm or corporation, must also pass the master electrician examination given by the state fire marshal with a grade of eighty percent correct or better;
(2) For a "journeyman electrician's license," a person must have at least four years of experience in performing electrical work under the direction or instruction of a master electrician or must have completed a formal apprentice program, or an electrical vocational education program of at least one thousand eighty hours in length and approved by the state board of education or its successor, providing actual electrical work experience and training conducted by one or more master electricians. Such applicant must also pass the journeyman electrician's examination given by the state fire marshal with a grade of eighty percent correct or better;

(3) For an "apprentice electrician license," a person must pass the apprentice electrician's examination given by the state fire marshal with a grade of eighty percent correct or better or be enrolled in an electrical apprentice program approved by the state fire marshal;

(4) A one time temporary master or journeyman electrician license of ninety-days duration may be issued to an applicant providing the applicant has completed a United States department of labor/bureau of apprenticeship and training registered electrical apprenticeship program, or an electrical vocational education program of at least one thousand eighty hours in length and approved by the state board of education or its successor, and have at least four years of experience in performing electrical work and furnishes the state fire marshal with satisfactory evidence of electrical work;

(5) Other specialty electrician license may be issued by the state fire marshal which limits the work in a limited area of expertise. Such applicant must pass the specialty electrician's examination given by the state fire marshal with a grade of eighty percent correct or better.

(d) (1) Certificates of license for a master electrician's license issued by the state fire marshal shall specify the name of the person, firm or corporation so qualifying and the name of the person, who in the case of a firm shall be one of its members and in the case
of a corporation shall be one of its officers, passing the
master electrician examination.

(2) Licenses issued to electricians shall specify the
name of the person who is thereby authorized to perform
electrical work or, in the case of apprentice electricians,
to work with other classes of electricians to perform
electrical work.

(e) No license issued under this article is assignable
or transferable.

(f) All licenses issued by the state fire marshal shall
expire on the thirtieth day of June following the year
of issue or renewal.

(g) (1) Each expiring license may be renewed with­
out need for examination and without limit as to the
number of times renewed, for the same class of license
previously issued and for the same person, firm or
 corporation to whom it was originally issued upon
payment to the state fire marshal of a renewal fee of
fifty dollars if such application for renewal and payment
of such fee is made before the date of expiration of the
license.

(2) In the case of a failure to renew a license on or
before the thirtieth day of June the person named in the
license may, upon payment of the renewal fee and an
additional fee of fifteen dollars, receive from the state
fire marshal a deferred renewal of such license which
shall expire on the thirtieth day of June in the ensuing
year. No person, firm or corporation may perform
electrical work upon expiration of such person's, firm's
or corporation's license until a deferred renewal for such
license is issued by the state fire marshal even if such
person, firm or corporation has applied for the deferred
renewal of such license.

(h) To the extent that other jurisdictions provide for
the licensing of electricians, the state fire marshall may
grant the same or equivalent classification of license
without written examination upon satisfactory proof
furnished to the state fire marshall that the qualifica­
tions of such applicant are equal to the qualifications
required by this article and upon payment of the re-
quired fee: Provided, That as a condition to reciprocity,
the other jurisdictions must extend to licensed electric-
cians of this state, the same or equivalent classification.

§29-3B-5. Rules; applications and examinations; fees.

(a) The state fire marshal shall promulgate necessary
rules pursuant to the provisions of chapter twenty-nine-
a of this code to implement the provisions of this article.

Rules adopted by the state fire marshal and presently
in effect shall remain in effect until and unless the state
fire marshal adopts new rules, and the state fire
marshals may adopt any or all of the rules presently in
effect.

(b) The state fire marshal shall prepare and arrange
for the receipt of applications from those who intend to
perform electrical work in the state of West Virginia.

Such application shall be sufficiently detailed to enable
the state fire marshal to determine the presence or
absence of an applicant's qualifications for a license of
a particular class. The state fire marshal may, if he
considers it necessary, require applicants to supply
affidavits or other documents attesting to the applicant's
qualifications from past employers, other electricians,
engineers and others with knowledge of the applicant's
qualifications. The state fire marshal may make such
other inquiries as he considers necessary to determine
the qualifications of the applicant. An applicant
expressly consents to such inquiries by the state fire
marshal by his application.

(c) The state fire marshal shall prepare and arrange
for the giving of examinations to all applicants for
licensure. There shall be a separate and different
examination for each class of license, appropriate in
subject matter, difficulty and depth of understanding
for each class. All examinations shall be based on and
derived from the national electric code as promulgated
from time to time by the national fire protection
association. A minimum grade of eighty percent correct
for all examinations is necessary for licensure by the
state fire marshal. The examinations shall be given at
least four times each year. The places, dates and times
of such examinations shall be made known by public
notice issued by the state fire marshal. The state fire
marshal may contract with the bureau of vocational,
technical and adult education, state department of
education, to perform such examinations.

(d) Each person desiring to take an examination shall
make written application therefor at the time design-
nated by and on forms prescribed by the state fire
marshal. The applicant shall specify the class of license
for which he seeks licensure. The application shall be
accompanied by an examination fee of twenty-five
dollars for licenses for master electrician or journeyman
electrician, or by an examination fee of ten dollars for
an apprentice electrician license applicant or twenty-
five dollars for a specialty license. The fee is not
returnable.

(e) An applicant who fails to make the required
passing score on any examination or who lacks qualifi-
cations for the class of license desired may retake the
examination or change his application to request a
license of a lesser class upon the payment to the state
fire marshal of a fee of ten dollars together with a new
application. Any reexamination may be taken or new
application may be submitted as many times as the
applicant desires, but each such examination or appli-
cation requires the payment of the additional fee of ten
dollars and the making of a new application to the state
fire marshal. When the examination is successfully
passed and the requisite qualifications are established
by the applicant, the state fire marshal shall issue the
appropriate license as provided above.

§29-3B-6. License without examination; fees.

(a) An applicant who is enrolled in a formal electrical
apprenticeship program and registered with the United
States department of labor/bureau of apprenticeship
and training or enrolled in an electrical vocational
education program of at least one thousand eighty hours
in length and approved by the state board of education
or its successor shall not be required to take the
apprentice examination described in section five of this article for one hundred eighty days, provided a one time temporary license shall be issued for one hundred eighty days. Such applicant is required to submit a completed application on forms prescribed by the state fire marshal accompanied by the appropriate license fee.

(b) Such applicant who is exempt from testing is nevertheless required to submit a complete application on forms prescribed by the state fire marshal accompanied by a license fee of twenty-five dollars.

(c) Such license issued by the state fire marshal upon application without examination expires and is eligible for renewal as provided in section four of this article.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

Any person, firm, corporation or employee thereof, or any representative, member or officer of such firm or corporation, individually, entering upon or engaging in the business of performing any electrical work as defined in this article, without obtaining the required license or otherwise complying with this article, is for the first offense guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars. For a second and each subsequent offense, the penalty and punishment is a fine of not less than one hundred dollars nor more than five hundred dollars.

Each day during which such electrical work is performed without the required license or while in noncompliance with any of the provisions of this article, after official notice that such work is unlawful, is a separate offense.

Any electrical work performed by a person, firm or corporation which is determined by the state fire marshal to constitute a safety or health hazard to members of the public or any electrical work of an extensive nature being performed by any person without the required license or otherwise in noncompliance with the requirements of this article or contrary to an order
or rule promulgated lawfully by the state fire marshal, is subject to being issued a citation or a civil action in the name of the state in the circuit court of the county where such work is being performed for an injunction against such person, firm or corporation, enjoining such work or violation. A circuit court by mandatory or prohibitory injunction may compel compliance with the provisions of this article, with the lawful orders of the state fire marshal and with any final decision of the state fire marshal or state fire commission. The state fire marshal shall be represented in all such proceedings by the attorney general or his assistants.

CHAPTER 160
(Com. Sub. for H. B. 4511—By Delegates S. Cook and P. White)
[Passed March 5, 1992; in effect 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 licensure of physician assistants and expanding the use of prescriptive authority.

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; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; 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.
(a) As used in this section:

(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 governing the extent to which physician assistants may function in this state. Such rules 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, 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 (k) of this section those categories of drugs submitted to it in the job description required by subsection (f) of this section. The board shall compile and publish a biennial report that includes a list of currently licensed 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 license 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 and has maintained certification by said commission so as to be currently certified;

(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 license 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.

Licensure 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, within two years of graduation, submits an application to the board, accompanied by a job description in conformity with subsection (f) of this section, for a physician assistant license, the board shall issue to such applicant a temporary license 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 license of an assistant to a physician for cause, after giving such person an opportunity to be heard in the manner provided by article five of chapter twenty-nine-a of this code and as set forth in rules duly adopted by the board.

(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 or outpatient 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 licensure of the physician assistant.
(k) A physician assistant 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 governing the eligibility and extent to which such a physician assistant may prescribe at the direction of the supervising physician. The rules 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 Uniform Controlled Substances Act, anticoagulants, antineoplastics, radiopharmaceuticals, general anesthetics, and radiographic contrast materials. Drugs listed under Schedule III shall be limited to a seventy-two 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 (f) of this section. The rules shall provide the maximum dosage a physician assistant may prescribe. The rule 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.
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 (l) 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 application for licensure submitted by a licensed supervising physician under this section shall be accompanied by a fee of one hundred dollars. A fee of fifty dollars shall be charged for the biennial renewal of the license. 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 license, each physician assistant shall provide written documentation pursuant to rules 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 license as a physician assistant until such time as the written documentation is submitted to and approved by the board.
244 (o) It is unlawful for any person who is not licensed
245 by the board as a physician assistant to use the title of
246 "physician assistant" or to represent to any other person
247 that he or she is a physician assistant. Any person who
248 violates the provisions of this subsection is guilty of a
249 misdemeanor, and, upon conviction thereof, shall be
250 fined not more than two thousand dollars.

251 (p) It is unlawful for any physician assistant to
252 represent to any person that he or she is a physician,
253 surgeon or podiatrist. Any person who violates the
254 provisions of this subsection is guilty of a felony, and,
255 upon conviction thereof, shall be imprisoned in the
256 penitentiary for not less than one nor more than two
257 years, or be fined not more than two thousand dollars,
258 or both fined and imprisoned.

259 (q) All physician assistants holding valid certificates
260 issued by the board prior to the first day of July, one
261 thousand nine hundred ninety-two, shall be considered
262 to be licensed under this section.

CHAPTER 161
(S. B. 524—By Senator Spears)

[Passed March 2, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-b, article
four, chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to
further amend said article by adding thereto a new
section, designated section seventeen-c, relating to
increasing the license renewal fees of dentists and dental
hygienists; making continuing education requirements a
prerequisite to license renewal; authorizing the board to
establish continuing education requirements and cri-
teria for course providers; and establishing the effective
dates for compliance.

Be it enacted by the Legislature of West Virginia:
That section seventeen-b, article four, 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 seventeen-c, to read as follows:

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fees; waiver of payment of fee on retirement or disability; change of address.

§30-4-17c. Continuing education requirements as a prerequisite to license renewal; board's authority; compliance deadlines.

§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fees; waiver of payment of fee on retirement or disability; change of address.

On or before the first day of February of each year, every dentist licensed to practice dentistry in this state, and every dental hygienist licensed to practice dental hygiene in this state, shall transmit to the secretary of the board upon a form prescribed by the board, his signature, post-office address, office address, the serial number of his license certificate, whether he has been engaged during the preceding year in the active and continuous practice of dentistry or dental hygiene, as the case may be, whether within or without this state, and such other information as may be required by the board, together with an information and renewal fee herein provided for.

The annual information and renewal fee for a dentist shall be seventy-five dollars and for a dental hygienist shall be fifty dollars.

Upon receipt of the required information and the payment of the proper renewal fee, the licensee shall be issued a renewal certificate authorizing him to continue the practice of dentistry or the practice of dental hygiene in this state for a period of one year from the first day of February.
A license to practice dentistry or dental hygiene granted under the authority of this article shall be canceled on the first day of May if the holder thereof fails to secure a current renewal certificate by that day. Any licensee whose license is thus canceled by reason of the failure, neglect or refusal to secure the proper renewal certificate may be reinstated by the board at any time within six months from the date of the cancellation of said license upon the payment of the proper renewal fee and an additional fee of twenty-five dollars. If the licensee shall not apply for renewal of his license as herein required within the said six months, that person shall, at the discretion of said board, be required to file an application for and take the examination provided in this article should he desire to practice dentistry or dental hygiene in this state.

Upon failure of any licensee to submit the required information and pay the annual renewal fee as herein required by the statutory date, the board shall attempt to notify such licensee in writing by mailing to his last registered address a notice of the requirements of this section apprising him of the fact that his license to practice will be canceled on the statutory date: Provided, That failure to mail or receive such notice shall not affect the cancellation of his license.

The board may waive the annual payment of the renewal fee herein required, and issue a renewal certificate to any West Virginia licensee for at least twenty-five years and who is presently retired from active practice, or to any West Virginia licensee who has retired for reasons of physical disability, so long as such retirement continues: Provided, That the licensee provides the board with the information required by this section.

Every licensed dentist within thirty days of changing his place of practice or establishing additional offices shall furnish the secretary of the board with his new professional address.
61 Every licensed dental hygienist within thirty days of
62 changing his place of employment shall furnish the
63 secretary of the board with his new professional address
64 and the name of his employer.

§30-4-17c. Continuing education requirements as a
prerequisite to license renewal; board's
authority; compliance deadlines.

1 (a) The board of dental examiners is authorized to
2 establish continuing education requirements as a
3 prerequisite to renewal of licences for dentists and
4 dental hygienists. The board shall develop criteria for
5 course content and publish the same for course
6 providers.

7 Only those courses approved by the board will be
8 accepted for purposes of fulfilling the continuing
9 education requirements.

10 The board will determine the number of continuing
11 education hours necessary for relicensure: Provided,
12 That the requirement does not exceed twenty hours for
13 any two-year period.

14 (b) Beginning on the first day of February, one
15 thousand nine hundred ninety-six, and every two years
16 thereafter, each dentist and dental hygienist licensed to
17 practice in this state shall return to the secretary of the
18 board evidence satisfactory to that board that such
19 dentist or dental hygienist has completed the required
20 number of course hours for the previous two-year
21 period.

22 Dentists or dental hygienists receiving their original
23 license to practice after the first day of February, one
24 thousand nine hundred ninety-four, shall comply with
25 the provisions of this section beginning on the first day
26 of February, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact sections three, five, six, eight, thirteen and sixteen, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to embalmers and funeral directors; further defining educational qualifications and requirements for license and work hours for apprentices; stating when a branch establishment is to be supervised by a funeral director; increasing or imposing certain fees; and increasing fines for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, eight, thirteen and sixteen, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

§30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

§30-6-8. Duty of public officers, physicians, etc., as to disposition of body of deceased person; penalty for violation of section; hearings on refusing, suspending or revoking licenses; appeals from decisions of board; penalty for engaging in business without license; purpose of article.

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

§30-6-16. Reciprocity in licensing of embalmers and funeral directors.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.
Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by the secretary of state.

Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his traveling expenses, incident to his attendance upon the business of the board, and in addition thereto, the sum of fifty dollars per day for each day actually spent by such member upon the business of the board. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and payment of which shall be fixed by said board, and in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his duties.

The board may employ an executive director and such clerks, inspectors and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and duly promulgated rules and regulations of the board and to effect its purposes, and the board shall determine the duties and fix the compensation of such executive director, clerks, inspectors and assistants, subject to the general laws of the state. Any inspector employed by the board shall have either a West Virginia embalmer’s license or a West Virginia funeral director’s license. Any inspection shall be conducted in such a manner so as not to interfere with the conduct of business within the funeral establishment, and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment.

All such expenses, per diem and compensation shall be paid out of the receipts of the board, but such allowances shall at no time exceed the receipts of the board.

The treasurer of the board shall give bond to the state of West Virginia in such sum as the board shall direct with two or more sureties or a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such
officer. Such bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

The board shall hold not less than two meetings during each calendar year for the purpose of examining applicants for licenses, such meeting or meetings to be held at such time and place as the board shall determine. The time and place of such meeting shall be announced by publication in three daily newspapers of general circulation in different locations in the state, and publication to be once a week for two consecutive weeks immediately preceding each such meeting.

The board may hold such other meetings as it may deem necessary and may transact any business at such meetings. Four or more members shall comprise a quorum authorizing the board to transact such business as is prescribed under this article.

The board shall have the power and it shall be its duty to make and enforce all necessary rules and regulations, not inconsistent with this article, for the examination and licensing of funeral directors, and the general practice of funeral directing; the examination and licensing of embalmers and the general practice of embalming and the registration and regulation of apprentices; the licensing and general operation of funeral establishments, except that no rules and regulations issued by the board shall require that an applicant for a license to operate a funeral establishment shall be required to have either an embalmer's or funeral director's license.

The board shall publish in its rules and regulations the subjects to be covered in the said examinations and the standards to be attained thereon. Changes in the rules and regulations shall be published and shall be given due publicity at least ninety days before becoming effective.

The board may conduct annually a school of instruction to apprise funeral directors and embalmers of the most recent scientific knowledge and developments affecting their profession. Qualified lecturers and
demonstrators may be employed by the board for this purpose. The board shall give notice of the time and place at which such school will be held for all licensed funeral directors and embalmers, and it shall be the duty of every licensed funeral director and embalmer to attend at least one such school or other approved program, every three years: Provided, That the location of any school of continuing education shall accommodate the geographic diversity of the embalmers and funeral directors of this state. Compliance with the requirements of continuing education is a prerequisite for license renewal.

Hours of continuing education may be obtained by attending and participating in board-approved programs, meetings, seminars or activities. It is the responsibility of each licensee to finance his or her costs of continuing education.

The board, any of its members or any duly authorized employee of the board shall have the authority to enter at all reasonable hours for the purpose of inspecting the premises in which the business or profession of funeral directing is conducted or practiced or where embalming is practiced.

§30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.

No person shall engage in or hold himself out as engaging in, or discharge any of the duties of the business or profession of embalming, or preserving in any manner dead human bodies in this state, whether for himself or in the employ of another, unless he holds an embalmer's license issued to him by the board, and shall at the date of its issuance have complied with the provisions of this article.

No person shall engage in, or hold himself out as engaging in, or discharge any of the duties of the business or profession of funeral directing in this state, unless he holds a funeral director's license issued to him by the board, and shall at the date of its issuance have
complied with the provisions of this article, or conduct a funeral unless he be a licensed funeral director.

No person shall be entitled to an embalmer’s license unless he:

(1) Is eighteen years of age or over;
(2) A citizen of the United States;
(3) Of good moral character and temperate habits;
(4) Holds a high school diploma or its equivalent;
(5) Holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study, as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship as described in subdivision (6) of this section and prior to obtaining a diploma of graduation from a school of mortuary science as described in subdivision (7) of this section;
(6) Has completed a one-year course of apprenticeship under the supervision of a licensed embalmer actively and lawfully engaged in the practice of embalming in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment, and under which said apprenticeship he shall have taken an active part in the operation of embalming not less than thirty-five dead human bodies, under the supervision of a licensed embalmer;
(7) Possesses a diploma of graduation from a school of mortuary science which requires as a prerequisite to graduation the completion of a course of study not less than twelve months’ duration, and which said school of mortuary science must be one accredited by the American board of funeral service education, inc., and duly approved by the board; and
(8) Passes with an average score of not less than seventy-five percent the national conference of funeral
services examination at a testing site provided by the
national conference, passes with a score of not less than
seventy-five percent the state law examination admin-
istered by the board and passes such further examina-
tion as the board may deem necessary to ascertain his
qualification and ability to engage in the practice of
embalming. Successfully passing the national confer-
ence of funeral services examination is a condition
precedent to taking the state law examination admin-
istered by the board. The board shall offer the state law
examination at least twice each year.

The board shall issue licenses separately to em-
balmers and to funeral directors.

An applicant for a funeral director's license must
furnish satisfactory proof to the board that his business
or profession of funeral directing is to be conducted in
a fixed place or establishment equipped for the care and
preparation for burial or disposition of dead human
bodies. What shall be deemed "necessary equipment"
shall be defined in the rules and regulations of the
board, the same to be in compliance with the public
health laws of the state or the rules of the state board
of health of West Virginia. This shall not be so construed
as to deny an applicant for a funeral director's license
such a license because he is not the owner, or part
owner, of an establishment or proposed funeral business.

Licenses issued under the provisions of this article
shall not be transferable or assignable.

No person shall be eligible to receive a license as a
funeral director unless he:

(1) Holds an embalmer's license issued by this board;

(2) Has been duly registered with the board as an
apprentice;

(3) Has served not less than a one-year apprenticeship
under the personal supervision of a licensed funeral
director-embalmer actively and lawfully engaged in the
business or profession of funeral directing and embalm-
ing in this state, such apprenticeship to consist of
diligent attention to the work in the course of regular
and steady employment and not as a side issue to another employment including taking an active part in conducting not less than thirty-five funeral services. For the purpose of this section, "regular and steady employment" means a forty-hour week or a longer period of time set at the discretion of the person by whom he is employed.

All funeral homes or establishments or any other places pertaining to funeral directing or the conducting of funerals shall display in all advertising the name of the licensed funeral director who is actually in charge of the establishment. All branch establishments must display the name of the funeral director who is actually in charge. At least one licensed funeral director shall supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment when professional services are performed at the branch establishment.

No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his license at the same time.

Any person now holding a license as an embalmer or funeral director shall not be required to make a new application, or submit to an examination, but shall, upon the payment of the fee therefor, be entitled to a renewal of his license upon the terms and conditions herein provided for the renewal of licenses of those who may be licensed after the effective date of this article, but all such persons shall be subject to every provision of this article, and such rules and regulations as the board may adopt in pursuance of this article.

No person shall be registered as an apprentice funeral director or apprentice embalmer unless he is eighteen years of age, or over, a citizen of the United States, of good moral character and temperate habits, the holder of a high school diploma or its equivalent, and holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a
baccalaureate degree with a declared major field of study.

The board may issue annual nonrenewable courtesy cards to licensed funeral directors and licensed embalmers of the states bordering on West Virginia, upon application for same made on form prescribed by the board. The annual fee for such courtesy cards shall be fifty dollars and said fee shall be paid at the time application is made therefor. Applications for said courtesy cards shall be approved by the board before the same may be issued, and said courtesy cards shall be issued under the following conditions: Holders of courtesy cards shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in the state of West Virginia, nor shall they be permitted to maintain an office or agency in this state. A violation of this section shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator.

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

The examination fee for a funeral director's license shall be one hundred fifty dollars and shall be remitted at the time the application for a funeral director's license is submitted to the board.

The examination fee for an embalmer's license shall be one hundred fifty dollars and shall be remitted at the time the application for an embalmer's license is submitted to the board.

All the licenses and certificates of registration shall expire on the thirtieth day of June of each calendar year and the renewal date for all licenses and certificates shall be the first day of July of each calendar year.

The annual renewal fee for embalmer's license is thirty dollars; the annual renewal fee for a funeral director's license is thirty dollars; the annual renewal fee for an apprentice embalmer's license is twenty-five dollars; the annual renewal fee for an apprentice funeral director's license is twenty-five dollars; and each shall
be paid on or before the first day of July of each calendar year.

Any person who has been duly licensed as a funeral director or as an embalmer under the laws of this state, but who fails to renew his license within thirty days after the expiration date for renewals, may file an application for a renewal of his license, without examination, upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee.

Any person who has been duly licensed as a funeral director or as an embalmer under the laws of this state, but who fails to renew his license within sixty days after the expiration date for renewals, may file an application for a renewal of his license, without examination, upon payment of a penalty of one hundred dollars, a reinstatement fee of one hundred dollars and the required renewal fee.

A funeral director or an embalmer whose license has lapsed one year or more shall make application to the board for a new license in compliance with the provisions of this article relating to unlicensed persons.

Any person who has been duly registered as an apprentice embalmer or apprentice funeral director and fails to renew his registration within thirty days after the expiration date for renewals may file an application for such renewal upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee. Otherwise, after the said period of thirty days, his registration will automatically be canceled.

All fees and other moneys received by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purposes of this article. After the expenditures for a fiscal year, of the remaining moneys accrued and set aside for that fiscal year, all sums in excess of twenty thousand dollars in the separate fund shall revert to the general fund of the state. The compensation provided by this article and all expenses incurred, the payment of which is autho-
rized under this article, shall be paid from this separate
fund. No compensation or expense incurred under this
article shall be a charge against the general funds of the
state.

§30-6-8. Duty of public officers, physicians, etc., as to
disposition of body of deceased person; pe-
nalty for violation of section; hearings on
refusing, suspending or revoking licenses; appeals from decisions of board; penalty for
engaging in business without license; purpose
of article.

No public officer, employee, physician or surgeon, or
any other person having a professional relationship with
the deceased, shall send, or cause to be sent, to any
funeral director, undertaker, mortician or embalmer,
the body of any deceased person without having first
made due inquiry as to the desires of the next of kin,
or any persons who may be chargeable with the funeral
expenses of such deceased person; and if any such kin
or person can be found, his authority and direction shall
be received as to the disposal of said corpse.

Any person who shall violate the provisions of this
section shall be deemed guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than five
hundred dollars, nor more than one thousand dollars, or
imprisoned not less than ten days nor more than ninety
days, or both.

The board may make investigations, subpoena wit-
nesses, administer oaths and conduct hearings.

No order refusing, suspending or revoking a license
shall be made until after a public hearing conducted by
the board.

At least twenty days prior to the date of hearing, the
board shall send a written notice of the time and place
of such hearing to the applicant, together with a
statement of the charges against him, by mailing the
same to the last-known address of such person.

The testimony presented and the proceedings had at
such hearings shall be taken in shorthand, at the
expense of the board, and preserved as records of the
board. The board shall as soon thereafter as possible
make its findings in determination thereof, and send a
copy to each interested party.

Any person who has been refused a license for any
cause or whose license has been revoked or suspended
may file with the secretary of the board, within thirty
days after the decision of the board, a written notice of
appeal therefrom to the circuit court of the county
within which such person whose license has been
refused, revoked or suspended resides. Upon the filing
of such notice, the secretary of the board shall transmit
to the clerk of said court the record of such proceedings.
Such court shall thereupon hear and determine such
case as in other cases of appeal. The judgment of the
circuit court may be reviewed upon proceedings in error
in the supreme court of appeals.

No person shall engage in the profession or business
of embalming or funeral directing as defined in this
article unless he is duly licensed as an embalmer and/or
as a funeral director within the meaning of this article,
and any person who shall engage in either business or
profession, or both, without having first complied with
the provisions of this article, or who shall violate any
other provisions of this article, shall be deemed guilty
of a misdemeanor, and, upon conviction thereof in any
court of competent jurisdiction, shall be fined not less
than two hundred dollars nor more than four hundred
dollars for the first offense. Upon conviction of a second
or subsequent offense, the violator shall be fined not less
than five hundred dollars nor more than one thousand
dollars.

The sanitary preparation of dead human bodies for
burial and the burial thereof is a public necessity, and
it has direct relation to the health, welfare and
convenience to the public, and the Legislature of this
state hereby finds, determines and declares that this
article is necessary for the immediate preservation of
the public peace, welfare, health and safety.
§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

On or before the first day of July, one thousand nine hundred sixty-nine, every funeral establishment operating in West Virginia shall obtain a license for the succeeding fiscal year beginning the first day of July, one thousand nine hundred sixty-nine, as provided for in this section.

An application for a license to operate a funeral establishment shall be in writing and verified on a form provided by the board and shall be accompanied by a fee as herein provided, and upon receipt of the same, the board shall forthwith issue or renew a license to operate a funeral establishment. Such application to operate a funeral establishment shall be made by any person, partnership, association, corporation, organization or fiduciary having controlling interest in such funeral establishment.

Such application shall be signed by the applicant and by the individual who is duly licensed as a funeral director, and who shall be in charge and responsible for all transactions conducted and services performed therein. If such funeral establishment is owned by a person who is not licensed as a funeral director or by a partnership, association, corporation or other organization, then such owner shall have in his or its employ and place in charge of such establishment a person who is duly licensed as a funeral director, who shall manage, conduct and have supervision of the work or business of such establishment and be responsible therefor.

A license to operate a funeral establishment shall expire on the thirtieth day of June of each calendar year and the renewal date for any such license shall be the first day of July of each calendar year.

Each funeral establishment license shall be valid only for one funeral establishment to be located at a specific street address or location; the fee to operate the
principal establishment shall be one hundred twenty-five dollars per year and the fee to operate each additional funeral establishment by the same applicant shall be seventy-five dollars per year. Each separate funeral establishment shall have its own license, which license shall be prominently displayed within the funeral establishment. No additional license fee shall be charged if during any given year it shall be necessary to reapply for a license to operate a funeral establishment at the same or different location. A funeral establishment that fails to pay fees for either the principal establishment or additional establishment by the first day of July of each calendar year is subject to a penalty of fifty dollars and a reinstatement fee of fifty dollars for each establishment and the required renewal fee.

The holder of any funeral establishment license who ceases to operate the funeral establishment at the location specified in the application shall, within twenty days thereafter, surrender the funeral establishment license to the board and such license shall be canceled by the board, except that in the event of the death of an individual who was the holder of a funeral establishment license, it shall be the duty of such holder's personal representative to surrender such funeral establishment license within one hundred twenty days of qualifying as such personal representative. It shall be the duty of any holder of a funeral establishment license, pursuant to this section, to notify the board within thirty days if for any reason the licensed funeral director whose name is signed to the application for the issuance thereof, ceases to be employed by such funeral establishment. Within thirty days after such notification, such holder may execute a new application for a funeral establishment license signed by the applicant and by the licensed funeral director who shall be in charge of and responsible for all transactions conducted and services performed within the funeral establishment. Failure to comply
with any of these provisions shall be grounds for
revocation of a funeral establishment license.

A licensee whose embalmer's license, funeral direc-
tor's license or license to operate a funeral establishment
has been revoked under this article shall not operate,
either directly or indirectly, or hold any interest in any
funeral establishment. Nothing herein contained shall
prohibit a licensee whose license has been revoked from
leasing any property owned by him or them for use as
a funeral establishment so long as he or they do not
participate in the control or profit of such funeral
establishment otherwise than as a lessor of the premises
for a fixed rental not dependent upon earnings.

§30-6-16. Reciprocity in licensing of embalmers and
funeral directors.

The board may recognize licenses issued to funeral
directors or embalmers from other states, and, upon
presentation of such license, may, upon the payment of
the sum of sixty dollars to the director of the board,
issue to the lawful holder thereof, the funeral director's
or embalmer's license provided for in this article:
Provided, That such recognition shall not be extended
to funeral directors or embalmers holding licenses from
other states unless reciprocal rights are provided by
such other states to holders of funeral director's or
embalmer's licenses granted in this state. Such recipro-
cal licenses may be renewed annually upon payment of
the renewal license fee as provided for in section six for
license holders residing in this state. No person is
titled to a reciprocal license as a funeral director or
embalmer unless he furnishes proof that he has, in the
state in which he is regularly licensed, complied with
requirements substantially equal to those set out in this
article.
AN ACT to amend and reenact sections one, six and eight, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the temporary licensure of registered professional nurses duly licensed under the laws of another state; temporary license fees; increase of renewal and reinstatement fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1. Definitions.

As used in this article the term:

(a) "Board" shall mean the West Virginia board of examiners for registered professional nurses;

(b) The practice of "registered professional nursing" shall mean the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician or a licensed dentist, or the applica-
tion of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others;

(c) "Temporary permit" means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia state board of examiners for registered professional nurses.

§30-7-6. Qualifications; licensure; fees; temporary permits.

To obtain a license to practice registered professional nursing, an applicant for such license shall submit to the board written evidence, verified by oath, that he or she (a) is of good moral character; (b) has completed an approved four-year high school course of study or the equivalent thereof, as determined by the appropriate educational agency; and (c) has completed an accredited program of registered professional nursing education and holds a diploma of a school accredited by the board.

The applicant shall also be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral examination. Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to practice registered professional nursing. The board shall determine the times and places for examinations. In the event an applicant shall have failed to pass examinations on two occasions, the applicant shall, in addition to the other requirements of this section, present to the board such other evidence of his or her qualifications as the board may prescribe.

The board may, upon application, issue a license to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country if in the opinion of the board the applicant meets the qualifications required of registered professional nurses at the time of graduation.

The board may, upon application and proper identi-
30 fication determined by the board, issue a temporary
31 permit to practice registered professional nursing by
32 endorsement to an applicant who has been duly licensed
33 as a registered professional nurse under the laws of
34 another state, territory or foreign country. Such
35 temporary permit authorizes the holder to practice
36 registered professional nursing in this state while the
37 temporary permit is effective. A temporary permit shall
38 be effective for ninety days, unless the board revokes
39 such permit prior to its expiration, and such permit may
40 not be renewed. Any person applying for a temporary
41 license under the provisions of this paragraph shall,
42 with his or her application, pay to the board a nonre-
43 fundable fee of ten dollars.

Any person holding a valid license designated as a
45 "waiver license" may submit an application to the board
46 for a license containing no reference to the fact that such
47 person has theretofore been issued such "waiver license."
48 The provisions of this section relating to examination
49 and fees and the provisions of all other sections of this
50 article shall apply to any application submitted to the
51 board pursuant to the provisions of this paragraph.

Any person applying for a license to practice regis-
53 tered professional nursing under the provisions of this
54 article shall, with his or her application, pay to the
55 board a fee of forty dollars: Provided, That the fee to
56 be paid for the year commencing the first day of July,
57 one thousand nine hundred eighty-two, shall be seventy
58 dollars: Provided, however, That the board in its
59 discretion may, by rule or regulation, decrease either or
60 both said license fees. In the event it shall be necessary
61 for the board to reexamine any applicant for a license,
62 an additional fee shall be paid to the board by the
63 applicant for reexamination: Provided further. That the
64 total of such additional fees shall in no case exceed one
65 hundred dollars for any one examination.

Any person holding a license heretofore issued by the
66 West Virginia state board of examiners for registered
67 nurses and which license is valid on the date this article
68 becomes effective shall be deemed to be duly licensed
69 under the provisions of this article for the remainder of
the period of any such license heretofore issued. Any such license heretofore issued shall also, for all purposes, be deemed to be a license issued under this article and to be subject to the provisions hereof.

The board shall, upon receipt of a duly executed application for licensure and of the accompanying fee of seventy dollars, issue a temporary permit to practice registered professional nursing to any applicant who has received a diploma from a school of nursing approved by the board pursuant to this article after the date the board last scheduled a written examination for persons eligible for licensure: Provided, That no such temporary permit shall be renewable nor shall any such permit be valid for any purpose subsequent to the date the board has announced the results of the first written examination given by the board following the issuance of such permit.

§30-7-8. Renewal of licenses; reinstatement; fees; penalties; inactive list.

The license of every person licensed and registered under the provisions of this article shall be annually renewed except as hereinafter provided. At such time or times as the board in its discretion may determine, the board shall mail a renewal application to every person whose license was renewed during the previous year and every such person shall fill in such application blank and return it to the board with a renewal fee of twenty-five dollars within thirty days after receipt of said renewal application: Provided, That the board in its discretion by rule may increase or decrease the renewal fee. Upon receipt of the application and fee, the board shall verify the accuracy of the application and, if the same be accurate, issue to the applicant a certificate of renewal for the current year. Such certificate of renewal shall entitle the holder thereof to practice registered professional nursing for the period stated on the certificate of renewal. Any licensee who allows his or her license to lapse by failing to renew the license as provided above may be reinstated by the board on satisfactory explanation for such failure to renew his or her license and on payment to the board of the renewal
fee hereinabove provided and a reinstatement fee of fifty
dollars. Any person practicing registered professional
nursing during the time his or her license has lapsed
shall be considered an illegal practitioner and shall be
subject to the penalties provided for violation of this
article. A person licensed under the provisions of this
article desiring to retire from practice temporarily shall
send a written notice of such desire to the board. Upon
receipt of such notice the board shall place the name of
such person upon the inactive list. While remaining on
this list the person shall not be subject to the payment
of any renewal fees and shall not practice registered
professional nursing in this state. When the person
desires to resume active practice, application for
renewal of license and payment of the renewal fee for
the current year shall be made to the board.

CHAPTER 164

(H. B. 4158—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed February 10, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter thirty of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto three new sections,
designated sections fifteen-a, fifteen-b and fifteen-c; to
amend and reenact sections one, two, three, five, six and
seven, article fifteen of said chapter thirty; and to
further amend said article fifteen by adding thereto
three new sections, designated sections seven-a, seven-
b and seven-c, all relating to provisions for registered
professional nurses and nurse-midwives prescriptive
authority for prescription drugs, collaborative relation-
ship with physician requirements, rules, classification of
drugs to be prescribed, coordination with boards,
eligibility for prescriptive authority, application, fee,
form of prescriptions, termination of authority, renewal,
notification of termination of authority, nurse-midwives
deinitions, licenses, qualifications, annual registration
fee, suspension or revocation of licenses, and limitations of authority.

Be it enacted by the Legislature of West Virginia:

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

Article
  7. Registered Professional Nurses.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-15a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; coordination with other boards; coordination with board of pharmacy.

§30-7-15b. Eligibility for prescriptive authority; application; fee.

§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

§30-7-15a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; coordination with other boards; coordination with board of pharmacy.

(a) The board may, in its discretion, authorize an advanced nurse practitioner to prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized advanced nurse practitioner may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice
between a physician and an advanced nurse practitioner shall be set forth in writing. Verification of such agreement shall be filed with the board by the advanced nurse practitioner. The board shall forward a copy of such verification to the board of medicine. Collaborative agreements shall include, but not be limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced nurse practitioner's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced nurse practitioner and the physician pursuant to the collaborative agreement between them;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced nurse practitioner may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced nurse practitioners, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, radio-pharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a seventy-two hour supply without refill.

(d) The board shall consult with other appropriate boards for the development of the formulary.

(e) The board shall transmit to the board of pharmacy a list of all advanced nurse practitioners with prescriptive authority. The list shall include:

(1) The name of the authorized advanced nurse practitioner;
§30-7-15b. Eligibility for prescriptive authority; application; fee.

An advanced nurse practitioner who applies for authorization to prescribe drugs shall:

(a) Be licensed and certified in West Virginia as an advanced nurse practitioner holding a baccalaureate degree in science or the arts;

(b) Not be less than eighteen years of age;

(c) Provide the board with evidence of successful completion of forty-five contact hours of education in pharmacology and clinical management of drug therapy under a program approved by the board, fifteen hours of which shall be completed within the two-year period immediately before the date of application;

(d) Provide the board with evidence that he or she is a person of good moral character and not addicted to alcohol or the use of controlled substances; and

(e) Submit a completed, notarized application to the board, accompanied by a fee of one hundred twenty-five dollars.

§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

(a) Prescriptions authorized by an advanced nurse practitioner must comply with all applicable state and federal laws; must be signed by the prescriber with the initials "A.N.P." or the designated certification title of the prescriber; and must include the prescriber's identification number assigned by the board.

(b) Prescriptive authorization shall be terminated if the advanced nurse practitioner has:

(1) Not maintained current authorization as an
(2) Prescribed outside the advanced nurse practitioner’s scope of practice or has prescribed drugs for other than therapeutic purposes; or

(3) Has not filed verification of a collaborative agreement with the board.

(c) Prescriptive authority for an advanced nurse practitioner must be renewed biennially. Documentation of eight contact hours of pharmacology during the previous two years must be submitted at the time of renewal.

(d) The board shall notify the board of pharmacy and the board of medicine within twenty-four hours after termination of, or change in, an advanced nurse practitioner’s prescriptive authority.

ARTICLE 15. NURSE-MIDWIVES.

§30-15-2. Licenses required.
§30-15-4. Form of licenses; annual registration fee.
§30-15-5. Suspension or revocation of licenses.
§30-15-7a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; consultation with other boards; coordination with board of pharmacy.
§30-15-7b. Eligibility for prescriptive authority; application; fee.
§30-15-7c. Form of prescription; termination of authority; renewal; notification of termination of authority.


The following terms wherever used or referred to in this article shall have the following meaning:

(a) "Midwife" means a person who assists in the management and care of a woman and her infant during the prenatal, delivery and postnatal periods.

(b) "Midwifery" means the practice of performing the service of a midwife for a fee or compensation.

(c) "Nurse-midwife" means a qualified professional
§30-15-2. Licenses required.

(a) No person, other than a physician, shall engage or hold themselves out as practicing nurse-midwifery without a license to do so issued by the West Virginia board of examiners for registered professional nurses: Provided, That this requirement does not apply to those midwives who hold a license upon the first day of July, one thousand nine hundred seventy-three, issued by the West Virginia board of health. Persons holding licenses on said date issued by the said board of health shall be permitted to practice midwifery as formerly defined and according to the authority granted to them upon the issuance of their licenses, until the expiration of such licenses without the privilege of renewal.

(b) No person may practice or offer to practice as a nurse-midwife with prescriptive authority without a license to do so issued by the West Virginia board of examiners for registered professional nurses and issued pursuant to section seven-a of this article.


(a) A nurse-midwife license shall be issued by the board to any applicant who provides evidence that he or she:

(1) Is a registered professional nurse licensed by the board;

(2) Is a graduate of a nurse-midwifery education program approved by the American college of nurse-midwives or any American college of nurse-midwives designated successor organization; and

(3) Is certified by the American college of nurse-midwives.
12  (b) Any nurse-midwife who desires privileges for
13  prescriptive authority as described in section seven-a of
14  this article must, in addition to the evidence required
15  by subsection (a) of this section, submit to the board the
16  information required by section seven-b herein.

§30-15-5. Form of licenses; annual registration fee.

1  (a) Licenses or certificates issued by the board shall
2  bear a serial number, the full name of the applicant, the
3  date of issuance of any such license, the seal of the board
4  and the signature of the executive secretary of the
5  board: Provided, That if prescriptive authority has been
6  granted pursuant to section seven-a of this article, such
7  authorization shall also be included on each license or
8  certificate issued by the board.

9  (b) Every licensed nurse-midwife shall procure from
10  the secretary of the board annually, on or before the first
11  day of July, a certificate of registration. The certificate
12  shall be issued by said secretary upon the payment of
13  a fee to be fixed by the board, not to exceed the sum
14  of ten dollars. The secretary shall mail annually, on or
15  before the first day of June, to each licensed nurse-
16  midwife a printed blank form to be properly filled in
17  and returned by such licensed person on or before the
18  first day of July to the secretary of the board. Upon the
19  receipt of the form properly filled in, and such fee, the
20  annual certificate of registration shall be issued and
21  transmitted.

22  (c) The authority to practice as a nurse-midwife with
23  prescriptive authority shall be indicated on the appli-
24  cant’s registered professional license issued by the
25  board.

§30-15-6. Suspension or revocation of licenses.

1  (a) The board may suspend or revoke a license for any
2  of the following reasons:
3  (1) Failure to remain current in annual registration;
4  (2) Gross negligence in performance of service as
5  provided by the statement of standards for the practice
6  of nurse-midwifery by the American college of nurse-
7  midwives; or
(3) The commission of a crime in association with the practice of nurse-midwifery.

(b) Before any license shall be revoked or suspended, the accused shall be furnished with a written statement of the reasons for such suspension or revocation and shall be given reasonable notice of, and be entitled to, a hearing before the board, in person, or by attorney, according to the provisions of chapter twenty-nine-a of this code.

§30-15-7. Limitations of authority; collaborative relationship with physicians.

The license to practice nurse-midwifery shall entitle the holder to practice such profession according to the statement of standards of the American college of nurse-midwives, and such holder shall be required to practice in a collaborative relationship with a licensed physician engaged in family practice or the specialized field of gynecology or obstetrics, or as a member of the staff of any maternity, newborn or family planning service approved by the West Virginia department of health and human resources, who, as such, shall practice nurse-midwifery in a collaborative relationship with a board-certified or board-eligible obstetrician, gynecologist or the primary-care physician normally directly responsible for obstetrical and gynecological care in said area of practice.

§30-15-7a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; consultation with other boards; coordination with board of pharmacy.

(a) The board shall, in its discretion, authorize a nurse-midwife to prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized nurse-midwife may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.
(b) For purposes of this section an agreement to a collaborative relationship for practice between a physician and a nurse-midwife shall be set forth in writing. Verification of such agreement shall be filed with the board by the nurse-midwife. The board shall forward a copy of such verification to the board of medicine. Collaborative agreements shall include, but not be limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive practice as it applies to the nurse-midwife's clinical practice;

(2) Statements describing the individual and shared responsibilities of the nurse-midwife and the physician pursuant to the collaborative agreement between them;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which a nurse-midwife may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by nurse-midwives, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, radio-pharmaceuticals and general anesthetics. Drugs listed under schedule III shall be limited to a seventy-two hour supply without refill.

(d) The board shall consult with other appropriate boards for development of the formulary.

(e) The board shall transmit to the board of pharmacy a list of all nurse-midwives with prescriptive authority. The list shall include:

(1) The name of the authorized nurse-midwife;

(2) The prescriber's identification number assigned by the board; and
§30-15-7b. Eligibility for prescriptive authority; application; fee.

A nurse-midwife who applies for authorization to prescribe drugs shall:

(a) Be licensed and certified as a nurse-midwife in the state of West Virginia;

(b) Not be less than eighteen years of age;

(c) Provide the board with evidence of successful completion of forty-five contact hours of education in pharmacology and clinical management of drug therapy under a program approved by the board, fifteen of which shall be completed within the two-year period immediately before the date of application;

(d) Provide the board with evidence that he or she is a person of good moral character and not addicted to alcohol or the use of controlled substances; and

(e) Submit a completed, notarized application to the board, accompanied by a fee of one hundred twenty-five dollars.

§30-15-7c. Form of prescription; termination of authority; renewal; notification of termination of authority.

(a) Prescriptions authorized by a nurse-midwife must comply with all applicable state and federal laws; must be signed by the prescriber with the initials “C.N.M.”, and must include the prescriber’s identification number assigned by the board.

(b) Prescriptive authorization shall be terminated if the nurse-midwife has:

(1) Not maintained current authorization as a nurse-midwife; or

(2) Prescribed outside the nurse-midwife’s scope of practice or has prescribed drugs for other than therapeutic purposes; or

(3) Has not filed verification of a collaborative agreement with the board.
(c) Prescriptive authority for a nurse-midwife must be renewed biennially. Documentation of eight contact hours of pharmacology during the previous two years must be submitted at the time of renewal.

(d) The board shall notify the board of pharmacy and the board of medicine within twenty-four hours after termination of, or change in, a nurse-midwife’s prescriptive authority.

CHAPTER 165

(Com. Sub. for S. B. 526—By Senator Burdette, Mr. President)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article thirteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to engineering; establishing an engineering board of registration; providing for legislative findings; defining certain terms; providing for registration of professional engineers; providing for the powers, duties and responsibilities of the board; allowing the board to levy fines; promulgate rules; develop certain ethical standards; and providing for certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 13. ENGINEERS.

§30-13-1. Legislative findings; intent.
§30-13-4. Board of registration for professional engineers; appointment and term.
§30-13-5. Board qualifications.
§30-13-6. Compensation and expenses.
§30-13-10. Receipt of fees, fund established, disbursements.
§30-13-12. Roster.
§30-13-16. Certificates and seals.
§30-13-20. Public works.
§30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, re-store or renew, probation, fine, reprimand.

§30-13-1. Legislative findings; intent.

1 The Legislature hereby determines the need to
2 regulate the practice of engineering; to provide for the
3 registration of qualified persons as professional engi-
4 neers and the certification of engineer interns; to define
5 the terms “engineer”, “professional engineer”, “engineer
6 intern” and “practice of engineering”; to create a state
7 board of registration for professional engineers and
8 provide for the appointment and compensation of its
9 members; to fix the term of members of the board and
10 define its powers and duties; to set forth the minimum
11 qualifications and other requirements for registration as
12 an engineer and certification as an engineer intern; to
13 establish registration fees with expiration and renewal
14 requirements; to impose certain duties upon the state
15 and political subdivisions thereof in connection with
16 public works; and to provide for the enforcement of this
17 article and penalties for its violation.


1 In order to safeguard life, health and property and to
2 promote the public welfare, the practice of engineering
3 in this state is hereby declared to be subject to
4 regulation in the public interest. It is unlawful for any
5 person to practice or to offer to practice engineering in
6 this state, as defined in the provisions of this article, or
7 to use in connection with his or her name or otherwise
8 assume or advertise any title or description tending to
convey the impression that he or she is a registered or licensed engineer, unless the person has been duly registered or exempted under the provisions of this article. Engineering is hereby declared a learned profession and its practitioners are held accountable to the state and the public by professional standards in keeping with the ethics and practice of other learned professions in this state. The practice of engineering is a privilege granted by the state.


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

(a) “Board” means the West Virginia state board of registration for professional engineers as provided for in this article.

(b) “Consulting engineer” means a professional engineer whose principal occupation is the independent practice of engineering; whose livelihood is obtained by offering engineering services to the public; who serves clients as an independent fiduciary; who is devoid of public, commercial and product affiliation that might tend to infer a conflict of interest; and who is cognizant of their public and legal responsibilities and is capable of discharging them.

(c) “Engineer” means a person who is qualified to practice engineering by reason of special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience.

(d) “Engineer intern” means a person who has qualified for, taken and has passed an examination in the fundamental engineering subjects, as provided in this article.

(e) “Practice of engineering” means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services
or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a professional engineer, or by using another title implies that he or she is a professional engineer or that he or she is registered under this article or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of this article.

(f) "Professional engineer" means a person who has been duly registered or licensed as a professional engineer by the board. The board may designate a professional engineer, on the basis of education, experience and examination, as being licensed in a specific discipline or branch of engineering signifying the area in which the engineer has demonstrated competence.

(g) "Responsible charge" means direct control and personal supervision of engineering work.
(h) "Rules of professional responsibility for professional engineers" means those rules, if any, promulgated by the West Virginia state board of registration for professional engineers as authorized by this article.

§30-13-4. Board of registration for professional engineers; appointment and term.

There is hereby created the board of registration for professional engineers which shall hereafter be referred to as the board. The board shall be composed of five members appointed by the governor, by and with the consent of the Senate, preferably from a list of names submitted by the West Virginia society of professional engineers. The members of the board shall be qualified and shall meet the requirements of section five of this article. The governor shall present each board member with a certificate of appointment. Each board member shall make and file an oath or affirmation with the secretary of state to faithfully execute the duties of a member of the board. Members of the board shall serve a term of five years. Of the members first appointed, one shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, one shall serve a term of four years and one shall serve a term of five years. Members are eligible for reappointment but no member may be appointed for more than three full consecutive terms. Each member shall hold office until the expiration of the term for which appointed or until a successor has been duly appointed and has qualified. In the event of a vacancy on the board due to resignation, death or for any cause resulting in an unexpired term and if not filled within three months by the governor, the board may appoint a member to serve in the vacancy until the governor makes the appointment. Members of the former board whose terms have not expired shall fill the term on this board which corresponds with the length of the unexpired term of that member.

§30-13-5. Board qualifications.

Each member of the board must be a citizen of the United States and a resident of this state. Each member
shall have been engaged in the lawful practice of
engineering as a professional engineer for at least
twelve years; shall have been in responsible charge of
engineering projects for at least five years; and shall be
a registered professional engineer in this state.

§30-13-6. Compensation and expenses.

Members of the board shall be compensated not to exceed fifty dollars per diem for time spent in actually performing the duties of the board and shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of board related duties.


The governor may remove any member of the board for misconduct, incompetency, neglect of duty or for any reason prescribed by law for removal of state officials. Vacancies in the membership of the board shall be filled for the unexpired term.


The board shall hold at least one regular meeting each year. Special meetings may be held as the bylaws of the board provide. Each year the board shall elect the following officers: A president, a vice president and a secretary, who shall serve at the will and pleasure of the board. A quorum of the board shall consist of not less than three professional engineer members.


(a) The board may adopt and amend bylaws not inconsistent with the constitution and laws of this state. The board may promulgate and shall adopt "rules of professional responsibility for professional engineers". These rules are binding to any person registered with the board under the provisions of this article. These rules are also applicable to firms holding a certificate of authorization as provided in section seventeen of this article.

(b) The board may subpoena witnesses and compel their attendance and it may also subpoena books,
papers, documents or other pertinent data in any disciplinary matters or in any case involving an allegation of a violation of the provisions of this article. The board may apply to the circuit court of Kanawha county to enforce compliance with any subpoena it issues.

(c) The board may seek an injunction in circuit court to enforce the provisions of this article or to restrain a person or entity from violating a provision of this article. In pursuing injunctive relief under this section, the board shall not be required to prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation. The members of the board may not be personally liable for any decisions made in good faith in pursuing injunctive relief.

(d) The board may require all applicants for registration to take and successfully pass an examination of their fitness and qualifications to become registered.

(e) The board may require that a registered professional engineer demonstrate continuing professional competency in engineering as a condition of renewal or reregistration.

(f) Board members are exempt from civil liability for any decision made or any act done in good faith in the performance of any duty or the exercise of any power granted under this article.

§30-13-10. Receipt of fees, fund established, disbursements.

There is hereby established within the state treasury a "board of professional engineers fund". The board shall deposit all fees and other moneys received by the board into the fund. The moneys in the fund shall be used for expenses of the board and shall be requisitioned on the signatures of the president and secretary of the board. The secretary of the board shall annually furnish an accounting of all funds received and expended by the board to the governor and to each house of the Legislature. The board may use the moneys in the fund to
employ necessary staff, pay for membership fees to the
national council of examiners for engineering and
surveying and for any other necessary and reasonable
expense of the board: Provided, That the board may not
issue warrants in excess of moneys in the fund.


(a) The board shall keep a record of its proceedings
and of all applications for registration. The record shall
show: (1) The name, age and last known address of each
applicant; (2) the date of application; (3) place of
business of such applicant; (4) education, experience and
other qualifications; (5) type of examination required; (6)
whether or not the applicant was rejected; (7) whether
or not a certificate of registration was granted; (8) the
date of the action by the board; and (9) such information
as may be deemed necessary by the board.

(b) The record of the board is prima facie evidence
of the proceedings of the board and a transcript duly
certified by the secretary, shall be admissible as
evidence with the same force and effect as if the original
were produced.

(c) On the first day of July of each year, the board
shall submit to the governor a report of its transactions
of the preceding year and shall transmit to the governor
a complete statement of the receipts and expenditures
of the board, attested to by affidavits of its chairman
and secretary.

(d) Board records and papers of the following class
are of a confidential nature and are not public records:
Examination material for examinations not yet given,
file records of examination problem solutions, letters of
inquiry and reference concerning applicants, board
inquiry forms concerning applicants, investigation files
where any investigation is still pending and all other
materials of like confidential nature.

§30-13-12. Roster.

A complete roster with the names and the last known
addresses of all registered professional engineers shall
be published by the secretary of the board at intervals
established by the board. Copies of this roster may be
mailed to each person registered and shall be placed on
file with the secretary of state and may be distributed
or sold to county and city officials and to the public.


To be eligible for admission to examination for
professional engineer or engineer intern, an applicant
must be of good character and reputation and he or she
shall submit five references along with the application
for registration as a professional engineer. Three
references shall be from professional engineers having
personal knowledge of the engineering experience of the
applicant or in the case of an application for certification
as an engineer intern. The references shall be from
three persons knowledgeable of the applicant’s
class.

(a) The minimum requirements for qualification for
registration as a professional engineer are:

(1) Registration by comity or endorsement. — A person
holding a certificate of registration to engage in the
practice of engineering, issued by a proper authority of
a state or possession of the United States, the District
of Columbia or any foreign country, based on require-
ments that do not conflict with the provisions of this
article and were of a standard not lower than that
specified in the applicable registration article in effect
in this state at the time such certificate was issued, may,
upon application, be registered without further
examination.

A person holding an active council record with the
national council of examiners for engineering and
surveying whose qualifications, as evidenced by the
council record, meet the requirements of this article
may, upon application, be registered without further
examination;

(2) Graduation, experience and examination. — A
graduate of an engineering curriculum of four years or
more approved by the board as being of satisfactory
standing and with a specific record of an additional four
years or more of progressive experience on engineering projects of a grade and a character which indicates to the board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering and, if passed, then shall be admitted to an eight-hour written examination in the principles and practice of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in West Virginia, provided the applicant is otherwise qualified; and

(3) Engineering teaching. — Engineering teaching of advanced subjects and the design of engineering research and projects in a college or university offering an approved engineering curriculum of four years or more may be considered as engineering experience.

(b) The minimum requirements for registration as an engineer intern are:

(1) Graduation from an engineering curriculum of four years or more approved by the board as being of satisfactory standing; and

(2) Satisfactorily passing a written exam, eight hours in duration, covering the fundamentals of engineering.


Every person seeking to become registered as a professional engineer or seeking to become certified as an engineer intern shall file an application on forms provided by the board. The application shall be made under oath and shall include:

(a) The level of education of the applicant;

(b) A summary of the applicant’s technical experience; and

(c) The names and complete mailing addresses of any references.

Applicants may not use the names of board members as references.

In lieu of information required on the board’s
application forms, the board may accept the verified
information contained in a valid council record issued
by the national council of examiners for engineering and
surveying for professional engineer applicants.

The board shall set fees for all applicants for
registration and certification by promulgating legisla-
tive rules under the provisions of article three, chapter
twenty-nine-a of this code.

Fees of unsuccessful applicants and the fees of
applicants who have been refused registration or
certification for any purpose shall be retained by the
board to cover administrative costs.


(a) The board shall establish examination criteria
including the acceptable passing grade.

(b) Written examinations shall be given in two
sections and may be taken only after the applicant has
met the other minimum requirements and has been
approved by the board for admission to the examina-
tions which are as follows:

(1) Engineering fundamentals. — The examination
consists of an eight-hour test period on the fundamentals
of engineering. Passing this examination qualifies the
examinee for an engineer intern certificate, provided
the examinee has met all other requirements for
certification required by this article; and

(2) Principles and practice of engineering. — The
examination consists of an eight-hour test period on
applied engineering. Passing this examination qualifies
the examinee for registration as a professional engineer,
provided the examinee has met the other requirements.

(c) A candidate failing one examination may apply
for reexamination, which may be granted upon payment
of a fee established by the board. In the event of a second
failure, the examinee may be required to appear before
the board to present evidence of having pursued further
instruction in deficit areas.

(d) The board shall publish in brochure form and
shall make available to any person interested in being registered the requirements and specifications of the written examination.

§30-13-16. Certificates and seals.

(a) The board shall issue a certificate of registration to any applicant who, in the opinion of the board, has met the requirements of this article. The certificate of registration shall carry the designation "professional engineer". It shall give the full name of the registrant with their registration number and shall be signed by the chairman and the secretary under the seal of the board. The certificate of registration grants the recipient authority to practice in this state.

(b) An unexpired and unrevoked certificate is prima facie evidence that the person named on it is entitled to all rights, privileges and responsibilities of a professional engineer.

(c) Every registrant shall obtain a seal for use in identifying his or her official professional work. The design of the seal shall be determined by the board and shall bear the registrant's name, registrant's registration number, the legend "registered professional engineer, state of West Virginia" and such other words or figures as the board may prescribe. The seal may be a rubber stamp. Whenever the seal is applied, the registrant's written signature shall be adjacent to or across the seal. No further words or wording are required. A facsimile signature is not acceptable. Whenever presented to a client or any public or governmental agency, the seal, signature and date shall be placed on all specifications, reports, drawings, plans, design information and calculations in accordance with rules promulgated by the board. The seal and signature shall be used by registrants only when the work being stamped was under the registrant's complete direction and control.

In the case of a registrant of another state using a temporary permit issued by this state, the registrant shall use the state of permanent registration seal and shall affix his or her signature and temporary permit.
number to all work. In the case of a registrant checking
the work of an out-of-state registrant, the state regis-
registrant shall completely check and have complete domin-
ion and control of the design. The complete dominion
and control includes possession of the sealed and signed
reproducible construction drawings with complete
signed and sealed design calculations indicating all
changes in design.

(d) The board shall issue to any applicant who, in the
opinion of the board, has met the requirements of this
article, an enrollment card as engineer intern, which
indicates that his or her name has been recorded in the
board office. The engineer intern enrollment card does
not authorize the holder to practice as a professional
ingineer. It is unlawful for a registrant to affix or to
permit his or her seal and signature to be affixed to any
document after the expiration of his or her certificate
or for the purpose of aiding or abetting any other person
to evade or attempt to evade any provisions of this
article.


(a) The practice of or offer to practice engineering by
consulting engineers registered under this article,
through a firm, corporation, copartnership, joint stock
association or private practitioner employing others,
referred to hereinafter as a firm, is permitted: Provided,
That the person in direct control or having personal
supervision of the practice and all personnel who act in
behalf of the firm in professional matters are registered
under this article: Provided, however, That the firm has
been issued a certificate of authorization by the board.

(b) A firm desiring a certificate of authorization must
file with the board an application using a form provided
by the board and the firm shall provide all the
information required by the board. A form as provided
by the board is to be filed with the board with the
renewal fee and within thirty days of the time any
information contained on the form is changed or differs
for any reason. If the information contained on the form
warrants action, the board, in its judgment, may issue
20. a certificate of authorization for the firm to practice
21. engineering and to contract and collect fees for furnish-
22. ing this service.
23. (c) No firm shall be relieved of responsibility for the
24. conduct or acts of its agents, employees, officers or
25. partners by reason of its compliance with the provisions
26. of this article. No individual practicing engineering
27. under the provisions of this article shall be relieved of
28. responsibility for engineering services performed by
29. reason of his or her employment or other relationship
30. with a firm holding an authorization certificate.
31. (d) An engineer who renders occasional, part-time or
32. consulting engineering services to or for a firm may not,
33. for the purposes of this article, be designated as being
34. responsible for the professional activities of the firm
35. unless that engineer is an owner or principal of the firm.
36. (e) Effective one year from the effective date of this
37. article, the secretary of state shall stop issuing a
38. certificate of incorporation to an applicant or a regis-
39. trant as a foreign firm to a firm which includes, among
40. the objectives for which it is established, the words
41. engineer, engineering or any modification or derivation
42. thereof unless the board of registration for this profes-
43. sion has issued to the applicant or registrant a certif-
44. icate of authorization or a letter indicating eligibility to
45. receive the certificate. The certificate or letter from the
46. board shall be filed with the firm's application for
47. incorporation or registration.
48. (f) Effective one year after the effective date of this
49. article, the secretary of state shall decline to register
50. any trade name or service mark which includes the
51. words engineer, engineering or modifications or deriv-
52. atives thereof in its firm name or logotype except those
53. firms holding authorization certificates issued under the
54. provisions of this article.
55. (g) The certificate of authorization may be renewed.

1. Certificates of registration and certificates of author-
2. ization for firms expire on the last day of the month of
June following issuance and are invalid after that date unless renewed. The secretary of the board shall notify every person registered and every firm holding a certification of authorization under this article of the pending expiration of a certificate of registration or certificate of authorization issued to that person or firm including notice of the fee required to renew the registration or certificate. The notice shall be mailed to the registrant or firm at their last known address at least one month in advance of the date of the expiration. An expired certificate may be renewed under rules promulgated by the board and may require reexamination and the payment of penalty fees.


A new certificate of registration or certificate of authorization to replace any certificate lost, destroyed or mutilated may be issued subject to the rules of the board. A charge established by rule shall be made for each new certificate.

§30-13-20. Public works.

Government agencies, authorities, officials and employees may not engage in the practice of engineering involving either public or private property unless the provisions of this article are met.

§30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, restore or renew, probation, fine, reprimand.

(a) The board may suspend or revoke or refuse to issue, restore or renew a certificate of registration of, or place on probation, fine or reprimand any professional engineer who has:

(1) Perpetrated any fraud or deceit in obtaining or attempting to obtain or renew a certificate of registration or certificate of authorization;

(2) Been negligent, incompetent or committed an act of misconduct in the practice of engineering;

(3) Been convicted of or has entered a plea of nolo contendere to any crime under the laws of the United
States or any state or territory thereof, which is a felony whether related to practice or not; and conviction of or entry of a plea of nolo contendere to any crime, whether a felony, misdemeanor or otherwise, an essential element of which is dishonesty, or which is directly related to the practice of engineering;

(4) Failed to comply with any of the provisions of this article or any of the rules promulgated under it;

(5) Been disciplined by another state, territory, the District of Columbia, foreign country, the United States government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those grounds for discipline contained in this article;

(6) Failed within thirty days to provide information requested by the board as a result of a formal or informal complaint to the board which would indicate a violation of this article;

(7) Knowingly made false statements or signed false statements, certificates or affidavits to induce payment;

(8) Aided or assisted another person in violating any provision of this article or the rules promulgated;

(9) Violated any terms of probation imposed by the board or using a seal or practicing engineering while the professional engineer's license is suspended, revoked, nonrenewed or inactive;

(10) Signed or affixed the professional engineer's seal or permitted the professional engineer's seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents or calculations or revisions which have not been prepared or completely checked by the professional engineer or under the professional engineer's direct supervision or control;

(11) Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(12) Provided false testimony or information to the
(13) Been habitually intoxicated or addicted to or by the use of drugs or alcohol.

In addition to any other penalty provided in this article, any person who violates any provision of this article or any rule promulgated by the board may be fined by the board for each offense in an amount determined by the board.

(b) The board shall prepare and shall adopt “rules of professional responsibility for professional engineers”. The board may revise and amend these “rules of professional responsibility for professional engineers” from time to time and shall notify each registrant in writing of any revisions or amendments.

(c) The board may:

(1) Revoke a certificate of authorization;

(2) Suspend a certificate of authorization of any firm for a period of time not exceeding two years where one or more of its officers or directors of the firm have been found guilty of any conduct which would authorize a revocation or suspension of his or her certificate of registration under the provisions of this article;

(3) Place the person or firm on probation for a period of time and make the person or firm subject to conditions as the board may specify;

(4) Levy a fine for each count or separate offense in an amount set by the board.


(a) Any person may file a complaint with the board that a person or firm subject to the provisions of this article has committed a fraud, been deceitful, been grossly negligent, incompetent, guilty of misconduct or has violated the “rules of professional responsibility for professional engineers”.

(b) All complaints, unless dismissed by the board as unfounded, trivial or unless settled informally, shall be heard by the board within six months after the date each complaint was received by the board.
(c) The board shall fix the time and place for hearings on complaints and a copy of all charges, together with a notice of the time and place of hearing on the complaint the person or firm complained against or mailed to the last known address of the person or firm holding a certificate of authorization at least thirty days prior to the hearing. At the hearing, the individual registrant or firm holding a certificate of authorization shall have the right to appear in person or by counsel, or both, to cross-examine witnesses and to produce evidence and witnesses in his, her or its defense. If the accused person or corporation fails or refuses to appear, the board may proceed to hear the complaint and determine the validity of the charges.

(d) If after the hearing a majority of the board votes in favor of sustaining the charges, the board shall reprimand or fine the person or firm complained against. The board may also suspend, revoke, refuse to issue or refuse to restore or renew an individual’s certificate of registration or a firm’s certificate of authorization. In addition, the board may place a registrant on probation.

(e) An individual registrant, having a certificate of registration, or a firm, having a certificate of authorization, aggrieved by any action of the board in levying a fine, denying, suspending, refusing to issue, refusing to restore or renew or revoking a certificate of registration or a certificate of authorization, may appeal the board’s decision to the circuit court.

(f) Any penalty assessed as a result of a hearing shall be paid within fifty days after the decision becomes final.

(g) The board may, upon petition of an individual registrant or firm holding a certificate of authorization, reissue a certificate of registration or authorization, provided that a majority of the members of the board votes in favor of such issuance.


Any person who practices or offers to practice
engineering in this state without being registered in accordance with the provisions of this article, or any person, firm, partnership, organization, association, corporation or other entity using or employing the words engineer, engineering or any modification or derivative thereof in its name or form of business activity except as authorized in this article, or any person presenting or attempting to use the certificate of registration or the seal of another, or any person who gives any false or forged evidence of any kind to the board or to any member thereof in obtaining or attempting to obtain a certificate of registration, or any person who falsely impersonates any other registrant of like or different name, or any person who attempts to use an expired, suspended or revoked or nonexistent certificate of registration, or who practices or offers to practice when not qualified, or any person who falsely claims that he or she is registered or authorized under this article, or any person who violates any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

Any person who commits a second or subsequent offense under this section is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty years.

The attorney general may act as legal adviser to the board and render any legal assistance as may be necessary in carrying out the provisions of this article. The board may employ counsel and necessary assistance to aid in the enforcement of this article and the compensation and expenses of the council shall be paid from the funds of the board.


This article may not be construed to prevent the practice by:

(a) Other professions. — The practice of any other legally recognized profession;
(b) *Temporary permits.* — The practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided the person is legally qualified by registration to practice engineering, as defined in this article, in their own state or country. The person shall make application to the board in writing and after payment of a fee established by the board may be granted a written permit for a definite period of time not to exceed one year to do a specific job: *Provided,* That no right to practice engineering shall accrue to the applicant with respect to any other works not set forth in the permit; and

(c) *Employees and subordinates.* — The work of an employee or a subordinate of a person holding a certificate of registration under this article, or an employee of a person practicing lawfully: *Provided,* That the work does not include final engineering designs or decisions and is done under the direct supervision of and verified by a person holding a certificate of registration under this article or a person practicing lawfully. Any regular full-time employee of a person, partnership, corporation or other business entity who is engaged solely and exclusively in performing services for such person, partnership, corporation or other business entity, who is not required by any provision of the law other than this article to be a registered professional engineer and whose services are performed on, or in connection with, property owned or leased by such person, partnership, corporation or other business entity, or in which such person, partnership, corporation or other business entity has an interest, estate or possessory right, and are not offered or made available to the public. This exemption includes the use of job title and personal classification by such person, but no name, title or words may be used which tend to convey the impression that an unlicensed person is offering professional engineering services to the public.
AN ACT to amend and reenact section five, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing a surveyor-in-training examination.

Be it enacted by the Legislature of West Virginia:

That section five, article thirteen-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 13A. LAND SURVEYORS.

§30-13A-5. Qualifications of applicants for licenses; surveyor-in-training applications; fees; examinations.

1. (a) To be eligible for a license to engage in the practice of land surveying, the applicant must:

   (1) Be at least eighteen years of age;

   (2) Be of good moral character;

   (3) Have been a resident of the United States for one year immediately preceding the date of application;

   (4) Not have been convicted of a crime involving moral turpitude;

   (5) Have four years or more experience in the practice of land surveying under the supervision of a person authorized to practice land surveying in this state, or a person authorized in another state or country to engage in the practice of land surveying; and each year of satisfactory study in a surveying or equivalent curriculum shall be substituted for one year of experience, but only two years of such experience requirement may be fulfilled by such study. On and after the first day of July, one thousand nine hundred ninety-one, six years or more of such experience under the supervision of a
licensee or a person authorized in another state or

20 country to engage in the practice of land surveying shall
21 be required by those applicants who are graduates of a
22 surveying or equivalent curriculum of two scholastic
23 years or more. However, only three years of such
24 experience may be fulfilled by such study, and eight
25 years of such experience under the supervision of a
26 person authorized to practice land surveying in this
27 state, or a person authorized in another state or country
28 to engage in the practice of land surveying, shall be
29 required for those applicants who are not graduates of
30 a surveying or equivalent curriculum; and
31
32 (6) Have passed the examination prescribed by the
33 board, which examination shall cover the basic subject
34 matter of land surveying and land surveying skills and
35 techniques.
36
37 (b) Any applicant for any such license shall submit an
38 application therefor on forms provided by the board.
39 Such application shall be verified and shall contain a
40 statement of the applicant’s education and experience,
41 the names of five persons for reference (at least three
42 of whom shall be licensees or persons authorized in
43 another state or country to engage in the practice of land
44 surveying, who have knowledge of his work) and such
45 other information as the board may from time to time
46 by reasonable rule prescribe.
47
48 (c) An applicant shall pay to the board with his
49 application an examination fee for the purpose of
50 covering the cost of the examination not to exceed two
51 hundred dollars as determined by the board by rule.
52
53 (d) Examinations shall be held at least once each year
54 at such time and place as the board shall determine. The
55 scope of the examination and methods of procedure shall
56 be determined by the board. An applicant who fails to
57 pass all or any part of an examination may reapply at
58 any time and shall furnish additional information as
59 requested by the board. The cost of reexamination will
60 be based on the cost of the examination as determined
61 by the board by rule.
62
63 (e) The board shall offer a surveyor-in-training (SIT)
examination to applicants who meet the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section, and are graduates of a surveying or equivalent curriculum of two or more years which has been approved by the board of examiners of land surveyors. The examination shall include an eight-hour portion of fundamentals in science, mathematics and surveying. Applicants must pass the other portions of the surveyor-in-training examination and complete the work experience and other requirements of this section before they are allowed to take the second eight-hour examination which consists of principles and practices.

CHAPTER 167
(H. B. 4689—By Delegate Cerra)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license renewal fees and continuing education requirements for a chiropractic physician.

Be it enacted by the Legislature of West Virginia:

That section seven, article sixteen, 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 16. CHIROPRACTORS.

§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.

1 All holders of certificates of license to practice chiropractic in this state shall renew them annually on or before the first day of July of each year: (1) By paying the board an annual renewal fee in an amount determined by the board; and (2) by presenting to the board evidence of twelve hours or more of continuing education each year as prescribed by the board. The West
Virginia board of chiropractic examiners shall establish
by rules and regulations promulgated in accordance
with the provisions of article three, chapter twenty-nine-
a of this code, all continuing education requirements and
all criteria for fulfillment of such continuing education
requirements. The board shall notify each certificate
holder by mail, at least thirty days prior to the first day
of July of each year, of the necessity of renewing his or
her certificate. The first annual renewal fee shall be due
on the first day of July, one thousand nine hundred
sixty-five.

The failure to renew a certificate of license to practice
chiropractic shall operate as an automatic suspension of
the rights and privileges granted by its issuance.

A certificate of license suspended by a failure to make
an annual renewal may be reinstated by the board upon
presentation of evidence of completion of the required
hours of continuing education for each year such license
has been suspended; payment of all fees that would have
been paid had the certificate holder maintained his
certificate in good standing and the payment to the
board of a reinstatement fee in an amount determined
by the board; but no certificate shall be reinstated after
a lapse of three years. After a lapse of three years,
license may be issued only after the former certificate
holder subsequent to said lapse has passed the exami-
nation provided for in this article.

CHAPTER 168

(Com. Sub. for H. B. 4656—By Mr. Speaker, Mr. Chambers, and Delegate
Richards)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, six,
seven, eight, nine, eleven, twelve, thirteen, fourteen and
fifteen, article seventeen, chapter thirty of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, relating to the board of registration for
sanitarians and its functions; stating qualifications, appointment, compensation and expenses of members; providing for registration of sanitarians and sanitarians-in-training; certificates of registration; fees; revocation; expenditures of funds; and criminal penalty.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen and fifteen, article seventeen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. SANITARIANS.

§30-17-3. Registration of sanitarians required.
§30-17-4. Qualifications for registration.
§30-17-5. Qualifications for registration as a sanitarian-in-training.
§30-17-6. Examination for registration as a sanitarian.
§30-17-7. Board of registration for sanitarians.
§30-17-8. Terms of office.
§30-17-9. Board organization; duties of the board, officers, compensation, seal and meetings.
§30-17-11. Application; fees; renewals, etc.
§30-17-12. Suspension or revocation of registration.
§30-17-13. Reciprocity.
§30-17-14. Use of title.
§30-17-15. Violation; penalty.

§30-17-3. Registration of sanitarians required.

On and after the first day of July, one thousand nine hundred ninety-two, no person shall perform or offer to perform the duties of a sanitarian in this state without first applying for and obtaining from the state board of registration for sanitarians a certificate of registration as a sanitarian or a sanitarian-in-training.

§30-17-4. Qualifications for registration.

Any person desiring to be registered as a sanitarian may make application to the board on a form prescribed by the board. The board shall accept such application when submitted if accompanied by the required fees. Persons meeting the following qualifications shall be eligible for registration under this article:

(a) Graduate with a baccalaureate or higher degree
from an accredited college or university.

(b) Successfully completed a sanitarian's training course of a minimum of three hundred hours approved by the board of registration within twelve months of hire, employed as a sanitarian in an official health department or allied agency for a period of not less than two years, and has passed an examination given and conducted by the board under the provisions of this article.

(c) A master's or higher degree in public health, environmental science, sanitary science, community hygiene or other science field as approved by the board of registration may be substituted for one of the required years of experience.

(d) Any person who on or before the first day of July, one thousand nine hundred ninety-two, has been registered as a sanitarian in the state of West Virginia.

§30-17-5. Qualifications for registration as a sanitarian-in-training.

Any person meeting the educational qualifications of section four, subdivisions (a) and (c) of this article, but who does not meet the experience requirements of said section may make application to the board on a form prescribed by the board for registration as a sanitarian-in-training. The board shall accept such application when submitted, if accompanied by the required fees.

§30-17-6. Examination for registration as a sanitarian.

(a) On and after the first day of July, one thousand nine hundred ninety-two, only persons who meet the education and experience requirements in section four, subdivisions (a), (b) and (c) of this article, shall be eligible for admission to examination for registration as a sanitarian.

(b) Examination for the registration of sanitarians-in-training may be required by the discretion of the board.

(c) Examination for registration of sanitarians under this article, shall be administered not less than once each calendar year, in the state at such times and places
as may be specified from time to time by the board. Such examination may be written, oral, or both, and shall include applicable subjects in the field of environmental sanitation as it relates to public health and such other subjects pertinent to the qualifications of sanitarians such as, the board may prescribe, physical, biological and sanitary sciences or environmental health and community hygiene. The examination shall be objective and of practical character. The examination papers shall not disclose the name of any applicant, but shall be identified by a number assigned by the chairperson of the board.

(d) A person shall not be registered if he or she fails to meet the minimum grade requirements for examination specified by the board. If an applicant fails to meet such minimum grade requirements in his or her first examination, he or she may be reexamined at any time and place specified by the board for the administration of such examination and upon resubmitting his or her application accompanied by the prescribed fees.

(e) The board shall hold at least one meeting each year to review and evaluate applications for registration as sanitarians and sanitarians-in-training, conduct examinations, review and approve all bills, prepare and approve reports, and transact all other business as may be necessary to carry out the provisions of this article.

(f) The board shall issue certificates of registration to which the official seal of the board has been affixed, and shall annually issue numbered identification cards to applicants who have been found qualified as sanitarians and sanitarians-in-training.

(g) The board may hold hearings for the purpose of administrative adjudication of such matters as may properly come before it, make the necessary determinations in conjunction therewith and issue such orders as may be consistent with the findings. The board may designate one or more of its members as a hearing agent. Such agent or representative shall conduct such hearings in the manner provided by law.

(h) Three members of the board shall constitute a
quorum and special meetings of the board shall be called by the chairperson upon written request of any two members of the board, or upon a written request signed by ten registered sanitarians.

(i) All board meetings shall be open to the public with the exception of the executive board sessions.

(j) The chairperson of the board shall receive and account for all money received from the operation of this article.

(k) The examination papers and records pertaining thereto shall be filed with the board and retained for at least one year.

§30-17-7. Board of registration for sanitarians.

1 A board for the registration and examination of sanitarians and sanitarians-in-training is hereby established to be known as the board of registration for sanitarians. The board shall consist of the commissioner of the bureau of public health, who shall be a nonvoting, ex officio member and secretary of the board, and five registered sanitarians to be appointed by the governor, by and with the advice and consent of the Senate. Each member appointed by the governor shall have been engaged in active practice as a registered sanitarian in this state for at least five years prior to his or her appointment, and except in the case of the original members of the board, shall have been registered in this state as a registered sanitarian.

§30-17-8. Terms of office.

1 On or before the first day of July, one thousand nine hundred ninety-two, the governor shall name the five original appointive board members for terms of one, two, three, four and five years respectively, beginning on that date. Thereafter each appointment shall be for a term of five years, except that an appointment to fill a vacancy shall be for the unexpired term. The governor, with the concurrence of the board, may remove an appointive board member for misconduct in office, incompetency, conflict of interest, neglect of duty or
§30-17-9. Board organization; duties of the board, officers, compensation, seal and meetings.

(a) The members of the board shall, as soon as appointed, organize and annually thereafter in the month of July, elect from their number a chairperson and vice chairperson.

(b) The board shall make such rules as are necessary to carry out the provisions of this article.

(c) Funds collected under the provisions of this article shall be used exclusively to pay compensation and expenses of the board and to administer the provisions of this article.

(d) The board may at such times as it deems necessary employ such administrative employees or other persons as may be necessary to carry out the provisions of this article.

§30-17-11. Application; fees; renewals, etc.

The board shall prescribe and provide an application form for use of all applicants. Applicants for registration as sanitarians shall deposit a fee of twenty dollars, and applicants for registration as sanitarians-in-training shall deposit a fee of twenty dollars, at the time of making application for registration. The board may also assess an additional fee for the cost of the examination when deemed necessary. Should the board deny the issuance of a certificate to any applicant, the initial fee deposited shall be retained as a fee for processing and evaluating the application.

All sanitarians and sanitarians-in-training registered under the provisions of this article may renew their certificates by paying the board an annual renewal fee of twenty dollars and proof of fifteen hours of continuing education hours. These hours are to be earned annually and the courses approved by the board (excluding
retirees of an official health department). Said fee and
proof of educational hours shall be due and payable on
or before the first day of July for which a renewal
certificate for the current year shall be issued. All
certificates shall expire on the renewal date unless
renewed prior to such date. Registrations expired for
failure to pay renewal fees may be reinstated only upon
the payment of all lapsed renewal fees up to five years
and submit to training approved by the board if in
excess of five years.

§30-17-12. Suspension or revocation of registration.

The board shall have the power to suspend or revoke,
after due notice and proper hearing, a certificate of
registration when the holder is found guilty of unpro-
fessional conduct, the practice of fraud or deceit in
obtaining a certificate of registration, dereliction of
duty, conflict of interest, incompetence in the practice
of environmental sanitation, malfeasance or misfeasance
in office, any criminal, infamous, dishonest, immoral or
notoriously disgraceful conduct, drug addiction or
habitual use of intoxicants to excess, any acts which
furnish reasonable grounds for belief by the board that
the certificate holder may be subject to coercion,
influence or pressure which may cause him or her to act
contrary to the best interest of the profession, or for
other good and sufficient cause. Notice of hearing in
writing shall be given not less than thirty days prior to
the date of the hearing, designating the time and place
of hearing and providing the certificate holder with a
copy of the charges against him or her. The person
charged shall be entitled to be represented at the
hearing and present evidence in his or her defense.
Every order of the board causing the suspension or
revocation of a certificate of registration shall be
predicated on findings based upon the record of hearing;
the determination of the board may be reviewed by a
court only to determine whether the board abused its
discretion or exceeded its jurisdiction.

§30-17-13. Reciprocity.
The board shall, upon application therefor, and upon payment of a fee of twenty dollars, issue a certificate of registration as a sanitarian to any person who holds a certificate of registration issued to him or her by the proper authority of any state, or territory, or possession of the United States, or any country: Provided, That the requirements for the registration of sanitarians under which the certificate was issued do not conflict with the provisions of this article and at the time said certificate was granted were of a standard not lower than those specified in section four, subdivisions (a), (b) and (c) of this article.

§30-17-14. Use of title.

Only a person who has qualified as a registered sanitarian and who holds a valid current registration certificate for use in this state shall have the right and privilege of using the title, "registered sanitarian" and to use the abbreviation, "R.S." after his or her name.

§30-17-15. Violation; penalty.

It shall be unlawful for any person to represent himself or herself as, or perform duties of a registered sanitarian without being duly registered and the holder of a currently valid certificate of registration issued by the board.

On and after the first day of July, one thousand nine hundred ninety-two, each person practicing as a sanitarian shall hold a valid certificate as a registered sanitarian or sanitarian-in-training.

A person who violates the provisions of this article is, upon conviction thereof, guilty of a misdemeanor, and shall be punished by a fine not to exceed two hundred dollars, or imprisoned for not more than thirty days, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article. In addition, the board is authorized and empowered to apply to any court having equity powers, or to the judge thereof in vacation, for an injunction to restrain any violation of the provisions of this article.
AN ACT to amend and reenact sections one and two, article twenty-five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nursing home administrators; designating such administrators as professionals; increasing from two to six the number of such administrators appointed to the nursing home administrators licensing board; specifying the terms to be served by such additional board members appointed in the year one thousand nine hundred ninety-two; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article twenty-five, 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 25. NURSING HOME ADMINISTRATORS.

§30-25-1. Definitions.
§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment, qualifications, term, etc., of members; vacancies; meetings, quorum; chairman; salaries and expenses.

§30-25-1. Definitions.

1 As used in this article, unless a different meaning appears from the context:
2 (1) The term “nursing home” means a nursing home as that term is defined in subdivision (c), section two, article five-c, chapter sixteen of this code.
3 (2) The term “nursing home administrator” means a professional who is an individual responsible for planning, organizing, directing and controlling a nursing home, or who in fact performs such functions, whether or not such individual has an ownership interest in the nursing home and whether or not such
functions are shared with one or more other persons.

(3) The term "board" shall mean the West Virginia nursing home administrators licensing board created by this article.

(4) The term "person" or "applicant" shall mean an individual.

§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment, qualification, term, etc., of members; vacancies; meetings, quorum; chairman; salaries and expenses.

There is hereby created a state board to be known and designated as the "West Virginia nursing home administrators licensing board" which shall consist of eleven members, all of whom except a lay member, as provided for in section four-a, article one, chapter thirty of this code, shall be appointed by the governor, by and with the advice and consent of the Senate. One of the members shall be a member of the medical profession whose practice involves gerontology, one member shall be a licensed pharmacist, one member shall be a registered nurse with experience in the care of elderly patients, one member shall be a person with experience or education in the field of aging, and six such members shall be persons who have been engaged in the management of an operating nursing home for four years immediately prior to the date of appointment, who shall hereinafter be referred to as nursing home administrators. The eleventh member shall be a lay member. No member of the board, other than the six nursing home administrators, shall have any direct or indirect financial or pecuniary interest in any nursing home in this state. Of the original board members appointed, the one who is a registered nurse shall serve for one year, the one who has experience or education in the field of aging shall serve for two years, the one who is a member of the medical profession shall serve for three years, the one who is a licensed pharmacist shall serve for four years, one of the two nursing home administrators shall serve for five years, and the other nursing home
administrator shall serve for six years. Of the members
appointed for the positions added in the year one
thousand nine hundred ninety-two, one shall serve for
six years, one shall serve for five years, one shall serve
for four years, and one shall serve for three years. All
subsequent appointments shall be for six years, except,
that in case of a vacancy, the appointee shall be
appointed for the remainder of the unexpired term. Any
vacancy shall be filled by appointment of the governor,
by and with the advice and consent of the Senate, from
the same group as was represented by the outgoing
member. All members of the board, unless sooner
removed, shall continue to serve until their respective
terms expire and until their successors are appointed
and have qualified.

CHAPTER 170

(H. B. 4597—By Delegates Rutledge and Stemple)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty­seven, chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to barbers, beauticians and manicurists; renewal of
license; fee; penalty for late renewal; withdrawal from
active practice.

Be it enacted by the Legislature of West Virginia:

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

§30-27-4. Renewal of license; fee; penalty for late renew­al; withdrawal from active practice.

1 Every licensed barber, beautician or manicurist who
desires to continue in active practice or service shall,
annually upon or before the first day of January, renew
his or her license and pay an annual renewal fee of
twenty-five dollars. For any renewal which is more than
thirty days late, a penalty of five dollars shall be added to the regular renewal fee, and an additional five dollar penalty for each successive thirty-day period said renewal fee is late, not to exceed a total renewal fee of two hundred five dollars. Any license not renewed for three successive years shall be deemed inactive and shall not be liable for additional renewal fees, but may be reactivated by written request to the board and payment of any accrued unpaid renewal fees, not to exceed a total renewal fee of two hundred five dollars. Every licensed barber, beautician or manicurist who does not desire to continue in active practice shall notify the board in writing, and shall, during such period, be listed by the board as being inactive, and shall not be required to renew his or her license until such time as he or she shall again become active, and during such inactive period he or she shall not be liable for any renewal fees.

CHAPTER 171

(H. B. 4388—By Delegates S. Cook and Brown)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the period of time a nonlicensed occupational therapist may practice in the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

§30-28-7. License required; persons and practices not affected.

(a) No person may hold himself out as an occupational therapist or an occupational therapy assistant in this state unless he is licensed in accordance with the provisions of this article.
(b) Nothing in this article shall be construed as preventing or restricting the practice, services or activities of:

(1) Any person licensed under any other law of this state, including physicians, nurses, clinical psychologists, speech pathologists and audiologists, dentists and physical therapists, from engaging in the profession or occupation for which he is licensed;

(2) Any person employed as an occupational therapist or an occupational therapy assistant by the government of the United States, if such a person provides occupational therapy solely under the direction or control of the organization by which he is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program which is accredited by the American occupational therapy association in collaboration with the American medical association, or in an educational program approved by the American occupational therapy association, and if such person is designated by a title which clearly indicates his status as a student or trainee;

(4) Any person fulfilling the supervised field work experience, if such activities and services constitute a part of the experience necessary to meet the requirements of section eight of this article;

(5) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than ninety consecutive days a calendar year in association with an occupational therapist licensed under this article, if such person meets the qualification for license under this article, except for the qualifying examination; or

(6) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than ninety consecutive calendar days in a calendar year and if:

(A) Such a person is licensed under the law of another state which has licensure requirements equivalent to the requirements of this article; or
(B) Such a person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) established by the American occupational therapy association.

CHAPTER 172
(Com. Sub. for H. B. 4416—By Delegates Ashcraft and Spencer)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-two, relating to the licensure and regulation of audiologists and speech-language pathologists; stating legislative intent; providing definitions; providing requirements for speech-language pathology and audiology assistants; defining persons and practices affected; defining persons and practices not affected; providing exemption from civil liability; establishing the board of examiners for speech-language pathology and audiology; requiring meetings of the board; providing compensation; establishing powers and duties of the board; establishing special revenue account; establishing qualifications for licensure; providing for provisional license; providing for license renewal; providing for reinstatement of expired licenses; providing disciplinary actions; providing procedures for hearing; providing for judicial review; providing for action to enjoin violations; providing civil and criminal penalties; providing for termination of the board; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-two, to read as follows:

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOL OLOGISTS.
§30-32-1. Purpose and legislative intent.

It is hereby declared to be a policy of this state that the practice of speech-language pathology and audiology is a privilege granted to qualified persons and that, in order to safeguard the public health, safety and welfare, protect the public from being misled by incompetent, unscrupulous and unauthorized persons, and protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists, it is necessary to provide regulatory authority over persons offering speech-language pathology and audiology services as designated in this article.


For the purpose of this article, the terms defined shall not include persons employed or contracted by the West Virginia Board of Education, a county board of education, or a Regional Education Service Agency:

(a) "Audiologist" means any person who engages in the practice of audiology and who meets the qualifications set forth in this article. A person represents himself or herself to be an audiologist when he or she
holds out to the public by any means, or by any service
or function he or she performs, directly or indirectly, or
by using the terms “audiology,” “audiologist,” “audiome-
try,” “audiometrist,” “audiological,” “audiometrics,”
“hearing therapy,” “hearing therapist,” “hearing clinic,”
“hearing clinician,” “hearing center,” “hearing aid
audiologist,” or any variation, synonym, coinage or
whatever expresses, employs, or implies these terms,
names or functions.

(b) “Audiology” means the application of principles,
methods, and procedures related to hearing and the
disorders of hearing and to related language and speech
disorders. Disorders means and includes any and all
conditions, whether of organic or nonorganic origin,
peripheral or central, that impede the normal process
of human communication including, but not limited to,
disorders of auditory sensitivity, acuity, function or
processing.

(c) “Audiology assistant,” or any variation, synonym,
or coinage of the term, means an individual who meets
minimum qualifications established by the board, which
are less than those established by this article as
necessary for licensing as an audiologist; who does not
act independently; and who works under the direction
and supervision of an audiologist licensed under this
article.

(d) “Board” means the West Virginia board of
examiners for speech-language pathology and audiology.

(e) “Instruction” means: (1) Providing speech-lan-
guage pathology or audiology services or teaching in
infant/toddler, preschool, elementary or secondary
school programs except for services provided by those
persons employed or contracted by the West Virginia
board of education, a county board of education or a
regional education service agency; or (2) teaching
students in institutions of higher education.

(f) “Person” means and includes any individual,
partnership, trust, association, corporation or other like
organization, or any combination thereof, except that
only individuals can be licensed under this article.
(g) "Practice of audiology" means: (1) Facilitating the conservation of auditory system function, developing and implementing environmental and occupational hearing conservation programs; (2) screening, identifying, assessing and interpreting, preventing and rehabilitating peripheral and central auditory system dysfunctions; (3) providing and interpreting behavioral and (electro) physiological measurements of auditory functions; (4) providing vestibular assessment and balance system rehabilitation; (5) providing neurophysiologic intraoperative monitoring; (6) selecting, fitting and dispensing of amplification, assistive listening and alerting devices and providing training in their use; (7) evaluating candidacy, fitting and providing training in the use of implantable devices; and (8) providing aural rehabilitation and related counseling services to hearing impaired individuals and their families. In accordance with rules promulgated by the board, the practice of audiology may include screening of speech-language and other factors affecting communication function for the purposes of an audioligic evaluation and/or initial identification of individuals with other communication disorders.

(h) "Practice of speech-language pathology" means: (1) screening, identifying, assessing and interpreting, diagnosing, preventing, and rehabilitating disorders of speech (e.g., articulation, fluency, and language); (2) screening, identifying, assessing and interpreting, evaluating and rehabilitating disorders of oral-pharyngeal function (e.g., dysphagia) voice and related disorders; (3) screening, identifying, assessing and interpreting, diagnosing and rehabilitating cognitive/communication disorders; (4) assessing, selecting and developing augmentative and alternative communication systems and providing training in their use; (5) providing aural rehabilitation and related counseling services to hearing impaired individuals and their families; and (6) enhancing speech-language proficiency and communication effectiveness (e.g., accent reduction). In accordance with rules promulgated by the board, the practice of speech-language pathology may include screening of hearing and other factors affecting
communication function for the purposes of a speech-language evaluation and/or initial identification of individuals with other communication disorders.

(i) "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge about human communication, human communication disorders, and/or evaluation or treatment strategies. Activities meeting this definition constitute research: Provided, That as used above and for the purposes of this article, research does not include activities that take place under the auspices of a recognized institutional review board which reviews, approves, and monitors proposals and activities involving human subjects to ensure that the rights and welfare of such subjects are protected.

(j) "Speech-language pathologist" means any person who engages in the practice of speech-language pathology and who meets the qualifications set forth in this article. A person represents himself or herself to be a speech-language pathologist when he or she holds out to the public by any means, or by any service or function he or she performs, directly or indirectly, or by using the terms "speech therapy," "speech therapist," "speech correction," "speech correctionist," "speech clinic," "speech clinician," "language pathology," "language pathologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiology," "aphasiologist," "phoniatrist," or any variation, synonym, coinage or whatever expresses, employs, or implies these terms, names or functions.

(k) "Speech-language pathology" means the application of principles, methods, and procedures related to the development and disorders of human communication. Disorders are defined to include any and all conditions, whether of organic or nonorganic origin, that impede the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cogni-
§30-32-3. **Speech-language pathology and audiology assistants.**

(a) Speech-language pathologists and audiologists supervising speech-language pathology and audiology assistants shall:

(1) Register with the board the name of each assistant working under their supervision;

(2) Be responsible for the performance of the assistant and for all services provided by the assistant, consistent with the board's designated standards and requirements; and

(3) Ensure that persons receiving services from an assistant receive prior written notification that services are to be provided by an assistant.

(b) The board shall establish rules to define the role of the speech-language pathology or audiology assistant, including, but not limited to:

(1) The supervisory responsibilities of the licensee;

(2) The ratio of assistants to licensees;

(3) The scope of duties and restrictions of assistants' responsibilities;

(4) The frequency, duration and documentation of direct, on-site supervision;

(5) The quantity and content of preservice and inservice instruction; and
(6) The procedures for renewing the registration of assistants and terminating their duties.

§30-32-4. Persons and practices affected.

1 The board shall grant licensure in either speech-language pathology or audiology independently. A person may be licensed in both areas if he or she meets the respective qualifications. Except as otherwise provided in this article, effective the first day of October, one thousand nine hundred ninety-two, no person shall practice speech-language pathology or audiology or represent himself or herself as a speech-language pathologist or audiologist in this state, unless such person is licensed in accordance with the laws of this state. A person licensed under this article as an audiologist shall not be required to obtain a license under the provisions of article twenty-six of this chapter.

§30-32-5. Persons and practices not affected.

1 Nothing in this article shall be construed as preventing or restricting:

(a) A person licensed or registered by this state in another profession from practicing the profession for which he or she is licensed or registered, so long as they do not hold themselves out to the public as possessing a license issued pursuant to this article or use a title set forth in section two of this article;

(b) A physician or surgeon licensed by this state while engaging in the profession for which they are licensed;

(c) Hearing testing or balance system assessment by trained individuals under the direct supervision of a licensed physician or surgeon, so long as such individuals do not hold themselves out to the public as possessing a license issued pursuant to this article or use a title set forth in section two of this article;

(d) A person employed or contracted with the West Virginia Board of Education, a county board of education, or a Regional Education Service Agency;

(e) A person duly credentialed by this state as a teacher of the deaf;
(f) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university, if:

(1) These activities and services constitute a part of a planned course of study at that institution;

(2) Such persons are designated by a title such as intern, trainee, student, or by other such title clearly indicating the status appropriate to their level of education; and

(3) Such persons work under the supervision of a person licensed by this state to practice speech-language pathology or audiology.

(g) The activities of persons who are nonresidents of this state from engaging in the practice of speech-language pathology or audiology if the activities of such persons do not exceed five days in any calendar year and such persons:

(1) Meet the qualifications of this article;

(2) Register with the board in accordance with procedures specified in its rules and regulations; and

(3) Agree to abide by the standards of professional conduct contained in this article and rules promulgated by the board.

(h) The practices and procedures of qualified licensed hearing aid dealers engaged solely in the practice of dealing in or fitting of hearing aids under article twenty-six of this chapter; and

(i) Occupational hearing conservationists engaged in hearing testing as part of a hearing conservation program in compliance with regulations of the Occupational Safety and Health Administration.

§30-32-6. Exemption from civil liability.

While serving on any peer review committee, any speech-language pathologist or audiologist shall not be liable for civil damages as a result of his or her decisions, findings or recommendations in connection with his or her duties on such committees, except for
§30-32-7. Board of examiners for speech-language pathology and audiology.

(a) There is hereby created a state board to be known and designated as the "West Virginia Board of Examiners for Speech-Language Pathology and Audiology" which shall consist of five members appointed by the governor, with the advice and consent of the Senate. All members shall be residents of this state and have been residents of this state for at least two years prior to their appointments. The board shall be representative of various geographical regions of the state and of various employment settings.

(b) Two of the members shall be speech-language pathologists who are currently practicing speech-language pathology or who have had three years experience practicing speech-language pathology, and who hold active and valid licensure for the practice of speech-language pathology in this state, except for the first speech-language pathologists appointed who shall meet the eligibility requirements for licensure as specified in this article. Two of the members shall be audiologists who are currently practicing audiology or who have had three years experience practicing audiology, and who hold active and valid licensure for the practice of audiology in this state, except for the first audiologists appointed who shall meet the eligibility requirements for licensure as specified in this article. The fifth member shall be a lay person who is not associated with or financially interested in the practice or business of speech-language pathology or audiology nor a member of an allied or related profession or occupation.

(c) Within thirty days from the effective date of this article, the governor shall appoint the professional members of the first board from a list of names of at least seven speech-language pathologists and seven audiologists submitted by the state speech-language hearing association or from recommendations submitted
by interested organizations or persons in the state. Each
subsequent appointment of professional members may
be made from recommendations submitted by the state
speech-language-hearing association which may submit
at least three names for each available position or from
recommendations submitted by other interested organ-
izations or persons in the state. No member of the board
shall at the same time serve in an elected, appointed,
or employed position in any state-level organization
representing speech-language pathologists and audiolo-
gists, or both, which presents or may present a conflict
of interest.

(d) Of the members first appointed, one of the
audiologists and one of the speech-language pathologists
shall serve for terms expiring the thirtieth day of June
one thousand nine hundred ninety-five, and the other of
each of the professions shall serve for terms expiring the
thirtieth day of June, one thousand nine hundred ninety-
four, and the lay member shall serve for a term expiring
the thirtieth day of June, one thousand nine hundred
ninety-three. All subsequent appointments shall be for
three years. Members shall serve until the expiration of
the term for which they have been appointed or until
their successors have been appointed and qualified. In
the event of a vacancy in the office of a member of the
board other than by expiration of a term, the governor
shall appoint a qualified person to fill the vacancy for
the unexpired term. No member may serve more than
two consecutive three year terms.

§30-32-8. Meetings of the board.

The board shall meet during the first month of each
calendar or fiscal year to select a chairperson and to
conduct other appropriate business, and shall hold at
least one additional meeting before the end of each
calendar or fiscal year. Additional meetings may be held
at the call of the chairperson. Three members of the
board shall constitute a quorum to do business, includ-
ing at least one speech-language pathologist and one
audiologist.

Members of the board shall receive a per diem of fifty dollars for each day actually engaged in the performance of the duties of the office, and shall also receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That a majority of the board shall approve such compensation.


The board shall:

1. Administer, coordinate and enforce the provisions of this article, establish licensure fees, evaluate the qualifications of applicants, supervise the examination of applicants, register speech-language pathology and audiology assistants and issue and renew licenses;

2. Investigate allegations of violations of this article and impose penalties if such violations of this article have occurred;

3. Promulgate reasonable rules, in accordance with chapter twenty-nine-a of this code, including, but not limited to, rules that delineate qualifications for licensure; specify requirements for the renewal of licensure; set forth procedures for registering speech-language pathology and audiology assistants; and establish standards of professional conduct. Following their adoption, the rules shall govern and control the professional conduct of every person who holds a license to practice speech-language pathology or audiology or who is registered as a speech-language pathology and audiology assistant in this state;

4. Have available the names of persons currently licensed and registered under the provision of this article;

5. Employ such personnel as determined by its needs and budget;

6. Request legal advice and assistance, as needed, from the attorney general;

7. Enter into such contracts as necessary to carry out its responsibilities under this article:
31 (8) Hire legal counsel, if necessary;  
32 (9) Establish a budget;  
33 (10) Maintain reports of its operations and finances;  
34 (11) Adopt an official seal (or seals) by which it shall  
35 authenticate its proceedings, copies of proceedings,  
36 records, acts of the board and licenses; and  
37 (12) Communicate disciplinary actions to relevant  
38 state and federal authorities and to other state speech-  
39 language pathology and audiology licensing authorities.  
40 (b) The conferral or enumeration of specific powers  
41 elsewhere in this article shall not be construed as a  
42 limitation of the general functions conferred by this  
43 section.  
44 (c) No member of the board shall be liable to civil  
45 action for any act performed in good faith in the  
46 performance of his or her duties as prescribed by law.  

§30-32-11. Funds.  
1 All fees and other moneys received by the board,  
2 including civil penalties imposed and collected pursuant  
3 to the provisions of section seventeen of this article, shall  
4 be deposited in a separate account in the state treasury.  
5 Expenditures for the purposes set forth in the article are  
6 not authorized from collections but are to be made only  
7 in accordance with appropriation and in accordance  
8 with the provisions of article three, chapter twelve of  
9 this code and upon fulfillment of the provisions set forth  
10 in article two, chapter five-a of this code.  
11 Amounts collected which are found from time to time  
12 to exceed the funds needed for the purposes set forth in  
13 this article may be transferred to other accounts or  
14 funds and redesignated for other purposes by appropri-  
15 ation of the Legislature.  

§30-32-12. Qualifications for license.  
1 To be eligible for licensure by the board as a speech-  
2 language pathologist or audiologist, the applicant shall:
(a) Make application to the board, upon such a form prescribed by the board;
(b) Pay to the board the appropriate application fee;
(c) Possess at least a master’s degree or equivalent in speech-language pathology or audiology from an educational institution approved by the board which consists of coursework approved by the board and delineated in the rules;
(d) Complete supervised clinical practicum experiences from an educational institution or its cooperating programs the content of which shall be approved by the board and delineated in the rules;
(e) Complete a postgraduate professional experience as approved by the board and described in the rules; and
(f) Pass the national examination in speech-language pathology or audiology which is approved by the American speech-language-hearing association.

§30-32-13. Waiver of requirements.

(a) The board may waive the practicum and professional experience requirements for applicants who:
(1) Provide proof of employment in the practice of speech-language pathology or audiology in this state for at least two out of the last five years immediately preceding the effective date of this article;
(2) Pass an examination, if requested by the board;
(3) Apply for a license in speech-language pathology or audiology within one year after the effective date of this article; and
(4) Possess at least a master’s degree or equivalent in speech-language pathology or audiology from an educational institution approved by the board which consists of coursework approved by the board and delineated in the rules.

(b) The board shall waive the examination requirement for applicants who either:
(1) Present proof of current licensure in a state that
has standards that are at least equivalent to those of this state; or

(2) Hold a certificate of clinical competence in speech-language pathology or audiology from the American speech-language-hearing association in the area for which they are applying for licensure.

c) A person who holds current licensure from another state with equivalent standards or who holds the certificate of clinical competence from the American speech-language-hearing association may practice speech-language pathology or audiology in this state, pending board disposition of their applications, if he or she:

(1) Is practicing in the area, speech-language pathology or audiology, in which the licensure or certificate of clinical competence was granted; and

(2) Has filed an application with the board and paid the appropriate application fee.

§30-32-14. Provisional license.

(a) The board shall issue a provisional license to an applicant who:

(1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this article;

(2) Submits an application to the board, upon such a form prescribed by the board, including a plan for the content of the postgraduate professional experience; and

(3) Pays to the board the appropriate application fee for a provisional license.

(b) The purpose of a provisional license is to permit an individual to practice speech-language pathology or audiology while completing the postgraduate professional experience as required by this article. A person holding a provisional license is authorized to practice speech-language pathology or audiology only while working under the supervision of a person fully licensed by this state in accordance with this article.
The term for provisional licenses and the conditions for their renewal are to be determined by the board and delineated in its rules and regulations.


(a) Licenses first issued under this article shall expire on the first day of January, one thousand nine hundred ninety-five, and subsequent licenses shall expire every two years thereafter;

(b) Every person licensed under this bill shall:

(1) Pay an amount established by the board in order for his or her license to be renewed;

(2) Submit an application for renewal on a form prescribed by the board;

(3) Meet any other requirements the board establishes as conditions for license renewal; and

(4) Engage in a minimum of ten hours of continuing education activities during the two-year licensing period whose content is directly related to the professional growth and development of speech-language pathologists and audiologists. The following are examples of ways in which these hours may be obtained:

(i) Short courses, mini-seminars and teleconferences of the American speech-language-hearing association;

(ii) Educational sessions of the West Virginia speech-language-hearing association;

(iii) Educational sessions provided within the licensee's work setting; or

(iv) Any other activities approved by the board.

(c) Licensees are granted a grace period of thirty days after the expiration of their licenses in which to renew retroactively as long as they otherwise are entitled to have their licenses renewed and pay to the board the renewal fee and any late fee set by the board.

(d) A suspended license is subject to expiration and may be renewed as provided in this article, but such renewal shall not entitle the licensee, while the license
remains suspended and until it is reinstated, to engage
in the licensed activity, or in any other conduct or
activity in violation of the order of judgment by which
the license was suspended.

(e) A license revoked on disciplinary grounds is
subject to expiration as provided in this article, but it
may not be renewed. If such license is reinstated after
its expiration, the licensee, as a condition of reinstatement,
shall pay a reinstatement fee that shall equal the
renewal fee in effect on the last regular renewal date
immediately preceding the date of reinstatement, plus
any late fee set by the board.

§30-32-16. Reinstatement of expired licenses.

(a) A person who fails to renew his or her license by
the end of the thirty-day grace period may have the
license reinstated if he or she:

1. Submits an application for reinstatement to the
board within five years after the expiration date of the
license;

2. Meets requirements established by the board as
conditions for license renewal; and

3. Pays to the board a reinstatement fee equal to the
renewal fee in effect on the last regular renewal date
immediately preceding the date of reinstatement, and
any late fee set by rules of the board.

(b) A person who fails to renew his or her license
within five years after the expiration date may not have
the license renewed, and the license may not be restored,
reissued, or reinstated thereafter, although such person
may apply for and obtain a new license if he or she
meets the requirements of this article and pays to the
board the appropriate fee or fees.

§30-32-17. Disciplinary actions.

(a) The board may impose any of the following
disciplinary actions in those instances in which an
applicant for a license or a licensee has been guilty of
conduct which has endangered, or is likely to endanger
the health, welfare or safety of the public:
(1) Refuse to issue or renew a license;
(2) Issue a letter of reprimand or concern;
(3) Require restitution of fees;
(4) Impose probationary conditions;
(5) Impose a civil penalty not to exceed five hundred dollars; or
(6) Suspend or revoke a license.

(b) The board may take disciplinary actions for conduct that may result from but not necessarily be limited to:

(1) Fraudulently or deceptively obtaining or attempting to obtain a license or a provisional license for the applicant, licensee, holder or for another;

(2) Fraudulently or deceptively using a license or provisional license;

(3) Altering a license or provisional license;

(4) Aiding or abetting unlicensed practice; and

(5) Committing fraud or deceit in the practice of speech-language pathology or audiology, including, but not limited to:

(i) Willfully making or filing a false report or record in the practice of speech-language pathology or audiology;

(ii) Submitting a false statement to collect a fee; or

(iii) Obtaining a fee through fraud or misrepresentation.

(6) Using or promoting or causing the use of any misleading, deceiving, improbable or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation;

(7) Falsely representing the use or availability of services or advice of a physician;

(8) Misrepresenting the applicant, licensee or holder
by using the word "doctor" or any similar word, abbreviation or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;

(9) Committing any act of dishonorable, immoral or unprofessional conduct while engaging in the practice of speech-language pathology or audiology;

(10) Engaging in illegal, incompetent or habitually negligent practice;

(11) Providing professional services while:

(i) Mentally incompetent;

(ii) Under the influence of alcohol;

(iii) Using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication; or

(iv) Having a serious contagious disease.

(12) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from such services, devices, appliances or products;

(13) Violating any provision of this article, or any lawful order given, or rule adopted by the board;

(14) Being convicted of or pleading guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

or

(15) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section.


(a) Whenever the board shall deny an application for any original or renewal license of any kind under this article or shall suspend or revoke any such license it
shall make and enter an order to that effect and serve
a copy thereof on the applicant or licensee, as the case
may be, by certified mail, return receipt requested.
Such order shall state the grounds for the action taken
and shall require that any license suspended or revoked
thereby shall be returned to the board by the holder
within twenty days after receipt of the copy of the order.

(b) Any person adversely affected by any such order
shall be entitled to a hearing thereon as to all issues not
excluded from the definition of "contested case" as set
forth in article one, chapter twenty-nine-a of this code
if, within twenty days after receipt of a copy thereof, he
or she filed with the board a written demand for such
hearing. A demand for hearing shall operate automatic-
ically to stay or suspend the execution of any order
suspending or revoking a license or denying an appli-
cation for a renewal of license. The board may require
the person demanding such hearing to give reasonable
security for the costs thereof, and, if such person does
not substantially prevail at such hearing, such costs
shall be assessed against the person and may be
collected by a civil action or other proper remedy.

(c) Upon receipt of a written demand for a hearing,
the board shall set a time and place thereof not less than
ten nor more than thirty days thereafter. The person
demanding the hearing may be granted one continuance
as a matter of right and further continuances for good
cause shown.

(d) All of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing, and the administrative procedures
in connection with and following such hearing, with like
effect as if the provisions of the article were set forth
in this subsection.

(e) Any such hearing shall be conducted by a quorum
of the board. For the purpose of conducting any such
hearing any member of the board may issue subpoenas
and subpoenas duces tecum which shall be issued and
served within the time and for the fees and shall be
enforced, as specified in section one, article five, chapter
twenty-nine-a of this code, and all of the provisions of such section dealing with subpoenas and subpoenas duces tecum shall apply to those issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or herself or be represented by an attorney admitted to practice law in this state. Upon request of the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing, 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 decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and the person’s attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with this article.


Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if they were set forth in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or
§30-32-20. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule or regulation promulgated hereunder or any final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under other provisions of this article.

Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules promulgated hereunder and all orders and final decisions of the board. The court may issued a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorney of the several counties as well, all without additional compensation.


Any person who violates this article shall be guilty of
2 a misdemeanor, and, upon conviction thereof, shall be
3 punished by a fine of not more than five hundred
4 dollars, or by imprisonment for not more than six
5 months, or both.

1 The West Virginia board of examiners for speech-
2 language pathology and audiology shall be terminated
3 pursuant to the provisions of article ten, chapter four of
4 this code on the first day of July, one thousand nine
5 hundred ninety-eight, unless sooner terminated or
6 unless continued or reestablished pursuant to that
7 article.

1 If any provision of this article or the application
2 thereof to any person or circumstance shall be held
3 invalid, the remainder of the article and the application
4 of such provision to other persons or circumstances shall
5 not be affected thereby.

CHAPTER 173
(S. B. 129—By Senators Minard, J. Manchin, Spears and Brackenrich)
[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, fourteen,
twenty-six, twenty-eight, twenty-nine, thirty, thirty-one,
thirty-three, thirty-four, thirty-five and thirty-six,
article fourteen, chapter thirty-seven of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to licensing and certification of real
estate appraisers; exempting financial institutions from
certain provisions; allowing the real estate licensing and
certification board to set criteria for examination;
establishing a new certification classification and
amending other provisions of the article to comply with
the new classification; and removing certain experience
restrictions for examination eligibility.

Be it enacted by the Legislature of West Virginia:
§37-14-2. Definitions.

§37-14-4. Exceptions to license or certification requirement.


§37-14-26. State certified real estate appraiser; use of term.


§37-14-29. Experience requirement.

§37-14-30. Qualifications.

§37-14-31. Examination required.

§37-14-33. Renewal of license or certification.

§37-14-34. Basis for denial.

§37-14-35. Use of term "state licensed or certified real estate appraiser".


§37-14-2. Definitions.

As used in this article, the following terms shall have the following meanings:

(a) "Appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment. The term "valuation appraisal" refers to an analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time. An "analysis assignment" refers to an analysis, opinion or conclusion prepared by a real estate appraiser that relates to the nature, quality or utility of identified real estate or identified real property. A "review assignment" refers to an analysis, opinion or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment;
(b) "Appraisal foundation" means the appraisal foundation established on the thirtieth day of November, one thousand nine hundred eighty-seven, as a not-for-profit corporation under the laws of Illinois;

(c) "Appraisal report" means any communication, written or oral, of an appraisal. An appraisal report may be classified by the nature of the assignment as a "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 by the provisions of this article;

(e) "Certified appraisal report" means a written appraisal report that is certified by a state licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal report as "certified", the real estate appraiser must indicate the type of licensure or certification he or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser, a state certified general real estate appraiser or a state certified residential real estate appraiser, represents to the public that the report meets the appraisal standards established by 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;
(j) "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 residential real estate appraiser or a state certified general real estate appraiser issued to him or her under the provisions of this article.

§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;

(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”; and

(f) Any evaluation of the value of real estate serving as collateral for a loan made by a financial institution insured by the federal deposit insurance corporation: Provided. That: (1) The amount of the loan is less than fifty thousand dollars or such other amount not to exceed one hundred thousand dollars established by the federal deposit insurance corporation, the board of governors of the federal reserve system, the office of the comptroller of the currency or the office of thrift supervision pursuant to authority granted under Title XI of the United States Code, entitled “Financial Institutions Reform, Recovery, and Enforcement Act of 1989” applicable to a particular insured financial institution as the level below which collateral evaluations need not be performed by a licensed or certified appraiser; (2) the evaluation is used solely by the lender in its records to document the collateral value; (3) the evaluation clearly indicates on its face that it is for the lender’s internal use only; (4) the evaluation shall not be labeled an “appraisal”; and (5) the evaluation be on a form approved by the board. Individuals performing these evaluations may be compensated for their services.


(a) As a prerequisite to renewal of license, a licensed or certified real estate appraiser shall present evidence satisfactory to the board that he or she has had at least ten hours of continuing education.

(b) The board shall adopt rules to ensure that persons licensed under the provisions of this article have a working knowledge of current real estate appraisal
§37-14-26. State certified real estate appraiser; use of term.

No person other than a state certified real estate appraiser under this article shall assume or use that title or any title, designation or abbreviation likely to create the impression of certification as a real estate appraiser by this state.


There are three classifications of real estate appraisers:

(a) State licensed residential real estate appraiser. — The state licensed residential real estate appraiser classification consists of those persons who meet the requirements for licensure that relate to the appraisal of: (1) Complex residential real estate of one to four units having a value of less than two hundred fifty thousand dollars; (2) noncomplex residential real estate of one to four units having a value of less than one million dollars; and (3) nonresidential real estate having a value of less than one hundred thousand dollars.

(b) State certified residential real estate appraiser. — The state certified residential real estate appraiser classification shall consist of those persons who meet the requirements for certification that relate to the appraisal of residential real estate of one to four units without regard to value or complexity, and to the value of nonresidential real estate when the value is less than one hundred thousand dollars.

(c) 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 promulgated pursuant to the provisions of chapter twenty-nine-
§37-14-29. Experience requirement.

An applicant for certification shall furnish the board with a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed by the applicant. Upon request, the applicant shall make available to the board for examination a sample of appraisal reports which the applicant has prepared in the course of his or her practice. All information provided by an applicant shall be under oath or affirmation that the information provided is true and correct and the oath or affirmation shall be notarized.

§37-14-30. Qualifications.

(a) Residential licensed 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 board pursuant to the provisions of chapter twenty-nine-a of this code.

(b) Residential and general certified classifications. — As a prerequisite to taking the examination for certification as either a state certified residential or 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 residential or general appraisers issued by the appraisal qualifications board of the appraisal foundation, which criteria shall be incorporated in regulations of the board adopted
pursuant to the provisions of chapter twenty-nine-a of this code.

(c) *Transitional license.* — The board may provide for satisfying the requirements of subsection (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.

§37-14-31. Examination required.

An original license as a state licensed residential real estate appraiser shall not be issued to any person who has not passed an examination administered through the board.

An original certification as a state certified real estate appraiser shall not be issued to any person who has not passed an examination administered by the board. The examination, administered by the board, shall be consistent with the uniform state examination for licensure or certification issued or endorsed by the appraisal qualifications board of the appraisal foundation.

The board may offer for the benefit of prospective applicants for licensure or certification a program of instruction and preparation for the examination.

§37-14-33. Renewal of license or certification.

To obtain a renewal of license or certification under this article, the holder of a current, valid license or certification shall make application and pay the prescribed fee to the board no earlier than one hundred twenty days nor later than thirty days prior to the expiration date of the certification then held. Each application for renewal shall be accompanied by evidence in the form prescribed by the board that the applicant has completed the continuing education
10 requirements for renewal specified in this article.

11 If the board determines that an applicant for renewal
12 has failed to meet the requirements for renewal of
13 license or certification through mistake, misunderstand-
14 ing, or circumstances beyond the control of the appli-
15 cant, the board may extend the term of the applicant's
16 license or certification for a period not to exceed six
17 months upon payment by the applicant of a prescribed
18 fee for the extension. If the applicant for renewal of
19 license or certification satisfies the requirements for
20 renewal during the extension period, the beginning date
21 of his or her renewal license or certificate shall be the
22 day following the expiration of the certificate previously
23 held by the applicant.

24 If a state licensed or certified real estate appraiser
25 under this article fails to renew his or her license or
26 certification prior to its expiration or within any period
27 of extension granted by the board pursuant to this
28 article, the applicant may obtain a renewal of his or her
29 license or certification by satisfying all of the require-
30 ments for renewal and filing an application for renewal,
31 accompanied by a late renewal fee, within two years of
32 the date that his or her certification expired.

§37-14-34. Basis for denial.

1 The board may deny the issuance of a license or
2 certificate as a state licensed or certified real estate
3 appraiser to an applicant on any ground enumerated in
4 this article. Any applicant whose application for license
5 or certification is denied may demand and shall be
6 afforded a hearing pursuant to section seven of this
7 article.

§37-14-35. Use of term “state licensed or certified real
estate appraiser”.

1 The term “state certified real estate appraiser” or
2 “state licensed real estate appraiser” may be used to
3 refer only to an individual who is a state licensed or
4 certified real estate appraiser under this article and
5 may not be used following, or immediately in connection
6 with, the name or signature of a firm, partnership,
corporation, group, or in such manner that it might be interpreted as referring to a firm, partnership, corporation or group or to anyone other than the individual who is licensed or certified under this article. This requirement shall not be construed to prevent a state licensed or certified real estate appraiser from signing an appraisal report on behalf of a corporation, partnership, firm or group practice if it is clear that only the individual is licensed or certified and that the corporation, partnership, firm or group practice is not. A license or certificate may not be issued under the provisions of this article to a corporation, partnership, firm or group.


As a prerequisite to renewal of license or certification, a state licensed or certified real estate appraiser shall present evidence satisfactory to the board of having met the continuing education requirements of this section.

The basic continuing education requirement for renewal of license or certification shall be the completion by the applicant, during the immediately preceding term of licensure or certification, of not less than ten classroom hours of instruction per year in courses or seminars which have received the approval of the board.

In lieu of meeting the requirements set forth above, an applicant for relicensure or recertification may satisfy all or part of the requirements by presenting evidence of the following:

(a) Completion of an educational program of study determined by the board to be equivalent, for continuing education purposes, to courses or seminars approved by the board; or

(b) Participation other than as a student in educational processes and programs approved by the board which relate to real property appraisal theory, practices or techniques, including, but not necessarily limited to, teaching, program development and preparation of textbooks, monographs, articles and other instructional materials.
The board shall develop rules for the implementation of the provisions of this section to the end of assuring that an individual who renews his or her license or certification under this article has a working knowledge of current real estate appraisal theories, practices and techniques that will enable the individual to provide competent real estate appraisal services to the members of the public with whom such individual deals in a professional relationship under the authority of his or her license or certification. All rules shall be promulgated pursuant to the provisions of chapter twenty-nine-a of this code and shall prescribe the following:

1. Policies and procedures to be followed in approval of courses of instruction and seminars;
2. Standards, policies and procedures to be used in evaluating an applicant's claim of equivalency;
3. Standards, monitoring methods and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to approval of courses and seminars for credit.

In developing and proposing rules pursuant to this section, the board shall give consideration to courses of instruction, seminars, and other appraisal education programs developed by or under the auspices of organizations or associations of professional real estate appraisers which are utilized by such organizations or associations for the purpose of awarding real estate appraisal designations or indicating compliance with the continuing education requirements of the organizations or associations.

No amendment or repeal of a rule adopted by the board pursuant to this section shall operate to deprive a state licensed or certified real estate appraiser of credit toward renewal of his or her license or certification for any course of instruction or seminar that has been completed by the state licensed or certified real estate appraiser prior to the adoption of the rule.

On or after the first day of January, one thousand nine hundred ninety-two, a license or certification as a state
65 licensed or certified real estate appraiser that has been
66 revoked or suspended as the result of a disciplinary
67 action taken by the board shall not be reinstated unless
68 the applicant for reinstatement presents evidence that
69 he or she has completed the continuing education
70 requirement that is provided in this article for the
71 renewal of license or certification. This continuing
72 education requirement shall not be imposed upon an
73 applicant for reinstatement who has been required by
74 the board to successfully complete the examination for
75 state licensed or certified real estate appraiser required
76 by section thirty-one of this article as a condition for
77 reinstatement of certification.

CHAPTEt 174

(S. B. 602—By Senators Spears, Wiedebusch, Lucht, Boley, Chernenko, Tomblin,
Brackenrich, J. Manchin, Felton, Jones, Craigo, Claypole, Holliday and Wehrle)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter
twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to giving
preferential recall rights to all state permanent classified
employees who are laid off, such recall rights to be
based on seniority and fitness; establishing eligible lists
for preference; limiting eligibility for appointment to
twelve months; and grounds for rejection of candidates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-10. Rules of division.

1 The board shall have the authority to promulgate,
2 amend or repeal rules, in accordance with chapter
3 twenty-nine-a of this code, to implement the provisions
4 of this article:
(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. The position classification plan for classified-exempt service shall become effective not later than the first day of July, one thousand nine hundred seventy-nine. Except for persons employed by the governing boards of higher education, all persons receiving compensation in the form of a wage or salary, funded either in part or in whole by the state, shall be included in either the position classification plan for classified service or classified-exempt service. After each such classification plan has been approved by the board, the director shall allocate the position of every employee in the classified service to one of the classes in the classified plan and the position of every employee in the classified-exempt service to one of the positions in the classified-exempt plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

(2) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state fiscal officers, and after a public hearing held by the board. Such pay plan shall become effective only after it has been approved by the governor after submission to him by the board. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed. The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.
(3) For open competitive examinations to test the relative fitness of applicants for the respective positions in the classified service. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one year after this article takes effect. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications thereafter, and may be advertised through the press, radio and other media. The director may, however, in his discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligibles to meet the needs of the service and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

An additional five points shall be awarded to the score of any examination successfully completed by a veteran. A disabled veteran shall be entitled to an additional ten points, rather than five points as aforesaid, upon successful completion of any examination.

(4) For promotions within the classified service which shall give appropriate consideration to the applicant's qualifications, record of performance and his score on a written examination, when such examination is practicable. In filling vacancies an effort should be made to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion.

(5) For layoffs by classification for reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, or any loss of position because of the provisions of this subdivision and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the senior employee cannot perform any
other job duties held by less senior employees within that agency in the job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall as hereinafter provided.

(6) For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his place on the recall list for the same period of time as his seniority on the date of his layoff or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his last place of employment is located or within a county contiguous thereto. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility of the employee to notify the agency of any change in his address.

Notwithstanding any other provision of the code to the contrary, except for the provisions of section seven, article two, chapter five-b of this code, when filling vacancies at state agencies the directors of state agencies shall, for a period of twelve months after the layoff of a permanent classified employee in another agency, give preference to qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities: Provided, That employment of these persons who are qualified and who were permanently employed immediately prior to their layoff shall not supersede the recall rights of employees who have been laid off in such agency or facility.

(7) For the establishment of eligible lists for appointment and promotion within the classified service, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the
respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority shall make his selection from the top ten names on the appropriate lists of eligibles, or may choose any person scoring at or above the ninetieth percentile on the examination.

For the establishment of eligible lists for preference as provided in subdivision (6) of this section, a list shall be provided according to seniority. An appointed authority shall make the selection of the most senior qualified person: Provided, That eligibility for appointment from any such list shall continue not longer than one year and shall cease immediately upon appointment to a classified position.

(8) For the rejection of candidates or eligibles within the classified service who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience who are addicted to alcohol or narcotics or who have attempted any deception or fraud in connection with an examination.

(9) For a period of probation not to exceed one year before appointment or promotion may be made complete within the classified service.

(10) For provisional employment without competitive examination within the classified service when there is no appropriate eligible list available. No such provisional employment may continue longer than six months, nor shall successive provisional appointments be allowed, except during the first year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

(11) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

(12) For discharge or reduction in rank or grade only
for cause of employees in the classified service. Dis-
charge or reduction of these employees shall take place
only after the person to be discharged or reduced has
been presented with the reasons for such discharge or
reduction stated in writing, and has been allowed a
reasonable time to reply thereto in writing, or upon
request to appear personally and reply to the appointing
authority or his deputy. The statement of reasons and
the reply shall be filed as a public record with the
director. Notwithstanding the foregoing provisions of
this subdivision, no permanent employee shall be
discharged from the classified service for absenteeism
upon using all entitlement to annual leave and sick leave
when such use has been due to illness or injury as
verified by a physician's certification or for other
extenuating circumstances beyond the employee's
control unless his disability is of such a nature as to
permanently incapacitate him from the performance of
the duties of his position. Upon exhaustion of annual
leave and sick leave credits for the reasons specified
herein and with certification by a physician that the
employee is unable to perform his duties, a permanent
employee shall be granted a leave of absence without
pay for a period not to exceed six months if such
employee is not permanently unable to satisfactorily
perform the duties of his position.

(13) For such other rules and administrative regula-
tions, not inconsistent with this article, as may be proper
and necessary for its enforcement.

(14) The board shall review and approve by rules and
regulations the establishment of all classified-exempt
positions to assure consistent interpretation of the
provisions of this article.

The provisions of this section are subject to any
modifications contained in chapter five-f of this code.
The board may include in the rules provided for in this
article such provisions as are necessary to conform to
regulations and standards of any federal agency
governing the receipt and use of federal grants-in-aid by
any state agency, anything in this article to the contrary
notwithstanding. The board and the director shall see
that rules and practices meeting such standards are in
effect continuously after the effective date of this article.
CHAPTER 175
(S. B. 159—By Senator Wooton)

[Passed March 3, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to audits of corporations, associations or other organizations that receive state funds or grants; and providing for certain audits by the legislative auditor.

Be it enacted by the Legislature of West Virginia:

That article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

1 Any corporation, association or other organization in West Virginia, whether nonprofit or for profit, which receives state funds or grants in the amount of fifteen thousand dollars or more shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office, at no cost to the grantee.
AN ACT to amend and reenact section twenty-three, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the governor to transfer funds from the West Virginia economic development authority insurance fund to a special economic development fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-23. Special highway fund; appropriations from fund.

(a) There is hereby created a special fund in the state treasury which shall be designated and known as the "West Virginia special highway fund." The special highway fund shall consist of (i) all funds allocated and disbursed to the state department of highways by the parkways authority, including without limitation the proceeds of any parkway revenue bonds or revenue refunding bonds issued by the parkways authority pursuant to sections eleven, twenty-one or twenty-two of this article, in repayment of the amount of state funds used to upgrade the West Virginia Turnpike to federal interstate standards, (ii) any appropriations, grants, gifts, contributions or other revenues received by the special highway fund from any source, and (iii) all interest earned on moneys held in the fund. When any funds are received by the state department of highways
from the parkways authority pursuant to this section, they shall be paid into the state treasury by the commissioner of the department of highways and credited to the special highway fund, and shall be disbursed in the manner set forth in subsections (b) and (c) of this section. The special highway fund shall not be treated by the auditor and treasurer as part of the state road fund or as part of the general revenues of the state.

(b) The governor shall have the authority to transfer to the insurance fund created in section eight, article fifteen, chapter thirty-one of this code, on any date or dates after the enactment of this section, up to thirty-five million dollars of the funds received or earned by the special highway fund, which funds may be used and applied by the West Virginia economic development authority in the manner and to the extent set forth in article fifteen of said chapter thirty-one. On or before the thirty-first day of December, one thousand nine hundred ninety-four, the economic development authority shall retransfer to the special highway fund the thirty-five million dollars advanced to the insurance fund pursuant to this section. All interest earned on the thirty-five million dollars while being held in the insurance fund shall remain in, and be the property of, said insurance fund: Provided, That on and after the first day of July, one thousand nine hundred ninety-two, the governor shall have the authority to transfer six million dollars from the insurance fund created in section eight, article fifteen, chapter thirty-one of this code to a special fund hereby created in the state treasury and designated “the West Virginia economic development fund.” Expenditures from the fund are to be made only in accordance with appropriations by the Legislature.

(c) Upon the transfer of thirty-five million dollars to the insurance fund as provided in subsection (b) of this section, the Legislature shall annually appropriate all or any part of the balance of the funds deposited in the special highway fund for the construction, reconstruction, improvement, maintenance or repair of any
parkway project or projects: \textit{Provided}, That all of such funds shall be appropriated to (i) the upgrading or addition of interchanges; (ii) the construction of expressways or feeder roads; or (iii) the upgrading or construction of information centers, visitors' centers, rest stops, or any combination thereof, and that all such feeder roads, expressways, interchanges, information centers, visitors' centers or rest stops shall connect to the West Virginia Turnpike and within seventy-five air miles of the West Virginia Turnpike as it existed on the effective date of this legislation, or any subsequent expressway, turnpike or feeder road constructed pursuant to this subsection. The appropriation of funds pursuant to this subsection shall be expended on more than one project.

\textbf{CHAPTER 177}


[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

\textbf{AN ACT} to amend and reenact section three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying provisions concerning motor vehicles transporting recycling materials.

\textit{Be it enacted by the Legislature of West Virginia:}

That section 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 to read as follows:

\textbf{ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.}

\textbf{§24A-1-3. Exemptions from chapter.}

1 The provisions of this chapter, except where specifically otherwise provided, shall not apply to:

3 (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 promul-
gated 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 transporta-
tion of agricultural or horticultural products, livestock,
poultry and dairy products from the farm or orchard on
which they are raised or produced to markets, process-
ing 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 transporta-
tion 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 transporta-
tion 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;

(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; and
(9) Motor vehicles owned, leased by or leased to any person and used exclusively for the transportation of processed source-separated recycled materials, generated by commercial, institutional and industrial customers, transported free of charge from such customers to a facility for further processing: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission.

CHAPTER 178
(Com. Sub. for S. B. 512—By Senators Burdette, Mr. President and Boley, By Request of the Executive)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-c, relating to the division of public transit, its creation, its designation, its powers and duties; creation of public transit advisory council; and assistance to be provided by other state agencies.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen-c, to read as follows:

ARTICLE 16C. DIVISION OF PUBLIC TRANSIT.

§17-16C-1. Creation of division.

§17-16C-2. Designation of department.

§17-16C-3. Powers and duties of the division.

§17-16C-4. Public transit advisory council.

§17-16C-5. Assistance of other state agencies.

§17-16C-1. Creation of division.

The division of public transit is hereby created and is under the supervision of the secretary of transportation pursuant to the provisions of chapter five-f of this code.
§17-16C-2. Designation of department.

The department of transportation through the division of public transit is hereby designated as the agency of this state responsible for administering all federal and state programs relating to public transportation.

§17-16C-3. Powers and duties of the division.

The division has the power to:

(a) Assist in the development of improved public transportation facilities, services, equipment, techniques and methods, with the cooperation of transportation carriers, both public and private;

(b) Enhance the mobility of all residents of the state, particularly those who by age, income or physical limitation experience serious transportation disadvantages;

(c) Manage publicly funded transportation resources in a cost effective manner and endeavor to achieve an increased ridership with available resources;

(d) Establish a system to adequately coordinate and distribute publicly funded transportation services within the state, including, but not limited to, transportation services for senior citizens, for participants in head start programs, for disabled citizens and for private nonprofit organizations and to establish a pilot project or projects as an initial part of implementing a system of coordination and distribution;

(e) Maintain a cooperative working relationship with public and private transportation providers, private nonprofit organizations, local planning and development councils, other state agencies and the federal government;

(f) Coordinate and assist various public and private transportation entities in strengthening their development and operation of public transportation facilities and services;

(g) Coordinate with other states and the federal government the planning, construction, operation and
maintenance of public transportation facilities in the
state having an interstate impact;

(h) Acquire, plan, hold, construct, improve, maintain
and operate, own or lease, either in the capacity of lessor
or lessee, all facilities necessary or incidental thereto for
the operation of public transportation systems in the
state;

(i) Apply for and receive from the federal govern-
ment or from any other person, corporation, association
or other entity, any grants in aid or gifts to be used for
public transportation related purposes;

(j) Provide financial assistance to local transportation
agencies to the extent authorized by the Legislature and
federal grants: Provided, That no county or local
government may reduce the level of funding for
transportation services in place upon the effective date
of this section and be eligible to receive financial
assistance pursuant to this section;

(k) Enter into contracts with other agencies of the
state, other public bodies, private firms or individuals
to provide technical services or public transportation
related services;

(l) Exercise or perform any power, duty, responsibil-
ity or function in carrying out public transportation
related activities which are essential to the completion
of the projects;

(m) Insure local matching funds with state or local
money, or both, for federal assistance projects; and

(n) Implement rules necessary to accomplish its
assigned duties.

§17-16C-4. Public transit advisory council.

There is hereby created the West Virginia public
transit advisory council which shall consist of eleven
members, selected by the governor, who shall serve for
two-year terms commencing on the first day of April,
one thousand nine hundred ninety-two, and who shall
serve at the will and pleasure of the governor. The
membership of the council shall be broadly representa-
Provided, That no more than four of the members of the council shall reside in the same congressional district. No more than six members may be of the same political party. The members of the council shall serve without compensation and without provision for their expenses related to the work of the council. The council shall provide consultation, on an advisory basis, to the division of public transit on matters related to the implementation of the pilot program or programs referred to in subdivision (d), section three of this article.

§17-16C-5. Assistance of other state agencies.

Notwithstanding any other provision of this code to the contrary, at the division’s request and as mutually agreed upon, other state departments, divisions or agencies may enter into agreements with the division to assist or undertake projects that are beneficial to public transportation. All expenses and other requirements connected with the projects remain the responsibility of the division of public transit.

CHAPTER 179
(H. B. 4428—By Delegate D. Miller)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vaccination of dogs and cats for rabies; and establishing requirements for rabies vaccination certificates.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-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:
§19-20A-4. Vaccination tag and certificate.

Each person vaccinating a dog or cat for rabies shall provide a "certificate of rabies vaccination" which shall contain the following information:

(a) Name of the county where the owner of the animal resides;
(b) Vaccination tag number;
(c) Identification of the animal by color, weight, breed, age and sex;
(d) Name, address and telephone number of the owner;
(e) Type of vaccine, the manufacturer of the vaccine and the serial number;
(f) Date of the vaccination;
(g) Identification of the veterinarian, doctor of medicine or person administering the vaccination;
(h) Such other information as the commissioner of agriculture may require.

The owner of the animal shall retain the original certificate of vaccination in his or her records. Copies of the certificate or a computer printout that contains the information required above shall be filed with the person administering the vaccination and the clerk of the county commission in the county where the owner of the animal resides.

Tags to be furnished by the county commission shall be of a distinctive and easily recognized color, and shall have thereon engraved, or stamped, the year of vaccination and the number indicating the record above described. Such tag shall be securely fastened to the collar worn by the dog and shall be given to the owner by the veterinarian, the doctor of medicine or the person vaccinating the dog or cat at the time of vaccination.
CHAPTER 180
(S. B. 448—By Senators Wiedebusch, Minard, Macnaughton, Withers, Brackenrich, Burdette, Mr. President, and Whitlow)

[Passed March 7, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the West Virginia recreational trails system; the “West Virginia Rails to Trails Program”; establishing a state rail bank procedure; powers and duties of the division of tourism and parks and railroad maintenance authority; and establishing limited liability for adjacent landowners.

Be it enacted by the Legislature of West Virginia:

That chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. WEST VIRGINIA RAILS TO TRAILS PROGRAM.

§5B-1A-1. Purpose.

§5B-1A-2. Rails to trails program.

§5B-1A-3. Definitions.

§5B-1A-4. Powers and duties of the division.

§5B-1A-5. Railroad maintenance authority.

§5B-1A-6. Abandoned rights-of-way owned by the state prior to effective date of article.

§5B-1A-7. Railroad rights-of-way preservation.

§5B-1A-8. Limitation on liability of owner from whom state acquires land or interest therein.

§5B-1A-9. Limitation on liability of persons making land available for trail use without charge.

§5B-1A-1. Purpose.

The Legislature hereby declares that the long-term value to the public of retaining networks of abandoned railroad corridor lines is substantial, not only for the preservation of corridors for future rail transportation uses, but in terms of providing interim recreational use, providing public open space and linking together other
community areas and recreational spaces, providing for efficient and convenient placement of underground utilities and telecommunication lines, providing environmental greenways and wildlife habitat, providing public access to other forms of recreation and improving economic development opportunities associated with all of the above listed multiple uses.

§5B-1A-2. Rails to trails program.

There is established within the division of tourism and parks the "West Virginia Rails to Trails Program", the purpose of which is to acquire or assist with the acquisition of, and to develop or assist with the development of, abandoned railroad rights-of-way for interim use as public nonmotorized recreational trails.

§5B-1A-3. Definitions.

(1) "Abandoned railroad rights-of-way" means land on which discontinuance of rail service has been authorized by the interstate commerce commission.

(2) "Division" means the division of tourism and parks.

(3) "Nonmotorized recreational trail use" means bicycle, hiking, cross-country skiing, horseback riding, horse drawn wagon, jogging or other similar activities.

(4) "Rail bank" means the holding intact of an abandoned railroad right-of-way for future railroad service.

(5) "Rail trail" means an abandoned railroad right-of-way utilized in the interim as a public nonmotorized recreational trail.

§5B-1A-4. Powers and duties of the division.

The commissioner of the division of tourism and parks is authorized to:

(1) Enter into agreements with any person on behalf of the state to acquire an interest in any abandoned railroad right-of-way, and to develop, maintain or promote any rail trails created pursuant to the provisions of this article or already existing and under the
§5B-1A-5. Railroad maintenance authority.

(a) The railroad maintenance authority, as created pursuant to the provisions of section four, article eighteen, chapter twenty-nine of this code, shall hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by the state, and utilized for interim nonmotorized recreational trail use pursuant to the provisions of this article. The railroad maintenance authority may, at the option of a political subdivision of this state, hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by such political subdivision, and utilized for interim nonmotorized recreational trail use. Any provision of article one-a, chapter twenty of this code to the contrary notwithstanding, the public land corporation shall not be vested with title to any abandoned railroad right-of-way which becomes vested in the state pursuant to the provisions of this article.

(b) The railroad maintenance authority may, at the request of the commissioner of the division of tourism and parks, acquire an interest in an abandoned railroad right-of-way to be used as a rail trail, in accordance with the provisions of section six, article eighteen, chapter twenty-nine of this code.
(c) The railroad maintenance authority shall issue a rail bank certificate for each abandoned railroad right-of-way held by the railroad maintenance authority for interim nonmotorized recreational purposes in accordance with the provisions of section six of this article.

§5B-1A-6. Abandoned rights-of-way owned by the state prior to effective date of article.

(a) No abandoned railroad right-of-way acquired by the state prior to the effective date of this article and used as a rail trail may be used for any purpose that would unreasonably limit the ability to restore rail service over the right-of-way if such service were to be required in the future.

(b) Any and all abandoned railroad rights-of-way acquired by the state prior to the effective date of this article are hereby declared held for railroad transportation purposes as of the date of acquisition, until, by executive order of the governor, the right-of-way is declared no longer suitable for a public transportation purpose as a railroad right-of-way. Such abandoned railroad rights-of-way shall not revert by operation of law to any other ownership while being held for future railroad use in accordance with the provisions of this article.

§5B-1A-7. Railroad rights-of-way preservation.

(a) Upon receipt of a notice to abandon a railroad right-of-way by the owner thereof, the commissioner may enter into an agreement with the owners of the railroad right-of-way to preserve intact the railroad right-of-way for a period of time not to exceed three months to afford the state sufficient time to evaluate the potential for use by the state for the purposes of this article, and the funds available for acquisition.

(b) With regard to any land or an interest therein actually acquired by the state pursuant to the provisions of this article:

(1) Every specifically identified railroad right-of-way, including all bridges still in place, shall remain intact except for necessary modifications required to
adapt the right-of-way for use as a nonmotorized recreational trail, except for where it is necessary for a motorized vehicle to cross the trail;

(2) Any abandoned railroad right-of-way shall be used solely for nonmotorized recreational purposes, subject to such right-of-way being made available for future rail use, if necessary; and

(3) Any abandoned railroad right-of-way acquired by the state pursuant to the provisions of this article shall be deemed to be held for railroad use and in continuation of the railroad easement and shall not revert by operation of law to any other ownership during the term of the agreement or during the term of a rail bank certificate issued pursuant to section five of this article.

§5B-1A-8. Limitation on liability of owner from whom state acquires land or interest therein.

During the interim period when an abandoned railroad right-of-way is held by the state for possible future railroad use, the owner of the railroad right-of-way from whom the state acquired the land or an interest therein is relieved from civil liability for any personal injury or property damage occurring on the right-of-way during such interim period, which might otherwise arise from ownership.

§5B-1A-9. Limitation on liability of persons making land available for trail use without charge.

(a) General rule. — Except as specifically recognized or provided in subsection (d) of this section, an owner or lessee who provides the public with land for use as a trail under this article or who owns land adjoining any trail developed under this article owes no duty of care to keep the land safe for entry or use by others for recreational purposes, or to give any warning to persons entering or going on the trail or adjoining land of a dangerous condition, use, structure or activity thereon.

(b) Owner. — Any person, public agency or corporation owning an interest in land utilized for recreational trail purposes pursuant to this article shall be treated as an “owner” for purposes of this article.
(c) Specific limitations on liability. — Except as specifically recognized by or provided in subsection (d) of this section, an owner or lessee who provides the public with land or who owns adjoining land to the trail under this article is not, by providing that trail or land or owning land adjoining the trail:

(1) Presumed to extend any assurance that the land is safe for any purpose;

(2) Incur any duty of care toward a person who goes on that land; or

(3) Become liable for any injury to persons or property caused by an act or an act of omission of a person who goes on that land.

(d) Exception. —

(1) This section does not apply to the owner or lessee of the land used as a trail if there is any charge made or usually made for entering or using the trail or land, or any part thereof.

(2) This section does not apply to the owner of land adjoining a trail if there is any charge made or usually made by the owner of such adjoining land for using the trail or land, or any part thereof, or if any commercial or other activity relating to the use of the trail whereby profit is derived from the patronage of the general public is conducted on such adjoining land, or on any part thereof.

(3) The foregoing applies whether the person going on the land provided or adjoining is an invitee, licensee, trespasser or otherwise.

(e) This article does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions of this article do not create or increase the liability of any person.
AN ACT to amend and reenact section six, article seven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the social security agency; the contribution fund; moneys which go into the contribution fund; authorized expenditures from the fund; transfer of excess moneys from the fund; payment to the federal agency of funds; administration of the fund; and submission of estimates to the governor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. SOCIAL SECURITY AGENCY.

§5-7-6. Contribution fund; appropriations thereto.

1 (a) There is hereby established a special fund to be known as the contribution fund. The fund shall consist of and there shall be deposited in the fund: (1) All contributions, interest and penalties collected under sections four and five of this article; (2) all moneys appropriated to the fund under this article; (3) all moneys paid to the state pursuant to any agreement entered into under subsection (b), section three of this article; (4) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (5) interest earned upon any moneys in the fund; and (6) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and
property or securities belonging thereto, and may
designated, which are necessary to the administration
thereof consistent with the provisions of this article.

(b) The contribution fund shall be established and
held separate and apart from any other funds or moneys
of the state and shall be used and administered
exclusively for the purpose of this article: Provided,
That amounts collected which are found from time to
time to exceed the funds needed for the purposes set
forth in this article may be transferred to other accounts
or funds and redesignated for other purposes by
appropriation of the Legislature: Provided, however,
That any other withdrawals from the fund shall be
made for, and solely for (1) payment of amounts
required to be paid to the federal agency pursuant to
an agreement entered into under section three; (2)
payment of refunds provided for in subsection (c),
section four of this article; and (3) refunds of overpay­
ments, not otherwise adjustable, made by a political
subdivision or instrumentality.

(c) From the contribution fund the custodian of the
fund shall pay to the federal agency such amounts and
at such time or times as may be directed by the state
agency in accordance with any agreement entered into
under section three of this article and applicable federal
law.

(d) The treasurer of the state shall be ex officio
treasurer and custodian of the contribution fund and
shall administer the fund in accordance with the
provisions of this article and the directions of the state
agency and shall pay all warrants drawn upon it in
accordance with the provisions of this section and with
such regulations as the state agency may prescribe
pursuant thereto.

(e) (1) There are hereby authorized to be approp­
riated annually to the contribution fund, in addition to
the contributions collected and paid into the contribu­
tion fund under sections four and five, to be available
for the purposes of subsections (b) and (c) of this section
59 until expended, such additional sums as are found to be
60 necessary in order to make the payments to the federal
61 agency which the state is obligated to make pursuant
62 to an agreement entered into under section three of this
63 article.

64 (2) The state agency shall submit to the governor, at
65 least ninety days in advance of the beginning of each
66 regular session of the Legislature, an estimate of the
67 amounts authorized to be appropriated to the contribu-
68 tion fund by paragraph (1) of this subsection for the next
69 appropriation period.

CHAPTER 182
(S. B. 105—By Senator Blatnik)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and five-a, article
five-f, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to
amend and reenact sections two and four, article five-
 of said chapter; and to amend and reenact sections two
and thirteen, article nine of said chapter, relating to
solid waste assessment fees exemptions; defining terms;
imposing fees, collection, payment requirements, re-
cords, personal liability, officer liability, owner or
operator liability; primary, secondary, joint and several
liability; including by reference tax administration and
procedure; providing for exemptions from fees; dedicat-
ing proceeds; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two and five-a, article five-f, chapter twenty
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted; that
sections two and four, article five-n of said chapter be
amended and reenacted; and that sections two and thirteen,
article nine of said chapter be amended and reenacted, all to
read as follows:
ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2. Definitions.

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

(a) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article.

(b) “Backhauling” means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

(c) “Chief” means the chief of the section of waste management of the division of natural resources.

(d) “Commercial recycler” means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

(e) “Municipal solid waste incineration” means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

(f) “Commercial solid waste facility” means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include the legitimate reuse and
recycling of materials for structural fill, road base, mine
reclamation and similar applications.

(g) "Division" means the division of natural resources.

(h) "Director" means the director of the division of
natural resources.

(i) "Open dump" means any solid waste disposal
which does not have a permit under this article, or is
in violation of state law, or where solid waste is disposed
in a manner that does not protect the environment.

(j) "Person", "persons" or "applicant" mean any
industrial user, public or private corporation, institu-
tion, 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 commis-
sion; municipal corporation; industry; sanitary district;
public service district; drainage district; soil conserva-
tion district; watershed improvement district; partner-
ship; trust; estate; person or individual; group of persons
or individuals acting individually or as a group; or any
legal entity whatever.

(k) "Sludge" means any solid, semisolid, residue or
precipitate, separated from or created by a municipal,
commercial or industrial waste treatment plant, water
supply treatment plant or air pollution control facility
or any other such waste having similar origin.

(l) "Solid waste" means any garbage, paper, litter,
refuse, cans, bottles, waste processed for the express
purpose of incineration, sludge from a waste treatment
plant, water supply treatment plant or air pollution
control facility, other discarded material, including
offensive or unsightly matter, solid, liquid, semisolid or
contained liquid or gaseous material resulting from
industrial, commercial, mining or community activities
but does not include solid or dissolved material in
sewage, or solid or dissolved materials in irrigation
return flows or industrial discharges which are point
sources and have permits under article five-a of this
chapter, or source, special nuclear or byproduct mate-
solid waste material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to such chapters. "Solid waste" shall not include materials which are recycled by being used or reused in an industrial process to make a product, as an effective substitute for commercial products, or are returned to the original process as a substitute for raw material feedstock.

(m) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

(n) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code.

(o) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(p) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten thousand and thirty thousand tons of solid waste per
month. Class A facility shall include two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(q) "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director of the division of natural resources may specify, including the following: Spouses, parents and children and siblings.

(r) "Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(s) "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

(t) "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

(u) "Materials recovery facility" means any solid waste facility at which solid wastes are manually or mechanically shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

§20-5F-5a. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected and paid as follows: (1) One dollar and
twenty-five cents per ton or part thereof of solid waste; and (2) one additional dollar per ton or part thereof of solid waste for solid waste generated from sources outside the solid waste disposal shed in which the solid waste disposal facility is located. The fee imposed by this section shall be in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall be required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until remitted to the tax commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she shall be personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and
payable to the tax commissioner, and to keep the amount
of such fees in such account until remitted to the tax
commissioner. Such notice shall remain in effect until
a notice of cancellation is served on the operator or
owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal
facility leases the solid waste facility to an operator, the
operator shall be primarily liable for collection and
remittance of the fee imposed by this section and the
owner shall be secondarily liable for remittance of the
fee imposed by this section. However, if the operator
fails, in whole or in part, to discharge his obligations
under this section, the owner and the operator of the
solid waste facility shall be jointly and severally
responsible and liable for compliance with the provi-
sions of this section.

(7) If the operator or owner responsible for collecting
the fee imposed by this section is an association or
corporation, the officers thereof shall be liable, jointly
and severally, for any default on the part of the
association or corporation, and payment of the fee and
any additions to tax, penalties and interest imposed by
article ten, chapter eleven of this code may be enforced
against them as against the association or corporation
which they represent.

(8) Each person disposing of solid waste at a solid
waste disposal facility and each person required to
collect the fee imposed by this section shall keep
complete and accurate records in such form as the tax
commissioner may require in accordance with the rules
and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by
this section and section twenty-two, article five, chapter
seven of this code shall be considered a necessary and
reasonable cost for motor carriers of solid waste subject
to the jurisdiction of the public service commission
under chapter twenty-four-a of this code. Notwithstand-
ing any provision of law to the contrary, upon the filing
of a petition by an affected motor carrier, the public
service commission shall, within fourteen days, reflect
the cost of said fee in said motor carrier's rates for solid
waste removal service. In calculating the amount of said
fee to said motor carrier, the commission shall use the
national average of pounds of waste generated per
person per day as determined by the United States
Environmental Protection Agency.

(d) Definition of solid waste disposal facility. — For
purposes of this section, the term "solid waste disposal
facility" means any approved solid waste facility or open
dump in this state, and includes a transfer station when
the solid waste collected at the transfer station is not
finally disposed of at a solid waste disposal facility
within this state that collects the fee imposed by this
section. Nothing herein shall be construed to authorize
in any way the creation or operation of or contribution
to an open dump.

(e) Exemptions. — The following transactions shall be
exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal
facility by the person who owns, operates or leases the
solid waste disposal facility if the facility is used
exclusively to dispose of waste originally produced by
such person in such person's regular business or
personal activities or by persons utilizing the facility on
a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individ-
ual not in the business of hauling or disposing of solid
waste on such days and times as designated by the
director of the division of natural resources is exempt
from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal
facility by a commercial recycler which disposes of
thirty percent or less of the total waste it processes for
recycling. In order to qualify for this exemption each
commercial recycler must keep accurate records of
incoming and outgoing waste by weight. Such records
must be made available to the appropriate inspectors
from the division of natural resources of solid waste authority, upon request.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said sections were applicable only to the fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited at least monthly in an account designated by the director of the division of natural resources. The director shall allocate twenty-five cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected and shall deposit the total amount so allocated into the “Solid Waste Reclamation and Environmental Response Fund” to be expended for the purposes hereinafter specified. The first one million dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Solid Waste Enforcement Fund” and expended for the purposes hereinafter specified. The next two hundred fifty thousand dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Resource Recovery — Solid Waste Disposal Authority Reserve Fund” which shall be renamed and hereinafter referred to as the “Solid Waste Management Board Reserve Fund”, and expended for the purposes hereinafter specified: Provided, That in any year in which the water development authority determines that the solid waste management board reserve fund is adequate to
defer any contingent liability of the fund, the water
development authority shall so certify to the director of
the division of natural resources and the director shall
then cause no less than fifty thousand dollars nor more
than two hundred fifty thousand dollars to be deposited
to the fund: Provided, however, That in any year in
which the water development authority determines that
the solid waste management board reserve fund is
inadequate to defer any contingent liability of the fund,
the water development authority shall so certify to the
director of the division of natural resources and the
director shall then cause not less than two hundred fifty
thousand dollars nor more than five hundred thousand
dollars to be deposited in the fund: Provided further,
That if a facility owned or operated by the state of West
Virginia is denied site approval by a county or regional
solid waste authority, and if such denial contributes, in
whole or in part, to a default, or drawing upon a reserve
fund, on any indebtedness issued or approved by the
solid waste management board, then in that event the
solid waste management board or its fiscal agent may
withhold all or any part of any funds which would
otherwise be directed to such county or regional
authority and shall deposit such withheld funds in the
appropriate reserve fund. The director of the division of
natural resources shall allocate the remainder, if any,
of said net proceeds among the following three special
revenue accounts for the purpose of maintaining a
reasonable balance in each special revenue account,
which are hereby continued in the state treasury:

(1) The “Solid Waste Enforcement Fund” which shall
be expended by the director of the division of natural
resources for administration, inspection, enforcement
and permitting activities established pursuant to this
article;

(2) The “Solid Waste Management Board Reserve
Fund” which shall be exclusively dedicated to providing
a reserve fund for the issuance and security of solid
waste disposal revenue bonds issued by the solid waste
management board pursuant to article twenty-six,
chapter sixteen of this code;
(3) The "Solid Waste Reclamation and Environmental Response Fund" which may be expended by the director of the division of natural resources for the purposes of reclamation, cleanup and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

(i) Findings. — In addition to the purposes and legislative findings set forth in section one of this article, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting such solid waste;

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.

(j) Severability. — If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(k) Effective date. — This section is effective on the first day of July, one thousand nine hundred eighty-eight.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-2. Definitions.
§20-5N-4. Solid waste assessment fee; penalties.
§20-5N-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) “Commercial recycler” means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility;

3 (2) “Cost of project” includes the cost of the services authorized in sections three and ten of this article, property, material and labor which are essential thereto, financing charges, interest during construction and all other expenses, including legal fees, trustees’, engineers’ and architects’ fees which are necessarily or properly incidental to the program;

4 (3) “Director” means the director of the division of natural resources of the department of commerce, labor and environmental resources, or his or her authorized representative;

5 (4) “Landfill” means any solid waste facility for the disposal of solid waste on land, and also means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located;

6 (5) “Permittee” means a person who has or should obtain a permit for a commercial solid waste facility that is a landfill;

7 (6) “Project” means the providing of closure assistance to one or more landfills under this article.

The definitions provided in section two, article five of this chapter, to the extent they are applicable, apply in this article.
§20-5N-4. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of four dollars per ton or like ratio on any part thereof of solid waste, except as provided in subsections (e) and (i) of this section: Provided, That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that such facility is required by the public service commission to set aside for the purpose of closure of that portion of the facility required by the solid waste management regulations to close by the thirtieth day of November, one thousand nine hundred ninety-one or ninety-two, including any extensions authorized pursuant to section eight, article five-f of this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.
(4) If any operator fails to collect the fee imposed by this section, he or she shall be personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof shall be liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep
complete and accurate records in such form as the tax commissioner may require in accordance with the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section, the term “solid waste disposal facility” means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources as exempt
from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division of natural resources of solid waste authority, upon request.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if said sections were applicable only to the fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — Fifty percent of the proceeds of the fee collected pursuant to this article in excess of thirty thousand tons per month from any landfill which is permitted to accept in excess of thirty thousand tons per month pursuant to section four-d, article five-f of this chapter shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to section seven of this article.

(i) Additional fee for out-of-shed waste. — In addition to the four-dollar fee imposed pursuant to the provisions of subsection (a) of this section, on and after the first day of January, one thousand nine hundred ninety-three,
there shall be imposed an additional two-dollar fee on
the disposal of solid waste generated outside of the
wasteshed wherein the solid waste disposal facility is
located.

(j) Effective date. — This section is effective on the
first day of January, one thousand nine hundred ninety-
two.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE
AUTHORITIES.

§20-9-13. Solid waste assessment interim fee; regulated motor carriers;
dedication of proceeds; criminal penalties.


1 Unless the context clearly requires a different
2 meaning, as used in this article, the terms:

3 (a) “Approved solid waste facility” means a commer-
4 cial solid waste facility or practice which has a valid
5 permit or compliance order under article five-f of this
6 chapter.

7 (b) “Commercial solid waste facility” means any solid
8 waste facility which accepts solid waste generated by
9 sources other than the owner or operator of the facility
10 and shall not include an approved solid waste facility
11 owned and operated by a person for the sole purpose of
12 disposing of solid wastes created by that person or that
13 person and another person on a cost-sharing or nonprofit
14 basis and shall not include the legitimate reuse and
15 recycling of materials for structural fill, road base, mine
16 reclamation and similar applications.

17 (c) “Commercial recycler” means any person, corpo-
18 ration or business entity whose operation involves the
19 mechanical separation of materials for the purpose of
20 reselling or recycling at least seventy percent by weight
21 of the materials coming into the commercial recycling
22 facility.

23 (d) “Class A facility” means a commercial solid waste
24 facility which handles an aggregate of between ten and
25 thirty thousand tons of solid waste per month. Class A
facility shall include two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(e) "Class B facility" means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand persons, but which does not receive solid waste exceeding an aggregate of ten thousand tons per month. Class B facilities do not include construction/demolition facilities: Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of chapter twenty-nine-a of this code.

(f) "Compliance order" means an administrative order issued pursuant to section five, article five-f of this chapter authorizing a solid waste facility to operate without a solid waste permit.

(g) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(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; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.
(i) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

(j) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" shall also not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

(k) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.
(l) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code.

(m) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource-recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(n) "Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(o) "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation, or any other method by which solid waste is incinerated.

(p) "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

(q) "Materials recovery facility" means any solid waste facility at which solid wastes are manually or mechanically shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

§20-9-13. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) Imposition. — Effective the first day of July, one
thousand nine hundred eighty-nine, a solid waste
assessment fee is hereby levied and imposed upon the
disposal of solid waste at any solid waste disposal facility
in this state to be collected at the rate of one dollar per
ton or part thereof of solid waste. The fee imposed by
this section shall be in addition to all other fees levied
by law.

(b) Collection, return, payment and record. — The
person disposing of solid waste at the solid waste
disposal facility shall pay the fee imposed by this
section, whether or not such person owns the solid waste,
and the fee shall be collected by the operator of the solid
waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time
the solid waste is delivered to the solid waste disposal
facility.

(2) The operator shall remit the fee imposed by this
section to the tax commissioner on or before the fifteenth
day of the month next succeeding the month in which
the fee accrued. Upon remittance of the fee, the operator
shall be required to file returns on forms and in the
manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees
collected under this section and shall hold them in trust
for the state until they are remitted to the tax
commissioner.

(4) If any operator fails to collect the fee imposed by
this section, he or she shall be personally liable for such
amount as he or she failed to collect, plus applicable
additions to tax, penalties and interest imposed by
article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully
account for, remit the fee or file returns with the fee
as required in this section, the tax commissioner may
serve written notice requiring such operator to collect
the fees which become collectible after service of such
notice, to deposit such fees in a bank approved by the
tax commissioner, in a separate account, in trust for and
payable to the tax commissioner, and to keep the amount
of such fees in such account until remitted to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof shall be liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section and section twenty-two, article five, chapter seven of this code shall be considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid
waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definition of solid waste disposal facility. — For purposes of this section, the term “solid waste disposal facility” means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing herein shall be construed to authorize in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions shall be exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person’s regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources as exempt from the fee imposed pursuant to section five-a, article five-f of this chapter; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division of natural resources of solid waste...
authority, upon request.

(f) **Procedure and administration.** — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) **Criminal penalties.** — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) **Dedication of proceeds.** — The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited, at least monthly, in a special revenue account known as the “Solid Waste Planning Fund” which is hereby created. The solid waste management board shall allocate the proceeds of the said fund as follows:

1. Fifty percent of the total proceeds shall be divided equally among, and paid over to, each county solid waste authority to be expended for the purposes of this article: 
   Provided, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

2. Fifty percent of the total proceeds shall be expended by the solid waste management board for:

   (A) Grants to the county or regional solid waste authorities for the purposes of this article; and

   (B) Administration, technical assistance or other costs of the solid waste management board necessary to implement the purposes of this article and article twenty-six, chapter sixteen of this code.
(i) *Severability.* — If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(j) *Effective date.* — This section is effective on the first day of July, one thousand nine hundred ninety.

**CHAPTER 183**

(H. B. 4524—By Delegates Rowe and J. Martin)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to the definition of wood waste and treatment of wood byproducts, wood residue and wood waste.

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

That article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-a, to read as follows:

**ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.**

§20-5F-2a. Special provision for wood waste.

(a) The purpose of this section is to allow for the combustion of wood waste without a solid waste facility permit and to allow facilities to use wood waste as an alternative fuel.

(b) "Wood waste" means wood residues from logging operations, sawmills, wood product manufacturing.
7 furniture making operations, recycling of wood products
8 and other industrial processes, but does not include
9 wood waste which contains hazardous constituents,
10 including copper chromium arsenate, which would
11 cause such wood waste to be regulated pursuant to
12 article five-e, chapter twenty of the code.
13 (c) For purposes of section two of this article and
14 section two, article nine of this chapter:
15 (1) Wood waste is not “solid waste” unless disposed of
16 at a solid waste facility or an open dump;
17 (2) Wood waste is a material which may be used as
18 an effective substitute for commercial products or raw
19 material feedstock.
20 (d) The use of incineration technologies in an energy
21 recovery incinerator for the purposes of combusting
22 wood waste is not prohibited and no solid waste facility
23 permit is required. The provisions of this section shall
24 not be construed to allow the combustion of wood waste
25 without a source permit from the air pollution control
26 commission if such permit is required by article twenty,
27 chapter sixteen of this code or the rules promulgated
28 thereunder.
29 (e) The division of natural resources, in consultation
30 with the air pollution control commission, may promul-
31 gate legislative rules, in accordance with the provisions
32 of chapter twenty-nine-a of this code, to effectuate the
33 purposes of this section.

CHAPTER 184
(H. B. 4149—By Delegates Douglas and Grubb)

[Passed February 20, 1992; in effect from passage. Approved by the Governor.]
of said chapter; to amend and reenact sections four, five and five-b, article eleven of said chapter; and to amend and reenact section one-h, article two, chapter twenty-four, relating to solid waste management; amending the date of expiration of division of health issued permits; revising the imposition of a fee; extending the deadline for closure assistance for single liner facilities; extending the application deadline for closure assistance for single liner facilities; decreasing the population requirement for municipalities to draft by ordinance a materials recovery facility; redefining “coal combustion byproduct”; allowing the public service commission to add additional classified exempt employees for solid waste program purposes and making other technical corrections.

Be it enacted by the Legislature of West Virginia:

That section five, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five and six, article five-n of said chapter be amended and reenacted; that sections four, five and five-b, article eleven of said chapter be amended and reenacted; and that section one-h, article two, chapter twenty-four be amended and reenacted, all to read as follows:

Chapter
20. Natural Resources.

CHAPTER 20. NATURAL RESOURCES.

Article
5F. Solid Waste Management Act.
5N. Solid Waste Landfill Closure Assistance Program.
11. West Virginia Recycling Program.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-5. Prohibitions; permits required; priority of disposal.

1 (a) Open dumps are prohibited and it shall be unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on his property unless that open
dump is under a compliance schedule approved by the chief. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm shall not be deemed to constitute a violation of this section if such open dump did not constitute a violation of law on the first day of January, one thousand nine hundred eighty-eight, and unauthorized dumps which were created by unknown persons shall not constitute a violation of this section: Provided, That no person shall contribute additional solid waste to any such dump after the first day of April, one thousand nine hundred eighty-eight, except that the owners of the land on which unauthorized dumps have been or are being made shall not be liable for such unauthorized dumping unless such landowners refuse to cooperate with the division of natural resources in stopping such unauthorized dumping.

(b) It shall be unlawful for any person, unless he holds a valid permit from the division to install, establish, construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.

(c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article five-a and the rules promulgated thereunder, so that only a single permit shall be required of a solid waste facility under these two articles. Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That the chief may administratively extend a permit beyond its five-year term if the approved solid waste facility is in compliance with this article, its rules and article five-a of this chapter and the rules promulgated thereunder: Provided, however, That such administrative extension
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46 may not be for more than one year. Upon expiration of
47 a permit, renewal permits may be issued in compliance
48 with rules and regulations promulgated by the director
49 of the division of natural resources.

50 (d) All existing permits of the division of health for
51 solid waste facilities under section nine, article one,
52 chapter sixteen of this code shall continue in full force
53 and effect until a permit is issued for that approved
54 solid waste facility under this article: Provided, That all
55 such existing permits of the division of health shall
56 expire within five years of the tenth day of June, one
57 thousand nine hundred eighty-three. Within four years
58 of the tenth day of June, one thousand nine hundred
59 eighty-three, all persons holding such division of health
60 permits shall apply to the chief for a permit under this
61 article: Provided, however, That the chief may require
62 persons holding such existing health division permits to
63 reapply under this section prior to four years from the
64 tenth day of June, one thousand nine hundred eighty-
65 three, if persistent violations of this article, any permit
66 term or condition, orders or rules promulgated under
67 this article, exist at that facility. Notwithstanding any
68 other provision contained in this subsection, the division
69 of natural resources may enter an extension order for
70 a period of two years while an application for a permit
71 pursuant to this article is pending.

72 (e) No person may dispose in the state of any solid
73 waste, whether such waste originates in state or out of
74 state, in a manner which endangers the environment or
75 the public health, safety or welfare as determined by the
76 director of the division of natural resources: Provided,
77 That the carcasses of dead animals may be disposed of
78 in any solid waste facility or in any other manner as
79 provided for in this code. Upon request by the director
80 of the division of natural resources, the director of the
81 division of health shall provide technical advice concern-
82 ing the disposal of solid waste or carcasses of dead
83 animals within the state.

84 (f) To the extent permissible by law, a commercial
85 solid waste facility shall first ensure that the disposal
86 needs of the county, or if applicable the region, in which
it is located are met. If the county solid waste authority, or regional solid waste authority if applicable, in which the facility is located determines that the present or future disposal needs of the county, or if applicable the region, are not being, or will not be, met by the commercial solid waste facility, such authority may apply to the director of the division of natural resources to modify the applicable permit in order to reduce the total monthly tonnage of out of county waste, or if applicable, out of region waste, the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage generated by the county, or if applicable the region, in which the facility is located.

(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, not otherwise allowed by an existing permit, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division of natural resources in accordance with the provisions of this article.

(h) The director of the division of natural resources shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code which reflect the purposes as set forth in this article.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

§20-5N-6. Application for closure assistance.

§20-5N-5. Limitation on assistance.

1 The director may provide closure assistance only to permittees who meet the following requirements:

3 (1) The permittee of a landfill that does not have a
liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-one, except for those landfills allowed to accept solid waste pursuant to the provisions of section eight, article five-f of this chapter and ceases accepting solid waste on or before the extension deadline as determined by the director; or the permittee of a landfill that has only a single liner and ceases accepting solid waste on or before the thirtieth day of September, one thousand nine hundred ninety-three;

(2) The permittee of the landfill must demonstrate to the satisfaction of the director that it does not have the financial resources on hand or the ability to generate the amounts needed to comply, in a timely manner, with the closure requirements provided in article five-f of this chapter and any rules promulgated pursuant thereto; and

(3) The permittee must maintain a permit for the landfill pursuant to the provisions of section five, article five-f of this chapter and maintain the full amount of the bond required to be submitted pursuant to section five-b, article five-f of this chapter.

§20-5N-6. Application for closure assistance.

(a) The director shall provide an application and application procedure for all permittees of solid waste landfills desiring to receive closure assistance under this article. At a minimum the procedure shall require that:

(1) The permittee of a landfill that does not have a liner system must submit its application no later than the fifteenth day of September, one thousand nine hundred ninety-two, except the permittee of a landfill that has been allowed to accept solid waste pursuant to the provisions of section eight, article five-f of this chapter must submit its application no later than the eleven months following the expiration of the extension; and

(2) The permittee of a landfill that has only a single liner system must submit its application no later than
eleven months following the date of closure of the landfill.

(b) The director shall, within a reasonable time after receipt of a complete application, notify the applicant of the acceptance or rejection of the application. If the application is rejected the notice shall contain the reasons for the rejection.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-4. Recycling plans.

§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

§20-11-5b. Solid and hazardous waste supplemental assessment fee.

§20-11-4. Recycling plans.

(a) Each county or regional solid waste authority, as part of the comprehensive litter and solid waste control plan required pursuant to the provisions of section seven, article nine of this chapter, shall prepare and adopt a comprehensive recycling plan to assist in the implementation of the recycling goals in section three of this article.

(b) Each recycling plan required by this section shall include, but not be limited to:

(1) Designation of the recyclable materials that can be most effectively source separated in the region or county, which shall include at least three recyclable materials; and

(2) Designation of potential strategies for the collection, marketing and disposition of designated source separated recyclable materials in each region or county.

§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

(a) Within twelve months following the effective date of this section, each municipality described in subsection (b) of this section shall submit a proposal to the solid waste management board, consistent with the provisions
of this section, describing the establishment and
implementation of the mandatory recycling program.
The solid waste management board shall review the
submitted plans for consistency with the criteria
provided in this section, the county or regional solid
waste management plan and the statewide management
plan. The solid waste management board may make
suggested changes to the plan and shall provide
technical assistance to the municipalities in the devel-
opment of the plans.

(b) Within twenty-four months following the effective
date of this section, each municipality with a population
of ten thousand or more people, as determined by the
most recent decennial census by the Bureau of the
Census of the United States Department of Commerce,
shall establish and commence implementation of a
source separation and curbside collection program for
recyclable materials. Implementation may be phased in
over a six month time period. Such program shall
include, at a minimum, the following:

(1) An ordinance adopted by the governing body of
the municipality requiring that each person, partner-
ship, corporation or other entity in the municipality
shall separate at least three recyclable materials, as
deemed appropriate by the municipality, from other
solid waste: Provided, That the list of recyclables to be
separated may be adjusted according to whether the
generator is residential, commercial or other type of
establishment.

(2) A scheduled day, at least one per month, during
which separated materials are to be placed at the
curbside, or similar location, for collection.

(3) A system that collects recyclable materials from
the curbside, or similar location, at least once per
month: Provided, That to encourage full participation,
the program shall, to the maximum extent possible,
provide for the collection of recyclables at the same rate
of frequency, and simultaneous with, the regular
collection of solid waste.

(4) Provisions to ensure compliance with the ordi-
nance, including incentives and penalties.

(5) A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality, and incentives and penalties.

(6) Consultation with the county or regional solid waste authority in which the municipality is located to avoid duplication, ensure coordination of solid waste programs, and maximize the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of this section, a comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) Each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only such solid waste from which recyclable materials in accordance with said county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to section four of this article shall, to the extent practicable, be incorporated in said county's comprehensive recycling program.

(d) For the purposes of this article, recyclable
materials shall include, but not be limited to, steel and bi-metallic cans, aluminum, glass, paper and such other solid waste materials as may be specified by either the municipality or county commission with the advice of the county or regional solid waste authority.

(e) A comprehensive recycling program for solid waste may be established in any county of this state by:

(1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue.

A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election or in conjunction with any other countywide election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.

The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than seventy days before the election, order that the issue be placed on the ballot and referendum held at the next primary, general or special election to determine whether it is the will of the voters of said county that a policy of comprehensive recycling of solid waste be established in the county: Provided, That the petition bearing the necessary signatures has been filed with the county commission at least one hundred days prior to the election.

The ballot, or the ballot labels where voting machines
are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to establish a comprehensive recycling program for solid waste in _________________ County, West Virginia?

□ For Recycling

□ Against Recycling

(Place a cross mark in the square opposite your choice.)"

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within one hundred eighty days of said certification, establishing a comprehensive recycling program for solid waste in the county: Provided, That such program shall be implemented and operational no later than twelve months following said certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, said policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in _________________ County, West Virginia?

□ Continue Recycling

□ End Recycling
(Place a cross mark in the square opposite your choice.)"

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, said ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than thirty thousand persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: Provided, That such materials recovery facility shall be subject to approval by both the public service commission and the solid waste management board upon a finding by both the public service commission and the solid waste management board that the establishment of such materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

§20-11-5b. Solid and hazardous waste supplemental assessment fee.

(a) Imposition. — Effective the first day of January, one thousand nine hundred ninety-two, a solid and hazardous waste supplemental assessment fee is hereby levied and imposed upon the disposal of solid or hazardous waste at all solid waste or hazardous waste disposal facilities in this state, to be collected at the rate of twenty-five cents per ton or part thereof of solid or hazardous waste. The fee imposed by this section shall be in addition to all other fees levied by law.
(b) Collection, return, payment and records. — The person disposing of solid or hazardous waste at the solid or hazardous waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid or hazardous waste, and the fee shall be collected by the operator of the solid or hazardous waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid or hazardous waste is delivered to the solid or hazardous waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall be required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she shall be personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee, or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid or hazardous waste disposal facility leases the solid or hazardous waste
facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section.

However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid or hazardous waste disposal facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof shall be liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them and against the association or corporation which they represent.

(8) Each person disposing of solid or hazardous waste at a solid or hazardous waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section shall be considered a necessary and reasonable cost for motor carriers of solid or hazardous waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid or hazardous waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section:

(1) "Solid or hazardous waste disposal facility" means
any approved solid or hazardous waste facility or open
dump in this state and includes a transfer station when
the solid or hazardous waste collected at the transfer
station is not finally disposed of at a solid or hazardous
waste facility within this state that collects the fee
imposed by this section.

(2) "Coal combustion byproduct" means the residuals,
including fly ash, bottom ash, bed ash, and boiler slag
produced by coal-fired or coal/gas-fired electrical or
steam generating units. For nonelectrical steam gener-
ating units burning a combination of solid waste and
coal, a carbon monoxide level of less than or equal to
one hundred parts per million on a twenty-four hour
average basis is required for the byproducts to meet this
definition. The carbon monoxide level shall be calcu-
lated on a dry gas basis corrected to seven percent
oxygen; and

(3) "Sludge" means any solid, semisolid, residue or
precipitate, separated from or created by a municipal,
commercial or industrial waste treatment plant, water
supply treatment plant or air pollution control facility
or any other such waste having similar origin.

Nothing herein shall be construed to authorize in any
way the creation or operation of or contribution to an
open dump.

(e) Exemptions. — The following transactions shall be
exempt from the fee imposed by this section:

(1) Disposal of solid waste in which the recycling
assessment fee levied and imposed by section five-a of
this article has been paid;

(2) Disposal of sludge or coal combustion byproducts;

(3) Reuse or recycling of any solid or hazardous waste;

or

(4) Disposal of residential solid waste by an individual
not in the business of hauling or disposing of solid waste
on such days and times as designated by the director of
the division of natural resources by regulation as
exempt from the fee imposed pursuant to section five-
a, article five-f, chapter twenty of this code.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, to the hazardous waste emergency response fund established in article five-g of this chapter.

(i) Severability. — If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(j) Effective date. — This section is effective on the first day of January, one thousand nine hundred ninety-two.
(a) Upon the petition of any county or regional solid waste authority, motor carrier or solid waste facility, or upon the commission's own motion, the commission may issue an order that solid waste generated in the surrounding geographical area of a solid waste facility and transported for processing or disposal by solid waste collectors and haulers who are "motor carriers", as defined in chapter twenty-four-a of this code, be processed or disposed of at a designated solid waste facility or facilities: Provided, That such order shall not include:

1. Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

2. Reuse or recycling of any solid waste; or

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources pursuant to the provisions of section four-b, article five-f, chapter twenty of this code.

(b) In determining whether to issue an order establishing flow control to a solid waste facility, the commission shall consider, but shall not be limited to considering, the nature and composition of the solid waste, the environmental impact of controlling the flow of solid waste, the efficient disposal of solid waste, financial feasibility of proposed or existing solid waste facilities, the county or region solid waste control plan, the statewide solid waste control plan and the public convenience and necessity.

(c) The public service commission shall promulgate rules providing standards and criteria to effectuate the purposes of this section.

(d) Notwithstanding any provision of this code to the
contrary, excepting rules of the public service commission from legislative rule-making review, the public service commission shall propose a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall mandate that motor carriers transport source-separated recyclable materials to a recycling facility. Such legislative rule shall provide, at a minimum, for a separate rate for the transportation of such materials or that such motor carriers may contract with a customer to waive the charge for transporting such materials in exchange for the value of such materials.

(e) Notwithstanding any provision of this code to the contrary, the public service commission is hereby authorized to employ ten persons, who shall be in the classified exempt service, in addition to any personnel positions otherwise authorized or allocated to the commission as of the effective date of this section to facilitate enforcement of duties imposed upon the commission in the regulation of solid waste disposal during the second extraordinary session of the Legislature, one thousand nine hundred ninety-one.

CHAPTER 185
(Com. Sub. for H. B. 4018—By Delegates Roop and Lane)

[Passed March 7, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred three, article two, chapter forty-six-a of said code, all relating to student loans for post-secondary education at eligible schools including private proprietary schools; exempting lenders of guaranteed student loans after stated date from being subject to consumer credit claims and defenses under West Virginia consumer credit and protection act; directing board of directors to promul-
gate various rules relating to private, proprietary, post-secondary schools in accordance with legislative oversight commission on education accountability rule-making provisions; exempting schools teaching preparation of tax returns; increasing initial and annual fee for permit for such schools; and requiring additional bonding for private proprietary schools under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18B. Higher Education.
46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

1 (a) It shall be unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as such shall be defined by the board of directors by rule promulgated in accordance with article three-a, chapter twenty-nine-a of this code, to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first obtains a permit from the West Virginia board of directors in the manner and on the terms herein prescribed: Provided, That this section shall not apply to schools where the courses of instruction offered are solely for the purpose of teaching preparation of tax returns.
The application for a permit shall be made on forms to be furnished by the board. An initial application fee of not less than one thousand dollars, but not more than ten thousand dollars, shall be required for a permit for each school newly permitted after the effective date of this section, the amount of such fee to be determined in accordance with objective criteria set forth in rules which shall be promulgated by the board of directors in accordance with article three-a, chapter twenty-nine-a of this code. Thereafter, a five hundred dollar annual fee for each campus shall be required.

(b) The application shall be accompanied by a surety bond in the penal sum of thirty-five thousand dollars for any school which has its physical facilities located in this state and which has operated in this state for at least ten years. For any other school, a surety bond in the penal sum of not less than thirty-five thousand dollars, but not more than two hundred thousand dollars, shall be required, such amount to be determined in accordance with objective criteria set forth in rules which shall be promulgated by the board of directors in accordance with article three-a, chapter twenty-nine-a of this code. Such rules shall also set forth objective criteria by which any school under bond pursuant to this section may be required to post an additional amount of surety bond, but not more than two hundred thousand dollars, such criteria to indicate circumstances which may necessitate the need for additional surety bond. Schools with more than one campus within the state shall be required to provide a bond for each of its campuses in an amount equal to the bond required for its oldest established campus in this state. The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring the student's enrollment or failure of the school to meet contractual obligations. The bond shall be given by the school itself as a blanket bond covering all of its representatives. The surety on any such bond may cancel the same upon giving thirty days' notice in writing to the principal on said bond and to the state board of directors and thereafter shall be relieved of
liability for any breach of condition occurring after the effective date of said cancellation.

(c) A permit shall be valid for one year corresponding to the effective date of the bond and, upon application, accompanied by the required fee and the surety bond as herein required, may be renewed. All fees collected for the issuance or renewal of such permit shall be deposited in the state treasury to the credit of the board of directors.

The board may refuse a permit to any school if the board finds that the school engages in practices which are inconsistent with this section or with rules and regulations issued pursuant thereto. A permit issued hereunder, upon fifteen days' notice and after a hearing, if a hearing is requested by the school, may be suspended or revoked by the board of directors for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract with one or more students who are residents of West Virginia, or for violation of or failure to comply with any provision of this section or with any regulation of the state board of directors pertinent thereto. Prior to the board taking any adverse action, including refusal, suspension or revocation of a permit, the school shall be given reasonable opportunity to take corrective measures. Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

(d) All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the board of directors on forms furnished by the board and shall provide such appropriate information as the board reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the board of directors a list of its official representatives. Each school shall be issued a certificate of identification by the board of directors for each of its official representatives.
(e) The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school nor any representative of a school shall make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the state of West Virginia, state board of directors or any other department or agency of the state.

The board of directors is hereby authorized to adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas and specialized associate degrees, which standards may include curriculum, personnel, facilities, materials and equipment: Provided, That in the case of accredited correspondence, business, occupational and trade schools under permit on the first day of July, one thousand nine hundred seventy-nine, having their physical facilities located in this state, and which are accredited by the appropriate nationally recognized accrediting agency or association approved by the United States department of education, the accrediting agency’s standards, procedures and criteria shall be accepted as meeting applicable laws, standards, rules and regulations of the board of directors: Provided, however, That such rules as shall be adopted by the board of directors which are applicable to correspondence, business, occupational and trade schools which were not under permit on the first day of July, one thousand nine hundred seventy-nine, may be different from the standards, procedures and criteria of an accrediting agency: Provided further, That the board of directors may authorize an investigation of written student complaints alleging a violation of this section, board rules, or accreditation standards and may take appropriate action based on the findings of such an investigation. All evaluations or investigations of correspondence, business, occupational and trade schools, and actions resulting from such evaluations or investigations, shall be made in accordance with rules promulgated by the board of directors pursuant to article three-a, chapter twenty-nine-a of this code.
The board of directors is hereby authorized to adopt rules for the awarding of any specialized associate degree by accredited proprietary institutions: Provided, That nothing contained herein shall infringe upon the rights of accredited West Virginia proprietary schools operating in West Virginia to confer specialized associate degrees, diplomas or certificates based on credit or clock hours in accordance with standards of the appropriate nationally recognized accrediting agency or association that is approved by the United States department of education. For the purposes of this section, proprietary schools that award specialized associate degrees shall be defined as institutions of higher education, and specialized associate degrees shall mean degrees awarded by such institutions pursuant to a program of not less than two academic years: Provided, however, That nothing herein shall be construed to qualify the said proprietary schools for additional state moneys not otherwise qualified for under other provisions of the code.

(f) In regard to private, proprietary educational institutions operating under this section of the code, accredited by a national or regional accrediting agency or association recognized by the United States department of education and which provide training at a campus located in this state:

(1) Any rule or standard which is authorized by this or any section of the code or other law, and which is now in effect or promulgated hereafter by the board of directors (or other agency with jurisdiction) shall be clearly, specifically, and expressly authorized by narrowly construed enabling law and shall be unenforceable and without legal effect unless authorized by an act of the Legislature under the provisions of article three-a, chapter twenty-nine-a of the code.

(2) Notwithstanding any other provision of this section or other law to the contrary, the institution's accrediting agency standards, procedures, and criteria shall be accepted as the standards and rules of the board of directors (or other agency with jurisdiction), and as meeting other law or legal requirements relating to the
operation of proprietary institutions which such board or other agency has the legal authority to enforce under any section of the code or other law: Provided, That nothing in this section shall be construed to deny students the use of remedies that would otherwise be available under state or federal consumer laws or federal law relating to federal college financial assistance programs.

(3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress shall be measured and reported in credit hours and all reports/documents filed on a credit hour basis.

(g) A representative of any school violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars per day of violation, not to exceed a maximum of two thousand dollars per violation, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned. No correspondence, business, occupational or trade school shall maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time the contract was signed by any of the parties thereto. The attorney general or any county prosecuting attorney, at the request of the board of directors or upon his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-103. Lender subject to claims and defenses arising from sales.

(a) The following provisions shall be applicable to claims and defenses of borrowers, arising from consumer sales, with respect to consumer loans:

A lender, other than the issuer of a lender credit card
or a lender of a student loan made on or after the first
day of July, one thousand nine hundred ninety-two, in
accordance with the federal higher education act of
1965, as amended, who, with respect to a particular
transaction, makes a consumer loan for the purpose of
enabling a borrower to buy goods or services, other than
primarily for an agricultural purpose, is subject to all
claims and defenses of the borrower against the seller
arising from that specific sale of goods or services if the
lender participates in or is connected with the sales
transaction. A lender is considered to be connected with
such sales transaction if:

(i) The lender and the seller have arranged for a
commission or brokerage or referral fee for the exten-
sion of credit by the lender;

(ii) The lender is a person related to the seller unless
the relationship is remote or is not a factor in the
transaction;

(iii) The seller guarantees the loan or otherwise
assumes the risk of loss by the lender upon the loan
other than a risk of loss arising solely from the seller's
failure to perfect a lien securing the loan;

(iv) The lender directly supplies the seller with
documents used by the borrower to evidence the
transaction or the seller directly supplies the lender
with documents used by the borrower to evidence the
transaction;

(v) The loan is conditioned upon the borrower's
purchase of the goods or services from the particular
seller, but the lender's payment of proceeds of the loan
to the seller does not in itself establish that the loan was
so conditioned;

(vi) The seller in such sale has specifically recom-
mended such lender by name to the borrower and the
lender has made ten or more loans to borrowers within
a period of twelve months within which period the loan
in question was made, the proceeds of which other ten
or more loans were used in consumer credit sales with
the seller or a person related to the seller, if in
connection with such other ten or more loans, the seller also specifically recommended such lender by name to the borrowers involved; or

(vii) The lender was the issuer of a credit card other than a lender credit card which may be used by the borrower in the sales transaction as a result of a prior agreement between the issuer and the seller.

(b) The total of all claims and defenses which a borrower is permitted to assert against a lender under the provisions of this section shall not exceed that portion of the loan used for that sale, except (1) as to any claim or defense founded in fraud: Provided, That as to any claim or defense founded in fraud arising on or after the first day of July, one thousand nine hundred ninety, the total sought shall not exceed the original amount of the sale and (2) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

(c) An agreement may not limit or waive the claims and defenses of a borrower under this section.

(d) "Lender credit card" as used in this section means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using the credit card in transactions which entitles the user thereof to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card, out of which debt arises:

(1) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(2) By the lender's payment or agreement to pay the consumer's obligation; or

(3) By the lender's purchase from the obligee of the consumer's obligations.

(e) A claim or defense which a borrower may assert against a lender under the provisions of this section may be asserted only as a defense to or setoff against a claim
by the lender: Provided, That if a borrower shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the lender were such lender to assert such claim against the borrower, then the borrower shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation, in whole or in part, of the indebtedness evidenced by a negotiable instrument or other instrument or the release, in whole or in part, of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a borrower at any time, subject to the provisions of this code relating to limitation of actions.

(f) Nothing contained in this section shall be construed in any manner as affecting any loan made prior to the operative date of this chapter.

(g) Notwithstanding any provisions of this section, a lender shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom or damage to property.

(h) Nothing contained in this section shall be construed as affecting any buyer's or lessee's right of action, claim or defense which is otherwise provided for in this code or at common law.

CHAPTER 186

(S. B. 54—By Senators Spears, Brackenrich and Boley)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the capitol building commission.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications; continuation.

There is continued a capitol building commission, hereinafter referred to as the commission, which shall be composed of five members, who shall be appointed by the governor with the advice and consent of the Senate, plus the secretary of the department of administration who shall be a nonvoting member. No more than three members shall be of the same political party. One member shall be an architect selected from three persons recommended by the board of architects, one member shall be a registered professional engineer selected from three persons recommended by the board of engineers, one member shall be the commissioner of the division of culture and history, who is chairman of the commission, and two members shall be selected from the public at large.

Pursuant to the provisions of section four, article ten of this chapter, the capitol building commission 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 187

(Com. Sub. for H. B. 4211—By Delegates J. Martin and L. White)

[Passed March 6, 1992; 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.

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 eighty-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 speci-
(8) On the first day of July, one thousand nine hundred eighty-eight: Labor management relations board; records management and preservation advisory committee; minimum wage rate board; commission on mass transportation; and the public employees insurance board.

(9) On the first day of July, one thousand nine hundred eighty-nine: Mental retardation advisory committee; board of school finance; veteran’s affairs advisory council; and the reclamation commission.

(10) On the first day of July, one thousand nine hundred ninety: Consumer affairs advisory council; savings and loan association; and the forest industries industrial foundation.

(11) On the first day of July, one thousand nine hundred ninety-one: The following divisions or programs of the department of agriculture: Interagency committee on pesticides.

(12) On the first day of July, one thousand nine hundred ninety-three: 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; governor’s cabinet on children and families; state water resources board; water resources division, department of natural resources; board of banking and financial institutions; farm management commission; state building commission; capitol building commission; West Virginia ethics commission; public service commission; family protection services board; family law masters system; 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-four: Ohio River valley water sanitation commission; the southern regional education board; real estate commission; the division of labor; division of tourism and parks; division of corrections; and the veteran’s council.
70 (14) On the first day of July, one thousand nine
71 hundred ninety-five: Emergency medical services
72 advisory council; commission on charitable organiza-
73 tions; information system advisory commission; West
74 Virginia labor-management council; and the board of
75 social work examiners; and the rural health initiative
76 advisory panel and the marketing and development
77 division of the department of agriculture.

78 (15) On the first day of July, one thousand nine
79 hundred ninety-six: U.S. geological survey program and
80 whitewater commission within the division of natural
81 resources; state geological and economic survey; division
82 of culture and history; and the board of investments.

83 (16) On the first day of July, one thousand nine
84 hundred ninety-seven: The driver's licensing advisory
85 board; department of health and human resources; West
86 Virginia health care cost review authority; division of
87 personnel; and the West Virginia contractors licensing
88 board.

89 (17) On the first day of July, one thousand nine
90 hundred ninety-eight: State lottery commission; the
91 following divisions or programs of the department of
92 agriculture: Meat inspection program and soil conserva-
93 tion committee; women's commission; state board of risk
94 and insurance management; board of examiners of land
95 surveyors; commission on uniform state laws; council of
96 finance and administration; forest management review
97 commission; West Virginia's membership in the inter-
98 state commission on the Potomac River basin; legislative
99 oversight commission on education accountability; and
100 the board of examiners in counseling.

CHAPTER 188

(S. B. 63—By Senators Spears, Brackenrich and Boley)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter
five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing
the state building commission.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

"The State Office Building Commission of West Virginia", heretofore created, shall continue in existence but on and after the ninth day of February, one thousand nine hundred sixty-six, shall be known and designated as "The State Building Commission of West Virginia" and shall continue as a body corporate and as an agency of the state of West Virginia. On and after the date aforesaid, the commission shall consist of the governor, attorney general, state treasurer and four additional members to be appointed by the governor by and with the advice and consent of the Senate. The terms of office for said members to be appointed by the governor shall be four years, except that the terms of office of the first four members so appointed by the governor shall be for one, two, three and four years, respectively. No more than three of such members so appointed by the governor shall be members of the same political party, nor shall any of said members be members or employees of the executive, legislative or judicial branches of government of West Virginia or any political subdivision thereof. The governor shall be chairman of the commission. The secretary of state shall be a member of the commission and serve as its secretary, but shall not have the right to vote upon matters before the commission. All members of the commission shall be citizens and residents of this state. The members of the commission shall be paid or reimbursed for their necessary expenses incurred under this article, but shall receive no compensation for their
services as members or officers of the commission:

Provided, That each member of the commission appointed by the governor shall, in addition to such reimbursement for necessary expenses, receive a per diem of thirty-five dollars for each day or substantial portion thereof that he is engaged in the work of the commission. Such expenses and per diem shall be paid solely from funds provided under the authority of this article, and the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided under the authority of this article. On or before the fifteenth day of each month, the commission shall prepare and transmit to the president and minority leader of the Senate and the speaker and the minority leader of the House of Delegates a report covering the activities of the said commission for the preceding calendar month.

Pursuant to the provisions of section four, article ten, chapter four of this code, the state building commission 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 189

(S. B. 64—By Senators Spears, Brackenrich and Boley)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia ethics commission.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-11. Continuation of commission.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia ethics commission 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 190

(S. B. 61—By Senators Spears, Brackenrich, Boley and Hawse)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the farm management commission.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-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 12A. FARM MANAGEMENT COMMISSION.

§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.

The farm management commission heretofore created is hereby continued and shall be composed of three members who are the commissioner of agriculture, who shall be chairman, the secretary of the department of administration and the dean of the West Virginia university college of agriculture and forestry. No business may be transacted by the commission in the
absence of a quorum which consists of two members including the chairman. The farm management com-
mission shall hold meetings at least once every two months, and on call of the chairman.

If a vacancy occurs on the commission, the farm management director, as provided in this article, shall act as a member of the commission until the vacancy is filled.

If a vacancy occurs in the office of the commissioner of agriculture, the members of the commission and the farm management director shall select, from among them, a chairman to serve until a commissioner of agriculture is appointed or elected and qualified.

Pursuant to the provisions of section four, article ten, chapter four of this code, the farm management commission shall continue to exist until the first day of July, one thousand nine hundred ninety-three, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 191
(S. B. 62—By Senators Spears, Brackenrich and Boley)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the water resources section of the division of natural resources; and correcting agency references to reflect current administrative structure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-14. Sections within division; continuation of the water resources section.
Sections of wildlife resources, of water resources and of law enforcement are hereby created and established within the division of natural resources. Subject to provisions of law, the director of the division of natural resources shall allocate the functions and services of the division to the sections, offices and activities thereof and may from time to time establish and abolish other sections, offices and activities within the division in order to carry out fully and in an orderly manner the powers, duties and responsibilities of the office as director. The director shall select and designate a competent and qualified person to be chief of each section. The chief shall be the principal administrative officer of that section and shall be accountable and responsible for the orderly and efficient performance of the duties, functions and services thereof.

Pursuant to the provisions of section four, article ten, chapter four of this code, the water resources section of the division of natural resources 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.

AN ACT to amend and reenact section three, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state water resources board; and correcting agency references to reflect current administrative structure.

Be it enacted by the Legislature of West Virginia:

That section three, article five, 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 5. WATER RESOURCES.

§20-5-3. Water resources board created; continuation; composition and organization; appointment, qualifications, terms, oaths, removal, compensation and expenses of members; others to assist board and division; vacancies; quorum; meetings; records.

(a) The state water resources board heretofore created and established as successor to the state water commission and the state water resources commission is hereby abolished. A new state water resources board is hereby created and established as a public corporation. As such, the board may sue and be sued, plead and be impleaded, contract and be contracted with, and shall have and use a common seal.

(b) Pursuant to the provisions of section four, article ten, chapter four of this code, the state water resources 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.

(c) The board shall be composed of five members who shall be appointed by the governor with the advice and consent of the Senate. Not more than three members of the board shall be of the same political party. Individuals appointed to the board shall be persons who by reasons of previous training and experience are knowledgeable in the husbandry of the state's water resources and with at least one member with experience in industrial pollution control. No member of the board shall receive or, during the two years next preceding the member of the board's appointment, shall have received a "significant portion of the member of the board's income" directly or indirectly from a permit holder or an applicant for a permit issued under any of the provisions of this chapter. For the purposes of this subsection: (1) The term "significant portion of the member of the board's income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for...
and is receiving such portion pursuant to retirement, a pension or similar arrangement; (2) the term “income” includes retirement benefits, consultant fees and stock dividends; (3) income is not received “directly or indirectly” from “permit holders” or “applicants for a permit” where it is derived from mutual-fund payments or from other diversified investments with respect to which the recipient does not know the identity of the primary sources of income; and (4) the terms “permit holders” and “applicants for a permit” shall not include any university or college operated by this state or political subdivision of this state.

(d) The members of the board shall be appointed for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively. Any member whose term expires may be reappointed by the governor. At its organizational meeting, one member of the board shall be selected chairman to serve as chairman at the will and pleasure of the members of the board. Members of the board shall, before performing any duty, take and subscribe to the oath required by section five, article four of the constitution of West Virginia. Members of the board may be removed only for the same causes and in like manner as elective state officers. Any vacancy in the office of a member of the board shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs. Each member of the board shall be paid as compensation for his work as such member from funds appropriated for such purposes, seventy-five dollars per day when actually engaged in the performance of work as a board member. In addition to such compensation, each member of the board shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the board member’s duties. The director of the public health sanitation division within the state department of health and human resources, formerly known as the division of
sanitary engineering of the state department of health, shall perform such services as the board and the chief of the division of water resources may request in connection with the discharge of their duties, and the director shall be reimbursed, out of moneys appropriated for such purposes, all sums which the director necessarily shall expend in the performance of such service. Nothing contained in this article or in article five-a of this chapter, however, shall be construed to limit or interfere with the power of the state department of health and human resources to select, employ and direct the director of the public health sanitation division of said department, or any employee thereof who in any way may perform any services for the board or the division of water resources. The college of engineering at West Virginia university and the schools and departments of engineering at other institutions of higher education operated by this state, under the direction of the dean or other head thereof, shall, insofar as they can, without interfering with their usual and regular activities, aid and assist the board and the division of water resources in the study and research of questions connected with water pollution and the control and reduction thereof in accordance with the provisions of article five-a of this chapter. Such dean or other head shall be reimbursed, out of moneys appropriated for such purposes, all sums which such dean necessarily shall expend in the performance of any services such dean may render to the board and the division under the provisions hereof.

A majority of the board shall constitute a quorum for the transaction of business. The board shall meet at such times and places as it may determine and shall meet on call of the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of three members thereof. The board shall keep an accurate record of all of its proceedings and maintain such board records and make certificates thereof or therefrom as may be required by law. The board may employ a secretary and necessary scientific and clerical assistance.
AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b of this code. Pursuant to the provisions of section four, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, one thousand nine hundred ninety-three, to allow for the completion of an audit by the joint committee on government operations. The public service commission may sue and be sued by that name. Such public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution, which oath shall be filed in the office of the secretary...
of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired term of members of the public service commission at the time this subsection becomes effective are continued through the thirtieth day of June, one thousand nine hundred seventy-nine. In accordance with the provisions of subsection (a) of this section, the governor shall appoint three commissioners, one for a term of two years, one for a term of four years and one for a term of six years, all the terms beginning on the first day of July, one thousand nine hundred seventy-nine. All future appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, may serve as a member of the commission or as an employee thereof. Nor may any such commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

(d) Effective the first day of November, one thousand nine hundred ninety-one, and in light of the assignment of new, substantial additional duties embracing new
areas and fields of activity under certain legislative enactments, each commissioner shall receive an annual salary of sixty thousand dollars to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, forty-eight thousand dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-b of this code, ten thousand dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, two thousand dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter on and after the first day of January, one thousand nine hundred ninety-two.

CHAPTER 194
(H. B. 4148—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three and nine of said article, relating to removing provisions relating to the state fire administrator; creation of the state fire commission; increasing and changing the composition of the commission; appointment of the commission; terms and reim-
bursement of expenses of commission members; and
powers and duties of the commission and state fire
marshal.

Be it enacted by the Legislature of West Virginia:

That section eight, article three, chapter twenty-nine of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be repealed; and that sections three and nine of
said article be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

§29-3-9. Powers, duties and authority of state fire commission and state fire
marshals.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

(a) There is hereby created a state fire commission,
which shall consist of thirteen members, qualified by
experience and training to deal with the matters which
are the responsibilities of the commission. The officers
of the West Virginia fire chiefs association, the West
Virginia firemen's association, the West Virginia
professional fire fighters association, the West Virginia
professional fire chiefs association, the West Virginia
manufacturers association, the professional independent
insurance agents of West Virginia, and the West
Virginia society of architects shall submit a list of
names of persons recommended by each of these
associations to the governor for consideration in appointing
the state fire commission. The West Virginia
professional fire fighters association and the West
Virginia professional fire chiefs association shall
recommend the names of two persons from full-time
paid fire departments. The West Virginia fire chiefs
association and the West Virginia firemen's association
shall each recommend the names of three persons from
volunteer fire departments. The West Virginia manu-
facturers association shall recommend the names of
three persons to represent business and industry. The professional independent insurance agents of West Virginia shall recommend the names of two persons to represent the fire insurance industry. The West Virginia society of architects shall recommend the names of two persons to represent registered architects. Appointments to the commission shall be made by the governor, by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations. Three members shall be appointed to represent full-time paid fire departments, one member shall be appointed to represent the full-time paid fire chiefs, three members shall be appointed to represent volunteer fire departments and two members shall be appointed to represent the volunteer fire chiefs. Two members shall be appointed to represent business and industry and one member shall be appointed to represent the fire insurance industry. One member shall be appointed to represent registered architects. The term of office of the members shall be staggered five-year terms. The terms of members first appointed shall expire as designated by the governor at the time of appointment, two at the end of one year, two at the end of two years, three at the end of three years, two at the end of four years and two at the end of five years. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of a term. Any member is subject to removal by the governor at any time for neglect of his duties or other conduct unbecoming his office. The governor shall make the appointments within ninety days after this section takes effect.

(b) The members of the state fire commission shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.

§29-3-9. Powers, duties and authority of state fire commission and state fire marshal.

(a) The state fire commission may employ personnel, fix their compensation and, within funds available to do
so, incur expenses as necessary in the performance of
the duties of its office.

(b) The state fire commission is responsible for fire
programs within this state, including the state fire
marshal’s office, training, uniform standards and
certification, finance and planning and fire prevention.

(c) All state and area training and education in fire
service shall be coordinated by the state fire commis-
sion. The state fire marshal shall ensure that these
programs are operated throughout the state at a level
consistent with needs identified by the commissioner.

(d) The state fire commission shall develop minimum
training levels for fire fighters, minimum levels of
equipment needed to protect life and property within
fire service areas, minimum performance standards the
departments must meet in response times, communica-
tions, minimum levels of water flow and pressure and
other performance measures as considered necessary to
meet the overall goals of improved fire prevention and
control. The state fire commission may make recommend-
atations to the state insurance commissioner regarding
town classifications for fire insurance rates.

(e) The formation of any new fire department,
including volunteer fire departments, requires the
concurrence of the state fire commission. The state fire
commission shall develop a method of certification
which can be applied to all fire departments and
volunteer fire departments.

(f) The state fire commission shall develop a plan for
fire prevention and control which shall include, but not
be limited to, the following areas: Manpower needs;
location of training centers; location of fire prevention
and control units; communications; fire fighting facili-
ties; water sources; vehicular needs; public education
and information; public participation; standardization
in record keeping; evaluation of personnel; reporting of
fire hazards; programs on mutual aid; location of public
safety agencies; outline of fire prevention programs; and
accessibility of fire prevention information.
(g) The state fire commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning and certification.

CHAPTER 195
(S. B. 141—By Senators Spears and Brackenrich)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-12. Reestablishment of board as state board of risk and insurance management.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state board of insurance should be continued and reestablished but shall be known and referred to as the state board of risk and insurance management. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state board of insurance shall continue to exist until the first day of July, one thousand nine hundred ninety-eight, but shall be known and referred to as the state board of risk and insurance management.
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. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.

1 The West Virginia commission on the status of women
2 is hereby abolished, and there is hereby continued
3 within the department of health and human resources
4 the West Virginia women's commission, to consist of
5 eighteen members, seven of whom shall be ex officio
6 members, not entitled to vote: The attorney general, the
7 state superintendent of schools, the commissioner of
8 labor, the commissioner of the bureau of human
9 resources of the department of health and human
10 resources, the director of the human rights commission,
11 the director of the division of personnel and the
12 chancellor of the board of directors of the state college
13 system. Each ex officio member may designate one
14 representative employed by his or her department to
15 meet with the commission in his or her absence. The
16 governor shall appoint the additional eleven members,
17 by and with the advice and consent of the Senate, from
18 among the citizens of the state. The governor shall
19 designate the chairman and vice chairman of the
20 commission and the commission may elect such other
21 officers as it deems necessary. The members shall serve
22 a term beginning the first day of July, one thousand nine
23 hundred seventy-seven, three to serve for a term of one
year, four to serve for a term of two years and the
remaining four to serve for a term of three years. The
successors of the members initially appointed as
provided herein shall be appointed for a term of three
years each in the same manner as the members initially
appointed under this article, except that any person
appointed to fill a vacancy occurring prior to the
expiration of the term for which his or her predecessor
was appointed shall be appointed for the remainder of
such term. Each member shall serve until the appoint-
ment and qualification of his or her successor.

No member may receive any salary for his or her
services, but each may be reimbursed for actual and
necessary expenses incurred in the performance of his
or her duties out of funds received by the commission
under section four of this article, except that in the event
the expenses are paid, or are to be paid, by a third party,
the members shall not be reimbursed by the
commission.

After having conducted a performance audit through
its joint committee on government operations, pursuant
to section nine, article ten, chapter four of this code, the
Legislature hereby finds and declares that the West
Virginia women's commission should be continued and
reestablished. Accordingly, notwithstanding the provi-
sions 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-eight.

CHAPTER 197
(H. B. 4096—By Delegates Love and L. White)

[Passed February 12, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three-
a, chapter twenty-nine-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to continuing the legislative oversight commis-
sion on education accountability.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commission on education accountability; continuation.

(a) There is hereby created a joint commission of the Legislature known as the legislative oversight commission on education accountability to review all legislative rules of the board and such other rules as the commission deems appropriate. The commission shall be composed of six members of the Senate appointed by the president of the Senate and six members of the House of Delegates appointed by the speaker of the House of Delegates. No more than five of the six members appointed by the president of the Senate and the speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the president of the Senate and the speaker of the House of Delegates shall be ex officio nonvoting members of the commission and shall designate the cochairmen. At least one of the Senate members and one of the House members shall be members of the committee on education of the Senate and House, respectively, and at least one of the Senate members and at least one of the House members shall be a member of the committee on finance of the Senate and House, respectively. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative oversight commission on education accountability, but if no such appropriation be made, such expenses shall be paid from the appropriation under "Account No. 103
(b) The commission may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

(c) Pursuant to the provisions of section four, article ten, chapter four of this code, the legislative oversight commission on education accountability 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. If such commission is terminated pursuant to this subsection, any report required to be submitted to it shall instead be submitted to the joint committee on education of the Legislature.

CHAPTER 198
(S. B. 143—By Senators Spears and Brackenrich)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of examiners in counseling.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article thirty-one, 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 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of board.
After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the West Virginia board of examiners in counseling should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the West Virginia board of examiners in counseling shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 199
(S. B. 140—By Senators Spears and Brackenrich)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the family protection services board.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two-c, 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 2C. DOMESTIC VIOLENCE ACT.

§48-2C-14. Continuation of board.

Pursuant to the provisions of section four, article ten, chapter four of this code, the family protection services 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 200
(S. B. 139—By Senators Spears and Brackenrich)

[Passed March 4, 1992; 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 West Virginia child advocate office; and the monitoring of compliance by the child advocate office with the recommendations of the performance audit by the joint committee on government operations.

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 health and human resources the child advocate office.

(b) 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 the child advocate office should be continued and reestablished. Accordingly, notwithstanding 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-three, so that the joint committee on government operations may monitor compliance by the child advocate office with the recommendations of the performance audit.

*Clerk's Note: This section was also amended by H. B. 4759 (Chapter 54), which passed subsequent to this act.
CHAPTER 201
(H. B. 4217—By Delegates J. Martin and L. White)

[Passed March 6, 1992; 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; and the monitoring of compliance by the family law masters system with the recommendations of the performance audit by the joint committee on government operations.

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. Continuation of family law masters system.

1. After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares the family law masters system should be continued and reestablished. Accordingly, notwithstanding 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-three, so that the joint committee on government operations may monitor compliance by the family law masters system with the recommendations of the performance audit.
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, relating to the application of the proceeds from the hotel occupancy tax; and permitting the expenditure of up to one hundred thousand dollars for medical care.

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 as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.


(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 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 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 this subsection: 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 this subsection 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 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 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 this subsection: 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 this subsection 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 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.

(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;

(7) Beautification projects; or

(8) Medical care, in an amount not exceeding one hundred thousand dollars, in any county where: (i) There is an urgent necessity to preserve the delivery of acute medical care services; (ii) there is an increase in need for acute medical care services directly related to tourism; (iii) recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care services; (iv) there is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care services; (v) there is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the census of the year one thousand nine hundred ninety; and (vi) there is one and only one hospital within the county; and the county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist.

(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 appurtenan-
ces 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, play-
ground, 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 203

(H. B. 4557—By Delegates Rutledge and Kiss)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-b, relating to the West Virginia Tax Procedure and Administration Act; providing for retroactive monetary relief for overpayments of unconstitutional state taxes when retroactive relief is ordered by a final decision of a state or federal court; legislative findings and purpose; legislative intent and rules of construction; criteria for retroactive monetary relief; type and manner of providing relief; finality of relief.

*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 fourteen-b, to read as follows:

**ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

§11-10-14b. Monetary remedies for overpayments due to unconstitutionality.
(a) Legislative findings and purpose. — Taxpayers who successfully challenge the constitutionality of state taxes may be entitled to retroactive monetary relief for the amount of their overpayments. Because there may be many of such taxpayers and the period of retroactivity may be extensive, the amount of monetary relief owed to such taxpayers may represent a considerable and unpredictable risk to the fiscal integrity and stability of this state. This section provides the tax commissioner with greater flexibility and discretion in the manner in which such relief may be provided.

(b) Legislative intent and rules of construction.

(1) Legislative intent. — It is the intent of the Legislature that this section shall be construed to preserve the fiscal integrity and stability of the state of West Virginia and to provide appropriate relief to the extent required by this section and the state and federal constitutions. The provisions of section fourteen of this article shall remain in full force and effect with regard to overpayments of tax resulting from any reason including unconstitutionality.

(2) Rules of construction.

(A) The remedies provided by this section and section fourteen of this article are exclusive and shall be in lieu of any and all remedies provided at common law or by other statutes.

(B) Because all legislative enactments are presumptively constitutional and because the tax commissioner is without authority to determine the constitutionality of tax laws, other than through the courts, no cause of action shall exist against said tax commissioner, in his individual capacity, for damages, attorney's fees or court costs incurred in litigating the constitutionality of any tax law administered under this article which is subsequently determined to be unconstitutional.

(C) A holding of retroactivity shall not be deemed to override any statutes of limitation which have run, or to require relief for any cases which are res judicata.

(c) Criteria for retroactive monetary relief. — No
person may be granted relief based on a claim of unconstitutionality, unless the decision that the tax or its application is unconstitutional also mandates retroactive monetary relief and is a final decision of a court of competent jurisdiction of this state or a federal court having appropriate jurisdiction. A final decision is one for which the availability of an appeal has been exhausted, and the time for filing a petition has elapsed or the petition has been finally denied.

(d) Amount of relief; interest. — The amount of monetary relief shall be comprised solely of the amount of overpayment, together with interest, and shall not include damages of any kind, court costs, or attorney's fees except when ordered by a court of competent jurisdiction. Interest shall be paid as provided by section seventeen of this article.

(e) Type and manner of providing relief. — In addition to the powers already provided in this article, the tax commissioner may, in his discretion and in accordance with guidelines published by him in the State Register, provide retroactive monetary relief by any one or combination of the following remedies:

(1) Refunds. — The total amount of any refund to be paid to a taxpayer may be paid either in one lump sum or in periodic installments. Installment payments shall be paid in full not later than three years from the date of the final decision of entitlement to retroactive monetary relief: Provided, That the periodic installment method for payment may only be used when the total amount of any refund to an individual taxpayer exceeds one thousand dollars or the aggregate amount of all refunds resulting from a final decision of unconstitutionality of a particular tax is estimated to be more than five million dollars.

(2) Credits. — With the taxpayer's consent, the tax commissioner may issue an overpayment credit for tax.

(f) Finality of relief. — The issuance of refunds or credits shall constitute complete and final settlement of all entitlements based on the claim or claims for which such refunds or credits were made.
AN ACT to repeal sections thirty-one, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven-a and fifty-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eighteen-a, article ten of said chapter eleven; to further amend said article ten by adding thereto a new section, designated section nineteen-a; to amend and reenact sections eighteen, thirty-two, thirty-seven, thirty-eight, thirty-nine, fifty-one-a and seventy-one-a, article twenty-one of said chapter eleven; to further amend said article twenty-one by adding thereto two new sections, designated sections thirty and forty-four; and to amend and reenact section thirteen-b, article twenty-four of said chapter eleven, all relating generally to administration and collection of West Virginia personal and corporation net income taxes from nonresident taxpayers and others; changing method by which personal income tax of nonresidents and part-year residents is determined and, as to such change in method: Specifying effective date, preserving prior law for prior taxable years, and making conforming changes in other provisions of personal income tax law necessary for implementation, administration and enforcement of this change in tax computation methodology; defining West Virginia source income in the case of nonresidents and part-year residents; making conforming changes in other statutory provisions pertaining to how West Virginia source income of nonresidents and part-year residents is determined; providing for partnerships, S corporations, estates and trusts to withhold income tax on distributions, both actual and deemed, of West Virginia source income to nonresidents and, as to such, changing rate of withholding to single uniform rate; providing for payment of withholding tax by pass-through entities and for administration and collection by tax commissioner,
including exceptions, limitations, special rules, definitions, and effective date; requiring nonpartnership ventures to file information returns pertaining to West Virginia source income; allowing nonresident individuals who are partners, S corporation shareholders, or beneficiaries of an estate or trust having West Virginia source income to file composite nonresident personal income tax returns and, as to such, changing the composite return rate of tax, defining terms and specifying effective date; changing the rules for imposing, collecting and administering additions to tax for underpayment of estimated tax, with such new rules to apply to all taxpayers and to certain other taxes collected by tax commissioner for taxable years beginning after specified date; imposing money penalties for failure to file certain information returns including but not limited to those filed by pass-through entities, and for failure to file complete and accurate information returns, and, as to such, providing rules for application, waiver, exception and effective date, and for administration and collection of such penalties; eliminating specific money penalty for failure to file S corporation income tax returns, with such penalty being replaced and superseded by generic penalty applicable to such failures; eliminating requirement that S corporation information returns provide certain information, leaving content of information return to information required by tax commissioner; specifying effective for all provision dates; and preserving prior law for prior taxable years.

Be it enacted by the Legislature of West Virginia:

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

Article
10. Tax Procedure and Administration.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated tax.
§11-10-19a. Failure to file correct information returns.

§11-10-18a. Additions to tax for failure to pay estimated tax.

(a) Additions to tax. — Except as otherwise provided in this section, in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under any article or section administered by this article, an amount determined by applying the rate established under section seventeen or seventeen-a of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(b) Amount of underpayment. — For purposes of subsection (a), the amount of the underpayment shall be the excess of the amount determined under subdivision (1) over the amount determined under subdivision (2) of this subsection.

(1) The amount of the installment required to be paid on or before the due date for the installment, if the estimated tax due for the taxable year were an amount equal to ninety percent of the tax shown on the annual return for the taxable year divided by the number of installments taxpayer was required to make for the taxable year, or, if no return was filed, ninety percent of the tax for such year divided by the number of installment payments taxpayer was required to make for the taxable year.

(2) The amount, if any, of the installments paid on or before the last date prescribed for payment of that installment.
(c) Period of underpayment. — The period of underpayment of an installment shall run from the date the installment was required to be paid (due date) to whichever of the following dates is the earlier:

(1) The due date of the annual return following the close of the taxable year for which the installment was due (determined without regard to any extension of time for filing such annual return); or

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision (2), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) Exception. — Notwithstanding the provisions of the preceding subsections, the additions to tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser:

(1) Prior year's tax. — One hundred percent of the tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months;

(2) Annualized tax. — In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection and under subsection (b) of this section, then the amount of such required installment shall be the annualized income installment. For purposes of this subdivision (2), there shall be four required installments for each taxable year and the "annualized income installment" is the difference (if any) determined by subtracting the amount determined under paragraph (B) of this subdi-
vision from the amount determined under paragraph (A) of this subdivision. When making these computations, the rules in paragraph (C) of this subdivision shall be followed:

(A) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the first installment;

(ii) For the first three months of or the first five months of the taxable year, in the case of the second installment;

(iii) For the first six months or the first eight months of the taxable year, in the case of the third installment; and

(iv) For the first nine months or for the first eleven months of the taxable year, in the case of the fourth installment.

(B) The aggregate amount of any prior required installments for the taxable year.

(C) Special rules. — For purposes of this subdivision (2):

(i) Annualization. — Taxpayer’s taxable income shall be placed on an annualized basis in the same manner that taxable income is annualized for federal income tax purposes for the taxable year.

(ii) Applicable percentage. — The applicable percentage shall be determined from the following table:

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<tr>
<th>In the case of the following required installments:</th>
<th>The applicable percentage is:</th>
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<tr>
<td>1st</td>
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<td>2nd</td>
<td>45</td>
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<tr>
<td>3rd</td>
<td>67.5</td>
</tr>
<tr>
<td>4th</td>
<td>90</td>
</tr>
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</table>

(e) Additional exceptions.

(1) Where tax amount is small. — No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year
(or, if no return is filed, the tax), reduced by the credit
allowable for withheld tax, is less than two hundred fifty
dollars.

(2) Where individual has no personal income tax
liability for preceding taxable year. — No addition to tax
shall be imposed under subsection (a) for any taxable
year if:

(A) The individual's preceding taxable year was a
taxable year of twelve months;

(B) The individual did not have any West Virginia
personal income tax liability for the preceding taxable
year;

(C) The individual was a citizen or resident of the
United States throughout the preceding taxable year;
and

(D) The individual's West Virginia personal income
tax liability for the current taxable year is less than five
thousand dollars.

(3) Waiver in certain cases. — No addition to tax shall
be imposed under subsection (a) with respect to any
underpayment if and to the extent the tax commissioner
determines that by reason of casualty, disaster, or other
unusual circumstances the imposition of such addition
to tax would be against equity and good conscience.

(f) Tax computed after application of credits against
tax. — For purposes of this section, the term "tax"
means the amount of any annual tax or fee administered
under this article that is generally payable in two or
more installment payments during the taxable year,
minus the amount of credits allowable against such tax
or fee, other than taxes withheld from the taxpayer
under section seventy-one or seventy-one-a, article
twenty-one of this chapter (relating to taxes withheld on
wages, or from distributions of pass-through income to
nonresident partners, S corporation shareholders or
beneficiaries of an estate or trust).

(g) Application of section in case of personal income
tax withheld on wages.
144 (1) In general. — For purposes of applying this section, the amount of the credit allowed under section seventy-one, article twenty-one of this chapter, for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed to have been paid on each installment payment due date for such taxable year, unless the taxpayer establishes the specific dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

155 (2) Separate application. — The taxpayer may apply subdivision (1) of this subsection separately with respect to:

158 (A) Wage withholding; and

159 (B) All other amounts withheld for which credit is allowed under section seventy-one of article twenty-one.

161 (h) Application of section in case of income tax withheld by pass-through entities from distributions to nonresidents. — For purposes of applying this section, the amount of credit allowed under section seventy-one-a, article twenty-one of this chapter to a nonresident distributee of a pass-through entity, shall be deemed to be a payment of estimated income tax for the taxable year of the nonresident distributee, and an equal part of such amount shall be deemed (only for purposes of this section) to have been paid on each installment due date for the taxable year of the distributee, unless the distributee establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

177 (i) Special rule where personal income tax return filed on or before January 31st. — If on or before the last day of the first month following the end of the taxable year, the taxpayer files his or her annual personal income tax return for that taxable year and pays in full the amount computed on the return as payable, then no addition to
tax shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for that taxable year.

(j) Special rules for farmers. — For purposes of this section, if an individual is a farmer for any taxable year:

(1) There is only one required installment for that taxable year;

(2) The due date for such installment is the fifteenth day of January of the following taxable year;

(3) The amount of such installment shall be equal to the required annual payment determined under subsection (b) of this section by substituting “sixty-six and two-thirds percent” for “ninety percent”; and

(4) Subsection (h) shall be applied:

(A) By substituting “the first day of March” for the phrase “the thirty-first day of January”; and

(B) By treating the required installment described in this subdivision (1) of this subsection as the fourth required installment.

(k) Fiscal years and short years.

(1) Fiscal years. — In applying this section to a taxable year beginning on any date other than the first day of January, there shall be substituted, for the months specified in this section, the months of the fiscal year that correspond thereto.

(2) Short taxable year. — The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the tax commissioner.

(1) Reserved.

(m) Estates and trusts.

(1) In general. — Except as otherwise provided in this subsection, this section shall apply to any estate or trust.

(2) Exception for certain estates and certain trusts. —
With respect to any taxable year ending before the date two years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent, or

(B) Any trust all of which was treated for federal income tax purposes as owned by the decedent, and to which the residue of the decedent's estate will pass under his or her will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration).

(3) Special rule for annualizations. — In the case of any estate or trust to which this section applies, subsection (d)(2)(A) shall be applied by substituting "ending before the date one month before the due date of the installment" for the phrase "ending before the due date for the installment".

(n) Regulations. — The tax commissioner may prescribe such regulations as the commissioner deems necessary to carry out the purpose of this section. This includes, but is not limited to, equitable regulations allowing payment of adjusted seasonal installments in lieu of annualized income installments when the commissioner determines, based on known facts and circumstances, that payment of the annualized income installment will result in significant hardship to the taxpayer due to the seasonal nature of taxpayer's business, and equitable regulations for payment of estimated personal income tax by an individual who is: (1) An employee, (2) employed in another state for some portion or all of the taxable year, and (3) required to pay personal income taxes to such other state on (or measured by) wages earned in that state, for which credit is allowed under section twenty, article twenty-one of this chapter.

(o) Effective date. — This section as amended in the year one thousand nine hundred ninety-two, shall apply to taxable years beginning after the thirtieth day of June, one thousand nine hundred ninety-two, and this section as in effect on the first day of January, one thousand nine hundred ninety-two, is preserved and
§11-10-19a. Failure to file correct information returns.

(a) Imposition of penalty. — In addition to any criminal penalty imposed by article nine of this chapter for willful failure to file required return or supply information or for knowingly filing false or fraudulent return, in the case of a failure described in subsection (b) by any person with respect to an information return, such person shall pay a penalty of fifty dollars for each information return with respect to which such failure occurs, but the total amount imposed by this section on such person for all such failures during any calendar year shall not exceed one hundred thousand dollars.

(b) Failures subject to penalty. — For purposes of subsection (a), the failures described in this subsection are:

(1) Any failure to file an information return with the tax commissioner on or before the required filing date; and

(2) Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

(c) Reduction of penalty where correction in specified period.

(1) Correction within thirty days. — If any failure described in subsection (b) is corrected on or before the day, thirty days after the required filing date, the penalty imposed by subsection (a) shall be fifteen dollars in lieu of fifty dollars, and the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed twenty-five thousand dollars.

(2) Failures corrected by August first. — If any failure described in subsection (b) is corrected after the thirtieth day referred to in subdivision (1) of this subsection but on or before the first day of August of the calendar year in which the required filing date
occurs, the penalty imposed by subsection (a) shall be calculated using thirty dollars in lieu of fifty dollars and the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed fifty thousand dollars.

(d) Exception for de minimis failures to include all required information.

(1) In general. — If an information return is filed with the tax commissioner, but there is a failure to include all of the information required to be shown on the return or there is inclusion of incorrect information, and such failure or error is corrected on or before the first day of August of the calendar year in which the required filing date occurs, then for purposes of this section, such return shall be treated as having been filed with all of the correct required information.

(2) Limitation. — The number of information returns to which subdivision (1) of this subsection applies for any calendar year shall not exceed the greater of: (A) ten, or (B) one-half of one percent of the total number of information returns required to be filed with the tax commissioner by the person during the calendar year.

(e) Penalty in case of intentional disregard. — If one or more failures described in subsection (b) are due to intentional disregard of the filing requirement or the correct information reporting requirement then, with respect to such failure, subsections (c) and (d) shall not apply and the penalty imposed under subsection (a) shall be one hundred dollars, or, if greater, ten percent of the aggregate amount of the items required to be reported correctly. When the amount of penalty is determined under this subsection, the one hundred thousand dollar limitation under subsection (a) shall not apply, and such penalty shall not be taken into account in applying such limitation (or any similar limitation under subsection (c)) to penalties not determined under this subsection (e).

(f) Reasonable cause waiver. — No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause and not due to willful neglect.
(g) Payment of penalty. — Any penalty imposed by this section shall be paid on notice and demand by the tax commissioner and in the same manner as tax.

(h) Definitions. — For purposes of this section:

(1) Information return. — The term “information return” means any return required by:

(A) Subsection (a)(2) or (4), section fifty-one, article twenty-one of this chapter (relating to estates and trusts);

(B) Subsection (b), section fifty-eight, article twenty-one of this chapter (relating to partnerships);

(C) Subsection (c), section fifty-eight, article twenty-one of this chapter relating to certain information at source; and

(D) Section thirteen-b, article twenty-four of this chapter relating to S corporations.

(2) Required filing date. — The term “required filing date” means the date prescribed for filing an information return with the tax commissioner determined with regard to any extension of time for filing.

(i) Effective date. — The provisions of this section shall apply to information returns required to be filed for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-18. West Virginia taxable income of resident estate or trust.
§11-21-30. Computation of tax on income of nonresidents and part-year residents.
§11-21-32. West Virginia source income of nonresident individual.
§11-21-37. Nonresident partners and shareholders of S corporations.
§11-21-38. West Virginia source income of nonresident estate or trust.
§11-21-39. Share of nonresident estate, trust or beneficiary in income from West Virginia sources.
§11-21-45. West Virginia source income of part-year resident individuals.
§11-21-51a. Composite returns.
§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.
§11-21-18. West Virginia taxable income of resident estate or trust.

The West Virginia taxable income of a resident estate or trust means its federal taxable income for the taxable year as defined in the laws of the United States and section nine of this article for the taxable year, with the following modifications:

(1) There shall be subtracted six hundred dollars as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be added or subtracted, as the case may be, the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen of this article.

(3) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended, to be separately taxed for federal income tax purposes: Provided, That the provisions of this subdivision shall first be effective for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

(a) Computation of tax. — For taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one, the tax due under this article on taxable income derived from sources in this state by a nonresident individual, estate, or trust or by a part-year resident individual shall be calculated as provided in this section.

(1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an individual, estate or trust, were a resident of this state for the entire
TAXATION

When determining tentative tax liability under this subdivision, a nonresident shall be allowed the same deductions, exemptions and credits that would be allowable if taxpayer were a resident individual, estate or trust, as the case may be, for the entire taxable year, except that no credit shall be allowed under section twenty of this article.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer's "federal adjusted gross income" for the taxable year as defined in section nine of this article.

(b) Special rules for estates and trusts. — For purposes of subdivision (1) of subsection (a):

(1) The "federal adjusted gross income" of an estate or trust shall be determined as if such estate or trust were an individual; and

(2) In the case of a trust, "federal adjusted gross income" shall be its "federal adjusted gross income" for the taxable year increased by the amount of any includible gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to section 644 of the Internal Revenue Code.

(c) Special rules for part-year residents. — (1) For purposes of subdivision (1) of subsection (a), the "federal adjusted gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income for the taxable year, as defined in section nine of this article, increased or decreased, as the case may be, by the items accrued under subdivision (1), subsection (b), section forty-five of this article, to the extent such items are not otherwise included in federal adjusted gross income for the taxable year, and decreased or increased, as the case may be by the items accrued under subdivision (2), subsection (b) of said section forty-five, to the
extent such items are included in federal adjusted gross income for the taxable year; and

(2) In computing the tax due as if taxpayer were a resident of this state for the entire tax year, West Virginia adjusted gross income shall include the accruals specified in subdivision (1) of this subsection (c), with the applicable modifications described in section forty-five of this article.

(d) Definitions.

(1) "Nonresident estate" means an estate of a decedent who was not a resident of this state at the time of his or her death.

(2) "Nonresident trust" means a trust which is not a resident trust, as defined in section seven.

(3) "Part-year resident individual" means an individual who is not a resident or nonresident of this state for the entire taxable year.

(e) 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-one. As to taxable years beginning prior to that date, the provisions of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

§11-21-32. West Virginia source income of nonresident individual.

(a) General. — The West Virginia source income of a nonresident individual shall be the sum of the net amount of income, gain, loss and deduction entering into his or her federal adjusted gross income, as defined in the laws of the United States and section nine of this article, for the taxable year, derived from or connected with West Virginia sources, including:

(1) His or her distributive share of partnership income, gain, loss and deduction, determined under section thirty-seven; and

(2) His or her pro rata share of S corporation income,
loss and deduction, determined under section thirty-seven, increased by reductions for taxes described in paragraphs (2) and (3), subsection (f), section 1366 of the Internal Revenue Code; and

(3) His or her share of estate or trust income, gain, loss and deduction, determined under section thirty-nine of this article.

(b) Income and deductions from West Virginia sources.

(1) Items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be those items attributable to:

(A) The ownership of any interest in real or tangible personal property in this state; or

(B) A business, trade, profession or occupation carried on in this state; or

(C) In the case of a shareholder of an S corporation, the ownership of shares issued by such corporation, to the extent determined under section thirty-seven.

(2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from West Virginia sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state.

(3) Deductions with respect to capital losses and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with West Virginia sources, under regulations of the tax commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(4) The deduction allowed by section 215 of the Internal Revenue Code, relating to alimony, shall not constitute a deduction derived from West Virginia sources.
(c) **Income and deductions partly from West Virginia sources.** — If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the tax commissioner, the items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be determined by apportionment and allocation under such regulations.

(d) **Purchase and sale for own account.** — A nonresident, other than a dealer holding property for sale to customers in the ordinary course of his or her trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property for his or her own account.

(e) **Husband and wife.** — If a husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia source incomes separately as if their federal adjusted gross incomes had been determined separately.

(f) **Effective date.** — This section as amended and reenacted in the year one thousand nine hundred ninety-two shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one. As to prior taxable years, the provisions of this section and of section thirty-one of this article, as then in effect, are fully and completely preserved.

§11-21-37. Nonresident partners and shareholders of S corporations.

1. **(a) Portion derived from West Virginia sources.** —

2. (1) In determining the West Virginia source income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with West Virginia sources of such partner’s distributive share, for federal income tax purposes, of items of partnership income, gain, loss and deduction, as such portion shall be determined under regulations of the tax commissioneer.
(2) In determining West Virginia source income of a nonresident shareholder of an S corporation, there shall be included only the portion derived from or connected with West Virginia sources of such shareholder’s pro rata share of items of S corporation income, gain, loss and deduction entering into the shareholder’s federal adjusted gross income, as defined in section nine, increased by reductions for taxes described in paragraphs (2) and (3), subsection (f), section 1366 of the Internal Revenue Code, as such portion shall be determined under regulations of the tax commissioner consistent with the applicable methods and rules for allocation under article twenty-four of this chapter.

(b) Special rules as to West Virginia sources. — In determining the sources of a nonresident partner’s income, no effect shall be given to a provision of the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital; or

(2) Allocates to the partner, as income or gain from sources outside West Virginia, a greater proportion of his or her distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside West Virginia to partnership income or gain from all sources, except as authorized in subsection (d); or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with West Virginia sources than his or her proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (c).

(c) Alternative methods. — The tax commissioner may, on written application filed on or before the due date of the partner’s or S corporation shareholder’s return under this article for that taxable year determined without regard to any extension of time for filing,
authorize the use of such other method or methods of
determining the nonresident partner's portion of
partnership items, or the nonresident S corporation
shareholder's portion of S corporation items, derived
from or connected with West Virginia sources, and the
modifications related thereto, as may be appropriate
and equitable, on such terms and conditions as the
commissioner may require.

(d) Application of rules for resident partners to
nonresident partners and shareholders.

(1) For a partner's distributive share of items, see
subsection (a) of section seventeen of this article.

(2) The character of partnership items for a nonres-
ident partner shall be determined under subsection (b)
of section seventeen of this article.

(3) The effect of a special provision in a partnership
agreement, other than a provision referred to in
subsection (b) of this section, having the principal
purpose of avoidance or evasion of tax under this article
shall be determined under subsection (c) of section
seventeen of this article.

(e) Application of rules for resident S corporation
shareholders to nonresident S corporation shareholders.

(1) For an S corporation shareholder's distributive
share of S corporation items, see subsection (a) of section
seventeen-a of this article.

(2) The character of S corporation items for a
nonresident shareholder of an S corporation shall be
determined under subsection (b) of section seventeen-a
of this article.

(f) Effective date. — The amendments to this section
enacted in the year one thousand nine hundred ninety-
two shall apply to taxable years beginning after the
thirty-first day of December, one thousand nine hundred
ninety-two. As to prior taxable years the provisions of
this section and of section thirty-seven-a of this article,
as then in effect, are fully and completely preserved.

§11-21-38. West Virginia source income of nonresident
estate or trust.
(a) General. — The West Virginia source income of a nonresident estate or trust shall be determined as follows:

(1) Items in distributable net income. — There shall be determined its share of income, gain, loss and deduction from West Virginia sources under section thirty-nine of this article (relating to items entering into the definition of distributable net income).

(2) Items not in distributable net income. — There shall be added to or subtracted (as the case may be) the amount derived from or connected with West Virginia sources of any income, gain, loss and deduction which would be included in the determination of federal adjusted gross income if the estate or trust were an individual and which is recognized for federal income tax purposes, but excluded from the definition of federal distributable net income of the estate or trust. The source of such income, gain, loss and deduction shall be determined in accordance with the applicable rules of section thirty-two of this article as in the case of a nonresident individual.

(b) Special West Virginia source rules. — Deductions with respect to capital losses and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with West Virginia sources, under regulations of the tax commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

(c) Effective date. — The provisions of this section as amended and reenacted in the year one thousand nine hundred ninety-two shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one. As to prior taxable years this section, as then in effect, is fully and completely preserved.

§11-21-39. Share of nonresident estate, trust or beneficiary in income from West Virginia sources.

(a) General. — The share of a nonresident estate or trust under paragraph (1) of subsection (a) of section
thirty-eight, and the share of a nonresident beneficiary of any estate or trust under subsection (a) of section thirty-two of this article, in estate or trust income, gain, loss and deduction from West Virginia sources shall be determined as follows:

(1) **Items of distributable net income from West Virginia sources.** — There shall be determined the items of income, gain, loss and deduction, derived from or connected with West Virginia sources, which would be included in the determination of federal adjusted gross income if the estate or trust were an individual and which enter into the definition of federal distributable net income of the estate or trust for the taxable year including such items from another estate or trust of which the first estate or trust is a beneficiary. Such determination of source shall be made in accordance with the applicable rules of section thirty-two of this article as in the case of a nonresident individual.

(2) **Allocation among estate or trust beneficiaries.**

(A) The amounts determined under subdivision (1) of subsection (a) shall be allocated among the estate or trust and its beneficiaries (including, solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income.

(B) The amounts so allocated shall have the same character under this article as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(b) **Alternative methods of determining shares.**

(1) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary (including, solely for the purposes of this allocation, resident beneficiaries) in the net amount determined under subdivision (1) of subsection (a) shall
be in proportion to the beneficiary’s share of the estate
or trust income for such year, under local law or the
governing instrument, which is required to be distrib-
uted currently and any such other amounts of such
income distributed in such year. Any balance of such net
amounts shall be allocated to the estate or trust.

(2) The tax commissioner may, on written application
filed on or before the due date of the return due under
this article for the taxable year from the estate or trust
determined without regard to any extension of time for
filing such return, authorize use of such other methods
of determining the representative shares of the benefi-
ciaries and of the estate or trust in its income derived
from West Virginia sources, and the modifications
related thereto, as may be appropriate and equitable, on
such terms and conditions as the commissioner may
require.

(3) The tax commissioner may by regulation establish
such other method or methods of determining the
respective shares of the beneficiaries and of the estate
or trust in its income derived from West Virginia
sources as may be appropriate and equitable. Such
method may be used by the fiduciary in his or her
discretion whenever the allocation of such respective
shares under subsection (a) or subdivision (1) of
subsection (b) would result in an inequity which is
substantial in amount.

(c) Effective date. — The amendments to this section
enacted in the year one thousand nine hundred ninety-
two shall apply to taxable years beginning after the
thirty-first day of December, one thousand nine hundred
ninety-one.

§11-21-44. West Virginia source income of part-year
resident individuals.

(a) Individuals. — The West Virginia source income
of a part-year resident individual shall be the sum of the
following:

(1) Federal adjusted gross income for the period of
residence, computed as if his or her taxable year for
(2) West Virginia source income for the period of nonresidence determined in accordance with section thirty-two of this article as if his or her taxable year for federal income tax purposes were limited to the period of nonresidence.

(3) The special accruals required by subsection (b) of this section.

(b) Special accruals.

(1) If an individual changes his or her status from resident to nonresident he or she shall, regardless of his or her method of accounting, accrue to the portion of the taxable year prior to such change in status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly entering into his or her federal adjusted gross income for such portion of the taxable year or a prior taxable year under his or her method of accounting.

(2) If an individual changes his or her status from nonresident to resident, he or she shall, regardless of his or her method of accounting, accrue to the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, other than items derived from or connected with West Virginia sources, if not otherwise properly entering into his or her federal adjusted gross income for such portion of the taxable year or for a prior taxable year under his or her method of accounting.

(3) No item of income, gain, loss or deduction which is accrued under this subsection shall be taken into account in determining West Virginia adjusted gross income or West Virginia source income for any subsequent period.

(4) The accruals under this subsection shall not be required if the individual files with the tax commissioner a bond or other security acceptable to the tax commissioner, conditioned upon the inclusion of amounts accruable under this subsection in West
Virginia adjusted gross income or West Virginia source income for one or more subsequent taxable years as if the individual had not changed his or her resident status.

(c) **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-one, as amended. For taxable years that began prior to the first day of January, one thousand nine hundred ninety-two, the provisions of section fifty-four, which is repealed by this bill, apply and for that purpose, the provisions of section fifty-four are fully and completely preserved.

§11-21-51a. Composite returns.

(a) Nonresident individuals who are required by this article to file a return and who are:

(1) Partners in a partnership deriving income from a West Virginia source or sources; or

(2) Shareholders of a corporation having income from a West Virginia source or sources and which made an election under section 1362(a) of the Internal Revenue Code (S corporations) for the taxable year; or

(3) Beneficiaries who received a distribution (actual or deemed) from an estate or trust having income from a West Virginia source or sources, may, upon payment of a composite return processing fee of fifty dollars, file a composite return in accordance with the provisions of this section.

(b) In filing a composite return and determining the tax due thereon, no personal exemptions may be utilized, and the rate of tax shall be six and one-half percent. The entity or entities, to which the composite return relates are responsible for collection and remittance of all income tax due at the time the return is filed.

(c) The composite return shall be filed in a manner and form acceptable to and in accordance with instructions from the commissioner, and need not be signed by
all nonresident individuals on whose behalf the return is filed: Provided, That the return is signed by a partner, in the case of a partnership, a corporate officer, in the case of a corporation, by a trustee, in the case of a trust or by an executor or administrator in the case of an estate.

(d) For the purposes of this section, a composite return means a return filed on a group basis as though there was one taxpayer, and sets forth the name, address, taxpayer identification number and percent ownership or interest of each nonresident individual who consents to be included in the composite return in addition to return information as that term is defined in section five-d, article ten of this chapter; the term includes block filing: Provided, That nothing in this section shall prohibit a nonresident from also filing a separate nonresident personal income tax return for the taxable year and a separate return shall be filed if the nonresident has income from any other West Virginia source. If a separate return is also filed for the taxable year, the nonresident shall be allowed credit for his or her share of the tax remitted with the composite return for that taxable year.

(e) This section, as amended in the year one thousand nine hundred ninety-two, shall apply to composite returns filed after the thirty-first day of December, one thousand nine hundred ninety-two.

§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

(a) General rule. — For the privilege of doing business in this state or deriving rents or royalties from real or tangible personal property located in this state, including, but not limited to, natural resources in place and standing timber, a partnership, S corporation, estate or trust, which is treated as a pass-through entity for federal income tax purposes and which has taxable income for the taxable year derived from or connected
with West Virginia sources any portion of which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary, as the case may be, shall pay a withholding tax under this section, except as provided in subsections (c) and (k) of this section.

(b) Amount of withholding tax.

(1) In general. — The amount of withholding tax payable by any partnership, S corporation, estate, or trust, under subsection (a) shall be equal to four percent of the effectively connected taxable income of the partnership, S corporation, estate or trust, as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate.

(2) Credits against tax. — When determining the amount of withholding tax due under this section, the pass-through entity may apply any tax credits allowable under this chapter to the pass-through entity which pass through to the nonresident distributees: Provided, That in no event may the application of any credit or credits reduce the tax liability of the distributee under this article to less than zero.

(c) When withholding is not required. — Withholding shall not be required:

(1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision (1), a person is exempt from the tax imposed by this article only if such person is, by reason of such person's purpose or activities, exempt from paying federal income taxes on such person's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or article twenty-four of this chapter; or
(2) On distributions to a corporation which is exempt from the tax imposed by article twenty-four of this chapter. For purposes of this subdivision (2), a corporation is exempt from the tax imposed by article twenty-four of this chapter only if the corporation, by reason of its purpose or activities is exempt from paying federal income taxes on the corporation's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by article twenty-four of this chapter provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable year filed under this article or article twenty-four of this chapter; or

(3) On distributions when compliance will cause undue hardship on the pass-through entity: Provided, That no pass-through entity shall be exempt under subdivision (3) from complying with the withholding requirements of this section unless the tax commissioner, in his or her discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The tax commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or

(4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under section 761 of the Internal Revenue Code, to not be treated as a partnership for federal income tax, is not treated as a partnership under this article and is not required to withhold under this section. However, such
unincorporated organizations shall make and file with
the tax commissioner a true and accurate return of
information under subsection (c), section fifty-eight of
this article, under such regulations and in such form
and manner as the tax commissioner may prescribe,
setting forth (A) the amount of fixed or determinable
gains, profits and income; (B) the name, address and
taxpayer identification number of persons receiving
fixed or determinable gains, profits or income from the
nonpartnership venture.

(d) Payment of withheld tax.

(1) General rule. — Each partnership, S corporation,
estate or trust, required to withhold tax under this
section shall pay the amount required to be withheld to
the tax commissioner no later than:

(A) S corporations. — The fifteenth day of the third
month following the close of the taxable year of the S
corporation along with the annual information return
due under article twenty-four of this chapter, unless
paragraph (C) of this subdivision applies.

(B) Partnerships, estates and trusts. — The fifteenth
day of the fourth month following the close of the
taxable year of the partnership, estate or trust, with the
annual return of the partnership, estate or trust due
under this article, unless paragraph (C) of this subdi-
vision applies.

(C) Composite returns. — The fifteenth day of the
fourth month of the taxable year with the composite
return filed under section fifty-one-a of this article.

(2) Special rules.

(A) Where there is extension of time to file return. —
An extension of time for filing the returns referenced
in subdivision (1) of this subsection does not extend the
time for paying the amount withholding tax due under
this section. In this situation, the pass-through entity
shall pay, by the date specified in subdivision (1) of this
subsection, at least ninety percent of the withholding tax
due for the taxable year, or one hundred percent of the
tax paid under this section for the prior taxable year,
if such taxable year was a taxable year of twelve months
and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing such return and the amount of tax due with such return is ten percent or less of the tax due under this section for the taxable year, no additions to tax shall be imposed under article ten of this chapter with respect to balance so remitted.

If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

(B) Deposit in trust for tax commissioner. — The tax commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this state, require any pass-through entity to pay over to the tax commissioner the tax deducted and withheld under this section, at any earlier time or times.

(e) Effectively connected taxable income. — For purposes of this section, the term "effectively connected taxable income" means the taxable income or portion thereof of a partnership, S corporation, estate or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under section thirty-two of this article and such regulations as the tax commissioner may prescribe, whether such amount is actually distributed or is deemed to have been distributed for federal income tax purposes.

(f) Treatment of nonresident partners, S corporation shareholders or beneficiaries of a trust or estate.

(1) Allowance of credit. — Each nonresident partner, nonresident shareholder, or nonresident beneficiary, shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, S corporation, estate or trust, under this
Provided, That when the distribution is to a corporation taxable under article twenty-four of this chapter, the credit allowed by this section shall be applied against the distributee corporation's liability for tax under article twenty-four of this chapter.

(2) Credit treated as distributed to partner, shareholder or beneficiary. — Except as provided in regulations, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share, of any withholding tax paid by the partnership, S corporation, estate or trust, under this section shall be treated as distributed to such partner by such partnership, or to such shareholder by such S corporation, or to such beneficiary by such estate or trust, on the earlier of:

(A) The day on which such tax was paid to the tax commissioner by the partnership, S corporation, estate, or trust; or

(B) The last day of the taxable year for which such tax was paid by the partnership, S corporation, estate, or trust.

(g) Regulations. — The tax commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(h) Information statement.

(1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the tax commissioner, showing the amount of West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate, or trust, to such nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the tax commissioner may require.

(2) A copy of the information statements required by
this subsection must be filed with the West Virginia
return filed under this article (or article twenty-four of
this chapter in the case of S corporations) by the pass-
through entity for its taxable year to which the
distribution relates. This information statement must be
furnished to each nonresident distributee on or before
the due date of the pass-through entity's return under
this article or article twenty-four of this chapter for the
taxable year, including extensions of time for filing such
return, or such later date as may be allowed by the tax
commissioner.

(i) Liability for withheld tax. — Every person re-
quired to deduct and withhold tax under this section is
hereby made liable for the payment of the tax due under
this section for taxable years (of such persons) beginning
after the thirty-first day of December, one thousand nine
hundred ninety-one, except as otherwise provided in this
section. The amount of tax required to be withheld and
paid over to the tax commissioner shall be considered
the tax of the partnership, estate, or trust, as the case
may be, for purposes of articles nine and ten of this
chapter. Any amount of tax withheld under this section
shall be held in trust for the tax commissioner. No
partner, S corporation shareholder, or beneficiary of a
trust or estate, shall have a right of action against the
partnership, S corporation, estate, or trust, in respect to
any moneys withheld from such person's distributive
share and paid over to the tax commissioner in com-
pliance with or in intended compliance with this section.

(j) Failure to withhold. — If any partnership, S
corporation, estate or trust, fails to deduct and withhold
tax as required by this section, and thereafter the tax
against which such tax may be credited is paid, the tax
so required to be deducted and withheld under this
section shall not be collected from the partnership, S
corporation, estate or trust, as the case may be, but the
partnership, S corporation, estate or trust, shall not be
relieved from liability for any penalties or interest on
additions to tax otherwise applicable in respect of such
failure to withhold.

(k) Distributee agreements.
(1) The tax commissioner shall permit a nonresident distributee to file with a pass-through entity, on a form prescribed by the tax commissioner, the agreement of such nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or article twenty-four of this chapter in the case of a C corporation, on the distributee with respect to the effectively connected taxable income of the pass-through entity; and (B) to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or article twenty-four of this chapter in the case of a C corporation), together with related interest, penalties, additional amounts and additions to tax, owed by the nonresident distributee.

(2) A nonresident distributee electing to execute an agreement under this subsection must file a complete and properly executed agreement with each pass-through entity for which this election is made, on or before the last day of the first taxable year of the pass-through entity in respect of which the agreement applies. The pass-through entity shall file a copy of that agreement with the tax commissioner as provided in subdivision (5) of this subsection.

(3) After an agreement is filed with the pass-through entity, that agreement may be revoked by a distributee only in accordance with regulations promulgated by the tax commissioner.

(4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity shall not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the tax commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee's continuing failure to comply with the terms of such agreement.

(5) The pass-through entity shall file with the tax
commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or article twenty-four of this chapter in the case of S corporations. If the pass-through entity fails to timely file with the tax commissioner a copy of an agreement executed by a distributee and furnished to the pass-through entity in accordance with this section, then the pass-through entity shall remit to the tax commissioner an amount equal to the amount that should have been withheld under this section from the nonresident distributee. The pass-through entity may recover payment made pursuant to the preceding sentence from the distributee on whose behalf the payment was made.

(1) Definitions. — For purposes of this section, the following terms mean:

(1) Corporation. — The term “corporation” includes associations, joint stock companies and other entities which are taxed as corporations for federal income tax purposes.

(A) C Corporation. — The term “C corporation” means a corporation which is not an S corporation for federal income tax purposes.

(B) S Corporation. — The term “S corporation” means a corporation for which a valid election under section 1362(a) of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

(2) Distributee. — The term “distributee” includes any partner of a partnership, any shareholder of an S corporation, and any beneficiary of an estate or trust, that is treated as a pass-through entity for federal income tax purposes for the taxable year of the entity, with respect to all or a portion of its income.

(3) Internal Revenue Code. — The term “internal revenue code” means the Internal Revenue Code of 1986, as amended through the date specified in section nine of this article.
(4) **Nonresident distributee.** — The term “nonresident distributee” includes any individual who is treated as a nonresident of this state under this article; and any partnership, estate, trust or corporation, whose commercial domicile is located outside this state.

(5) **Partner.** — The term “partner” includes a member of a partnership as that term is defined in this section.

(6) **Partnership.** — 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. “Partnership” does not include an unincorporated organization which, under section 761 of the Internal Revenue Code, is not treated as a partnership for the taxable year for federal income tax purposes.

(7) **Taxable period.** — The term “taxable period” means, in the case of an S corporation, any taxable year or portion of a taxable year during which a corporation is an S corporation.

(8) **Taxable year of the pass-through entity.** — The term “taxable year of the pass-through entity” means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

(m) **Effective date.** — The provisions of this section shall first apply to taxable years of pass-through entities beginning after the thirty-first day of December, one thousand nine hundred ninety-one.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-13b. Information return for corporations electing to be taxed under subchapter S.

Every corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1986, as amended, shall on or before the fifteenth day of the third
month following the close of the taxable year file an
information return for each tax year providing such
information as the tax commissioner may prescribe.
Corporations failing to file information returns by the
due date as prescribed in this section shall be subject
to a penalty of fifty dollars for each failure to file, with
such penalty being collected as other penalties are
collected by the tax commissioner: Provided, That for
tax years beginning on or after the first day of January,
one thousand nine hundred ninety-two, the penalty for
failure to file an information return shall be determined
under section nineteen-a, article ten of this chapter.

CHAPTER 205
(Com. Sub. for H. B. 4055—By Mr. Speaker, Mr. Chambers, and Delegate Burk
By Request of the Executive)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fifty-six-a, article one, chapter thirty-one of said code; to amend and reenact section eighty-five, article twelve of said chapter eleven; to further amend said chapter eleven by adding thereto a new article, designated article twelve-c; and to amend and reenact article one, chapter thirty-one of said code by adding thereto a new section, designated section seventy-six-a, all relating to the corporate license tax; eliminating previous provision regarding assessment, card collections of the tax; eliminating the annual report required of corporations qualified to hold property or do business in the state; eliminating the preliminary annual report required for foreign corporations; providing definitions; providing imposition and rate of tax; providing exemptions from tax; providing for the payment and collection
of tax; providing for assessment and collection of annual attorney-in-fact fee; providing for notice to taxpayers; providing for reports by the secretary of state; providing for the application of the West Virginia Tax Procedure and Administration Act and the West Virginia Tax Crimes and Penalties Act; providing effective date and preservation of prior law; providing a severability clause; requiring judicial notification of court actions affecting corporation's status; imposing a fine for failure to file annual corporate license tax return; making it a misdemeanor to conduct business without corporate license.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

CHAPTER 11. TAXATION.

Article
12C. Corporate License Tax.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-85. Investigation of corporations' delinquencies.

1 The tax commissioner, with the approval of the governor, may appoint agents to investigate all violations of the provisions of this article concerning landholding taxes on corporations, and also for the
5 purpose of collecting such taxes from all corporations
6 which have not paid the same, whether due from
7 domestic or foreign corporations. The compensation of
8 all such agents shall be fixed by the tax commissioner.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-1. Definitions.
§11-12C-2. Corporate license required; tax levied; exemption from tax;
   effective date.
§11-12C-3. Payment and collection of tax; deposit of money; return required.
§11-12C-4. Due date of return; payment of tax.
§11-12C-5. Annual fee of secretary of state as attorney-in-fact.
§11-12C-6. Notice to corporations taxable; tax as lien.
§11-12C-7. Monthly report by secretary of state to tax commissioner as to
corporations.
§11-12C-8. Administrative and criminal penalties.
§11-12C-9. Disposition of corporate license tax collected.
§11-12C-10. Applicability of tax procedure and administration act and tax
   crimes and penalties act.
§11-12C-11. Effective date.
§11-12C-12. Severability.

§11-12C-1. Definitions.

1 As used in this article:
2 (1) "Business activity" means all activities engaged in
3 or caused to be engaged in with the object of gain or
4 economic benefit, direct or indirect, but does not mean
5 any of the activities of foreign corporations enumerated
6 in subsections (b), (c) and (d), section forty-nine, article
7 one, chapter thirty-one of this code.
8 (2) "Corporate license tax" or "license tax" or "tax"
9 means, in addition to the amount of corporate license tax
10 levied pursuant to this article, all interest, additions to
11 tax, fines and penalties, unless the intention to give the
12 term a more limited meaning is clear from the context
13 in which it is used.
14 (3) "Delegate" in the phrase "or his delegate," when
15 used in reference to the tax commissioner, means any
16 officer or employee of the state tax department duly
17 authorized by the tax commissioner directly, or indi-
18 rectly by one or more redelegations of authority, to
19 perform the functions mentioned or described in this
20 article or rules promulgated thereunder.
(4) "Domestic corporation" means a corporation incorporated under the laws of this state and corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred and sixty-three, which have its principal place of business and chief works (if it has chief works) in this state. Every other corporation is a foreign corporation.

(5) "Foreign corporation" means a corporation which is not a domestic corporation.

(6) "Nonprofit corporation" means a nonprofit corporation as defined by section six, article one, chapter thirty-one of this code.

(7) "Tax commissioner" means the tax commissioner of the state of West Virginia or his or her delegate.

§11-12C-2. Corporate license required; tax levied; exemption from tax; effective date.

(a) Corporate license required. — No corporation, domestic or foreign, may engage in any business activity in this state without paying the corporate license tax to the tax commissioner of the state of West Virginia, except as provided in subsection (c) of this section.

(b) Tax levied. — Every corporation shall pay an annual corporate license tax for the license year which begins on the first day of July of each year and ends the thirtieth day of the following June. This tax shall be in addition to the annual fee, if any, payable to the secretary of state as attorney-in-fact. The amount of this tax shall be as follows:

(1) Amount of license tax on domestic corporations. — Every domestic corporation shall pay an annual license tax on its charter for the fiscal year beginning on the first day of July of each year, based on its authorized capital stock as follows: If the authorized capital stock be five thousand dollars, or less, twenty dollars; if more than five thousand dollars and not more than ten thousand dollars, thirty dollars; if more than ten thousand dollars and not more than twenty-five thousand dollars, forty dollars; if more than twenty-five thousand dollars and not more than fifty thousand
dollars, fifty dollars; if more than fifty thousand dollars and not more than seventy-five thousand dollars, eighty dollars; if more than seventy-five thousand dollars and not more than one hundred thousand dollars, one hundred dollars; if more than one hundred thousand dollars and not more than one hundred and twenty-five thousand dollars, one hundred and ten dollars; if more than one hundred and twenty-five thousand dollars and not more than one hundred and fifty thousand dollars, one hundred and twenty dollars; if more than one hundred and fifty thousand dollars and not more than one hundred and seventy-five thousand dollars, one hundred and forty dollars; if more than one hundred and seventy-five thousand dollars and not more than one million dollars, one hundred and eighty dollars, and an additional twenty cents on each one thousand dollars, or fraction thereof, in excess of one million dollars; if more than one million dollars, three hundred and forty dollars, and an additional fifteen cents on each one thousand dollars, or fraction thereof, in excess of one million dollars; if more than fifteen million dollars, twenty-five hundred dollars. The license tax collected hereunder shall be in addition to the annual fee, if any, payable to the secretary of state as statutory attorney-in-fact. For the purpose of the assessment of the license tax provided by this section, and for no other purpose, shares of stock having no par value shall be presumed to be of the par value of twenty-five dollars each: Provided, That if such stock was originally issued for a consideration greater than twenty-five dollars per share, such license taxes as are required to be paid to the tax commissioner shall be computed upon the basis of the consideration for which such stock was issued.

(2) Amount of license tax on foreign corporations. — It shall be the duty of the tax commissioner to assess and fix the license tax of each foreign corporation engaging in business activity in this state according to the proportion of its issued and outstanding capital stock which is represented by its property owned and used in
this state, which license tax shall be at the rate prescribed in subdivision (1) of this subsection (b), plus seventy-five percent of such tax. In no event shall any such foreign corporation pay an annual license tax of less than two hundred fifty dollars, which shall be in addition to the fee of the secretary of state as statutory attorney-in-fact. The tax commissioner may in any case require such additional information as he or she may deem necessary to enable him or her to assess and fix the just amount of license tax of such corporation; it shall be his or her duty to notify every such corporation of the amount so assessed; and it shall be the duty of the corporation to pay the same to the tax commissioner within thirty days thereafter, and if it fail to do so it shall be liable to the penalties prescribed in, or pursuant to, this article.

(c) Exemptions. — Nonprofit corporations are exempt from payment of the corporate license tax but must file with the tax commissioner the return required by section three of this article, and pay the annual fee of the secretary of state as attorney-in-fact under section five of this article if applicable.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

(a) Payment and collection of tax. — When application is made to the secretary of state for a certificate of incorporation or authority to do business in this state, it shall be the duty of the applicant to pay all taxes and fees due under this article; and it shall be the duty of the secretary of state to collect the corporate license tax for the first year before issuing such certificate. Thereafter, on or before the first day of the license tax year next following the date of the certificate, and on or before the first day of each succeeding license tax year, such corporation shall pay and the tax commissioner shall collect such tax for a full license tax year together with the statutory attorney fee: Provided, That if the application is made on or after the first day of the second month preceding the beginning of the next license tax year, and before the first day of such license tax year, the secretary of state shall collect the tax for
(b) Deposit of money. — The money so received by the secretary of state and the tax commissioner shall be paid by them into the state treasury.

(c) Returns. — Payment of the tax and statutory attorney fee required under the provisions of this section shall be accompanied by a return on forms provided by the tax commissioner for that purpose. The tax commissioner shall upon completion of processing such return, forward it to the secretary of state, together with a list of all corporations which have paid such tax. Such return shall contain (1) the address of its principal office; (2) the names and mailing addresses of its officers and directors; (3) the name and mailing address of the person on whom notice of process may be served and such other information as the tax commissioner deems appropriate.

§11-12C-4. Due date of return; payment of tax.

It shall be the duty of every corporation required to pay the tax to file a properly completed return together with payment of tax owed to the tax commissioner by the first day of July of the license year; and if it fails to do so it shall be liable for payment of interest, additions to tax and penalties prescribed in article ten of this chapter and subject to the penalties prescribed in section eight of this article.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.

Every foreign corporation, every foreign limited partnership, every domestic corporation whose principal place of business or chief works is located outside the state, and every domestic limited partnership whose principal place of business is located outside the state, shall pay an annual fee of ten dollars for the services of the secretary of state as attorney-in-fact for such corporation or limited partnership, which fee shall be due and payable at the same time and with the same
return, collected by the same officers, and accounted for in the same way, as the annual license tax imposed on corporations under this article. The tax commissioner shall pay over to the secretary of state all attorney-in-fact fees collected under this section, and such fees shall be used to offset the costs of the secretary of state for his or her services as attorney-in-fact.

§11-12C-6. Notice to corporations taxable; tax as lien.

(a) It shall be the duty of the tax commissioner, between April fifteenth and May fifteenth each year, to notify every domestic corporation and every foreign corporation currently registered to do business in this state which is or may be liable for payment of the tax imposed by this article of the time of payment of such tax and the amount thereof, together with the statutory attorney fee, if any. Such notices may be sent through the mails, addressed to the corporation at its last known post office address as shown by the records in the office of the secretary of state.

(b) The amount of such tax shall be deemed a debt due the state, and shall be a lien as to an innocent purchaser for value, on the property and assets of the corporation prior to all other liens, except the lien for ad valorem property taxes levied on its property, from the time a notice of such lien, specifying the year and the amount for which the lien is claimed, is filed in the office of the clerk of the county commission of the county in which the property subject to such liens is situated. Such clerk shall, upon the filing in his or her office of any such notice, record such notice in the docket where general state tax liens are filed and index the same in the name of the corporation against whom the lien is claimed. Upon payment of such lien debt there shall be executed by the tax commissioner and delivered to the clerk of the county commission in whose office notice of such lien is filed a release thereof, which release shall be filed and recorded by such clerk in like manner as releases of judgment or tax liens are filed and recorded. Such tax shall be a preferred debt in case of insolvency.
§11-12C-7. Monthly report by secretary of state to tax commissioner as to corporations.

The secretary of state shall within twenty days after the close of each month make a report to the tax commissioner for the preceding month, in which he or she shall set out the name of every corporation to which he or she issued a certificate of incorporation during the month, as well as the name of each corporation to which he or she issued a certificate of authority, with the amount of license tax paid to him or her by each; also he or she shall set out in such report the names of all corporations to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal or merger; and a statement of all moneys received during such preceding month from all sources which are due to the state, and pay the same into the treasury; if he or she fails to do so it shall be the duty of the tax commissioner to report such failure to the governor.

§11-12C-8. Administrative and criminal penalties.

The following penalties shall be in addition to the penalties and remedies available under articles nine and ten of this chapter of the code:

(a) Administrative penalty. — The commissioner shall impose upon each delinquent corporation a fine in the amount of one hundred dollars per year for each license tax year or portion thereof in which the license tax return which is due is not filed or the license tax which is owed is not paid. This penalty shall be assessed and collected in the same manner as the license tax.

(b) Criminal penalty. — It shall be a misdemeanor for a corporation to conduct business for more than thirty consecutive calendar days without paying in full the amount of corporate license tax which is due. The penalty for any officer, agent or employee convicted of such offense shall be a fine equal to a sum of two and one-half times the annual corporate license tax assessed for said corporation, not to exceed one thousand dollars per conviction.
(c) Revocation of certificate of incorporation or certificate of authority. — Upon the establishment of a finalized liability for corporate license taxes, not subject to further administrative or judicial review under article ten of this chapter, the certificate of incorporation in the case of a domestic corporation, or the certificate of authority in the case of a foreign corporation, shall be revoked. Any corporation whose certificate of incorporation or certificate of authority has been revoked due to nonpayment of its corporate license taxes shall be reinstated to its former rights as if it had not been delinquent upon payment to the tax commissioner of all delinquent license taxes, plus any interest, additions or penalties accruing thereon.

§11-12C-9. Disposition of corporate license tax collected.

All taxes collected under the provisions of this article shall be paid into the general revenue fund of the state treasury in the manner provided by law.

§11-12C-10. Applicability of tax procedure and administration act and tax crimes and penalties act.

Except when a specific provision of this article directly conflicts with a provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter of the code, the provisions of that act are fully applicable to the corporate license tax imposed by this article. In the event of any conflict, the provisions of this article shall have paramount effect, but the two articles shall be construed as complementary and harmonious unless so clearly in conflict that they cannot reasonably be reconciled. However, notwithstanding any provision of that act, the tax commissioner may lawfully release the names and addresses of the directors and officers of a corporation to anyone upon written request: Provided, That such request provides the correct name of the corporation as reported to the tax commissioner. The tax commissioner may charge a reasonable fee to cover the costs of processing such requests.

Each and every provision of the "West Virginia Tax
20 Crimes and Penalties Act” set forth in article nine of
this chapter shall apply to the tax imposed by this
article with like effect as if said act were applicable only
to the tax imposed by this article and were set forth in
extension in this article.

§11-12C-11. Effective date.
1 (a) The provisions of this article shall take effect on
2 the first day of July, one thousand nine hundred ninety-
3 three, and apply to license tax years beginning the first
day of July, one thousand nine hundred ninety-three and
4 thereafter.
6 (b) Tax liabilities, if any, arising for taxable years
7 ending prior to the first day of July, one thousand nine
8 hundred ninety-three, shall be determined, adminis-
tered, assessed and collected as if sections seventy-six
10 through eighty-four and eighty-six through ninety-one,
11 article twelve of this chapter had not been repealed; and
12 the rights and duties of the taxpayer and the state of
13 West Virginia thereunder shall be fully and completely
14 preserved.

§11-12C-12. Severability.
1 If any provision of this article or the application
2 thereof to any person or circumstance is for any reason
3 adjudged by any court of competent jurisdiction to be
4 unconstitutional or otherwise invalid, such judgment
5 shall not affect, impair or invalidate the remainder of
6 said article, but shall be confined in its operation to the
7 provision thereof directly involved in the controversy in
8 which such judgment shall have been rendered, and the
9 applicability of other provisions shall not be affected
10 thereby.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-76a. Notification of court action affecting corpo-
rate status.
1 It shall be the duty of the clerk of every court of this
2 state in which any proceedings are had which result in
3 the forfeiture of the charter or certificate of incorpora
tion of any corporation issued under the laws of this state, or result in the dissolution or extinction of any such corporation, or in the revocation of the rights and privileges of any foreign corporation to do business in this state, to notify the secretary of state of any such forfeiture, dissolution, extinction or revocation, in which report he shall state the name of the court, the name of the corporation, the nature of the actions and the date of the order or judgment, and such other pertinent matter as may be required by the secretary of state; and the secretary of state shall file and record such report in his or her office, and shall note the same in the indexes of corporations kept in his or her office.

CHAPTER 206

(H. B. 4692—By Delegates Flanigan and Bailey)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-d, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, reducing to ten million dollars the amount of qualified investment in a new industrial facility producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel to be eligible for credits against business franchise and corporation net income taxes.

Be it enacted by the Legislature of West Virginia:

That section three-d, article thirteen-d, 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 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, AND INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS.

§11-13D-3d. Amount of credit allowed and application of
credit for qualified investment in a new industrial facility 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 ten 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 ten 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 (5) 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 (A) of subdivision (5) of this subsection (b) shall then be applied against the tax liabilities in the manner specified in paragraph (B), subdivision (5) 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 subdivision (5) of this subsection (b) 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 as 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 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 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 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 commis-
sioner 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 contain-
ing 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-three and annually thereafter. 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.

CHAPTER 207
(Com. Sub. for S. B. 348—By Senators Spears, Wooton, Wehrle, Wiedebusch,
Sharpe, Jones, Claypole, Chernenko, Boley, Blatnik,
Burdette, Mr. President, and Whitlow)

[Passed March 7, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen,
chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
further amend said article by adding thereto a new
section, designated section eleven, removing nails and
fencing from the definition of improvements to real
property; exempting health and fitness organizations
providing personalized fitness programs from remitting
sales tax; exempting sales of services by baby-sitters
from remitting sales tax under certain conditions;
exempting certain community-based service organiza-
tions from collecting and remitting sales tax on specified
programs and activities; prohibiting the tax commis-
sioner from taking action against community-based
organizations for taxes uncollected prior to the first day
of July, one thousand nine hundred ninety-two; and
barring refunds of taxes collected and paid over prior
to that date.
Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, 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 a new section, designated section eleven, to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.


1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

3 (b) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education and the arts, board of trustees of the university system of West Virginia, or the board of directors for colleges located in this state;

4 (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;

5 (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;

6 (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 organiza-
tions, 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 article 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: Provided, however, That nails and fencing shall not be considered as improvements to real property;

(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, 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 commis-
sioner, pursuant to rules and regulations which shall be
promulgated by the tax commissioner; and notwith-
standing 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 elemen-
tary 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 "electronic data processing services" means:
(1) The processing of another's data, including all
processes incident to processing of data such as key-
punching, keystroke verification, rearranging or sorting
of previously documented data for the purpose of data
entry or automatic processing, and changing the
medium on which data is sorted, whether these pro-
cesses 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 corpora-
tion for another corporation when both corporations are
members of the same controlled group. Control means
ownership, directly or indirectly, of stock possessing
fifty percent or more of the total combined voting power
of all classes of the stock of a corporation entitled to vote
or ownership, directly or indirectly, of stock possessing
fifty percent or more of the value of the corporation;
(dd) Food for the following shall be exempt:
(1) Food purchased or sold by public or private
schools, school sponsored student organizations, or
school sponsored parent-teacher associations to students
enrolled in such school or to employees of such school
during normal school hours; but not those sales of food
made to the general public;
(2) Food purchased or sold by a public or private
college or university or by a student organization
officially recognized by such college or university to
students enrolled at such college or university when
such sales are made on a contract basis so that a fixed
price is paid for consumption of food products for a
specific period of time without respect to the amount of
food product actually consumed by the particular
individual contracting for the sale and no money is paid
at the time the food product is served or consumed;
(3) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(4) Food sold in an occasional sale by a charitable or nonprofit organization including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose;

(5) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on such functions and activities: Provided, That purchases made by such organizations shall not be exempt as a purchase for resale;

(ee) Sales of food by little leagues, midget football leagues, youth football or soccer leagues and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That such purchases made by such organizations shall not be exempt as a purchase for resale;

(ff) Charges for room and meals by fraternities and sororities to their members: Provided, That such purchases made by a fraternity or sorority shall not be exempt as a purchase for resale;

(gg) Sales of or charges for the transportation of passengers in interstate commerce;

(hh) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

(ii) Sales of tangible personal property or services to any person who claims exemption from the tax imposed
393 by this article or article fifteen-a of this chapter
394 pursuant to the provisions of any other chapter of this
395 code;
396 (jj) Charges for the services of opening and closing a
397 burial lot;
398 (kk) Sales of livestock, poultry or other farm products
399 in their original state by the producer thereof or a
400 member of the producer's immediate family who is not
401 otherwise engaged in making retail sales of tangible
402 personal property; and sales of livestock sold at public
403 sales sponsored by breeder's or registry associations or
404 livestock auction markets: Provided, That the exemp-
405 tions allowed by this subsection shall apply to sales
406 made on or after the first day of July, one thousand nine
407 hundred ninety, and may be claimed without presenting
408 or obtaining exemption certificates: Provided, however,
409 That the farmer shall maintain adequate records;
410 (ll) Sales of motion picture films to motion picture
411 exhibitors for exhibition if the sale of tickets or the
412 charge for admission to the exhibition of the film is
413 subject to the tax imposed by this article and sales of
414 coin-operated video arcade machines or video arcade
415 games to a person engaged in the business of providing
416 such machines to the public for a charge upon which the
417 tax imposed by this article is remitted to the tax
418 commissioner: Provided, That the exemption provided in
419 this subsection shall apply to sales made on or after the
420 first day of July, one thousand nine hundred ninety, and
421 may be claimed by presenting to the seller a properly
422 executed exemption certificate;
423 (mm) Sales of aircraft repair, remodeling and main-
424 tenance services when such services are to an aircraft
425 operated by a certified or licensed carrier of persons or
426 property, or by a governmental entity, or to an engine
427 or other component part of an aircraft operated by a
428 certificated or licensed carrier of persons or property,
429 or by a governmental entity and sales of tangible
430 personal property that is permanently affixed or
431 permanently attached as a component part of an aircraft
432 owned or operated by a certificated or licensed carrier
433 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;

(nn) Sales of tangible personal property and services to a person entitled to claim the tax credit for investment in certain management information services facilities allowed under section three-c, article thirteen-d of this chapter, pursuant to the issuance of a management 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 consumed 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 operating 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 information services facility, or to gasoline or special fuel: Provided, however, That nothing in this paragraph shall be construed to limit, exclude or preclude the application 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;

(oo) Charges for memberships or services provided by
health and fitness organizations relating to personalized fitness programs;

(pp) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby sitting services does not exceed $5,000.00 in a taxable year; and

(qq) A corporation or organization which is a not-for-profit entity which charges membership dues utilized for and contributing significantly to traffic and pedestrian safety and education programs whether or not the corporation or organization is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1985, as amended.


1 (a) Sales of taxable services by a corporation or organization that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and that meet the requirements set forth in subsection (b) of this section, are exempt from the tax imposed by this article, except that this exemption shall not apply to sales of taxable services to the extent that income received from the sales of such services is taxable under Section 511 of the Internal Revenue Code.

(b) The exemption set forth in this section applies only to those corporations or organizations meeting the following criteria:

(1) The corporation or organization is organized and operated primarily for charitable or educational purposes and its activities and programs contribute importantly to promoting the general welfare of youth, families and the aged, improving health and fitness and providing recreational opportunities to the public;

(2) The corporation or organization offers membership or participation in its programs and activities to the general public and charges fees or dues which make its programs and activities accessible by a reasonable cross-section of the community; and

(3) The corporation or organization offers financial assistance on a regular and on-going basis to individuals
unable to afford the organization's membership dues or fees.

(c) The tax commissioner is prohibited from issuing any assessments and from taking any other action under article ten of this chapter after the thirty-first day of December, one thousand nine hundred ninety-one, to collect the tax imposed by this article from an organization described in subsections (a) and (b) of this section that did not collect the tax on transactions occurring before the first day of July, one thousand nine hundred ninety-two. The tax commissioner is also prohibited from refunding any tax collected by a qualified organization prior to the first day of July, one thousand nine hundred ninety-two, that was paid over to the tax commissioner.

(d) For purposes of this section, the term "corporation" and the term "organization" are used interchangeably and mean a corporation or other organization that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, as amended.

(e) Nothing in this section shall affect the application of this article to nonprofit tax-exempt hospitals.

CHAPTER 208
(H. B. 4052—By Mr. Speaker, Mr. Chambers, and Delegate Burk, By Request of the Executive)

[Passed February 21, 1992; 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 ninety; preserving 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.


(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-two, 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-one, or thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-two, shall be given effect.

(b) Effective date. — (1) 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-one, prior law shall be fully preserved.

(2) The amendments to this section enacted in the year one thousand nine hundred ninety-two shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, 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-one, prior law shall be fully preserved.
CHAPTER 209
(H. B. 4053—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed February 10, 1992; 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 ninety; 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


ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3a. Meaning of terms; general rule.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition 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-two, 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-one, 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-two, shall be given effect.

(b) Effective date. — (1) The amendments to this section reenacted 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.

(2) The amendments to this section reenacted in the year one thousand nine hundred ninety-two shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, 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-one, prior law shall be fully preserved.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety-two, 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-one, 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-two, 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. — (1) 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.

(2) 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-one, 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-one, prior law shall be fully preserved.
AN ACT to amend and reenact section eight, article one, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the sheriff to include notices of taxes and fees owed to the county or a municipality with notices of real or personal property taxes.

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TAXATION 1583

CHAPTER 210
(H. B. 4677—By Delegates Mezzatesta and L. White)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the sheriff to include notices of taxes and fees owed to the county or a municipality with notices of real or personal property taxes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.


1. The sheriff may give notice by posting at not less than six public places in each magisterial district, for at least ten days before the time appointed, that between July fifteen and August thirty-first he will attend at one or more of the most public and convenient places in each district, such places to be specified in the notice, for the purpose of receiving taxes due by the people residing or paying taxes in such district. The notice shall also state that those who pay the first installment of their taxes on or before September first will be entitled to a discount of two and one-half percent. Like notice may be given that between January fifteenth and February twenty-eighth he will again appear in each district for the collection of taxes, and that those who pay their second installment on or before March first will be entitled to the same discount. Failure of the sheriff to post such lists shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes, or the methods of enforcing the payment of such taxes.
interest or penalty.

The county commission of any county may order that the above notice shall also be given by advertisement. Such an order, once entered, shall continue in effect until rescinded by the county commission. Upon entry of such order, the sheriff shall, besides posting as required above, publish the proper notice 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. Such notice shall be so published within fourteen consecutive days next preceding the fifteenth day of July or the fifteenth day of January as the case may be. For every failure so to advertise, the sheriff shall forfeit one hundred dollars.

Notwithstanding the foregoing provisions, the sheriff shall send to every person owing real or personal property taxes a copy of such taxpayer's annual tax ticket or tickets showing what tax is due and how such tax may be paid. Such copy shall be sent to the last known address of such taxpayer by first class United States mail.

Failure of the sheriff to send or failure of the taxpayer to receive such copy shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes, or the method of enforcing the payment of such taxes, interest or penalty.

At such time as the sheriff prepares the delinquent list for real property, he shall compare such list with a copy of the landbooks most recently delivered by the assessor to the board of review and equalization pursuant to section nineteen, article three of this chapter. The assessor shall make a copy of said landbooks available to the sheriff. If property on the delinquent list should appear as a transfer on said landbooks with the delinquent owner as the transferor, the sheriff shall send to the transferee at his last known address by first class United States mail a copy of the annual tax ticket or tickets showing what taxes are due
upon the real property of such transferee and how they
may be paid as prescribed in this section.

Failure of the sheriff to send or failure of the taxpayer
to receive such copy shall not impair the right to collect
such taxes, the right to collect any interest or penalty
imposed as a result of the failure to pay such taxes, or
the method of enforcing the payment of such taxes,
interest or penalty.

In addition to the notice of real or property taxes
owed, provided in this section, the county commission of
any county may order that the sheriff include in the
mailing notice of any taxes or other fees owed to the
county or a municipality in the county.

CHAPTER 211
(H. B. 4507—By Delegates Browning and Prezioso)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight,
article seven-b, chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to participation in teachers' defined
contribution retirement system; limiting participation
in existing teachers retirement system; permitting
withdrawal of benefits from existing system and deposit
in defined contribution system.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, article seven-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 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7. Participation in teachers' defined contribution retirement system;
limiting participation in existing teachers retirement system.

§18-7B-8. Voluntary participation in system.
§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.

Beginning the first day of July, one thousand nine hundred ninety-one, the teachers' defined contribution retirement system shall be the single retirement program for all new employees whose employment commences on or after that date. No additional new employees except as may be provided herein may be admitted to the existing retirement system. Members of the existing retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, are not affected by this article and shall continue to contribute and participate in the existing system without change in provisions or benefits.

Notwithstanding the provisions of section twenty-three, article seven-a of this chapter, any employee whose employment terminates after the thirtieth day of June, one thousand nine hundred ninety-one, who is later reemployed by an employer shall be eligible for membership only in the teachers' defined contribution system: *Provided*, That if such reemployment with an existing employer occurs not more than six months after the employee's previous employment, he or she shall be entitled to readmission to the existing retirement system in which he or she was originally a member: *Provided, however*, That if such employee has ten or more years of credited service in the existing retirement system, he or she shall be entitled to readmission into the existing retirement system in which he or she was originally a member if said person's employment was suspended or terminated due to reduction-in-force, so long as he or she has not withdrawn his or her contributions from the existing retirement system and if such employee shall apply for readmission before the first day of July, one thousand nine hundred ninety-three: *Provided further*, That if such employee has withdrawn his or her contribution from the existing retirement system, then readmission shall not be permitted and the employee will be entitled only to the defined contribution system.

An employee whose employment with an employer or
an existing employer is suspended as a result of an
approved leave of absence, approved maternity or
paternity break in service, or any other approved break
in service authorized by the board, is eligible for
readmission to the existing retirement system in which
he or she was a member.

In all cases where a question exists as to readmission
to membership in the existing retirement system, the
board shall decide the question.

§18-7B-8. Voluntary participation in system.

Any employee who is a member of the existing
retirement system may, upon written election, voluntar-
ily elect membership in the defined contribution system,
on a prospective basis, on or after the first day of July,
one thousand nine hundred ninety-one. All benefits
earned by any employee making such voluntary election
under the existing retirement system prior to such a
voluntary election shall be frozen and made available to
that employee upon retirement as provided by the
existing retirement system. A member of the existing
retirement system who has less than five years of
contributing service in the existing retirement system
may elect to withdraw his or her contribution plus
interest thereon as if such member is terminating
employment and upon withdrawal shall deposit such
funds in the defined contribution system: Provided, That
such member’s years of contributing service in the
existing system shall be applied toward the years of
employment service required under section eleven of
this article: Provided, however, That this election shall
be allowed on a retroactive basis to the first day of July,
one thousand nine hundred ninety-one. For the purposes
of this section, “frozen” means that the member’s salary,
years of service and any other factor to determine
benefits shall be calculated as of the date that the
member elected membership in the defined contribution
system and after that date no increase in salary, years
of service or any other factor may be used to increase
the retirement benefit above that which it would be if
a person retired upon the date that the election is made.

After having made such election, the employee may not
change such election or again become a member of the existing retirement system.

CHAPTER 212
(S. B. 153—By Senator Humphreys)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uniform commercial code—bulk transfers.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to uniform commercial code—Bulk transfers.

1 Article six, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 213
(H. B. 4585—By Delegates Houvouras and Burk)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a preference for resident vendors of commodities to the state.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; exceptions.

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

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

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

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

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

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

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

(e) If any provision or clause of this section or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect
120 without the invalid provision or application, and to this 121 end the provisions of this section are declared to be 122 severable.

123 (f) This section may be cited as the "Jobs for West 124 Virginians Act of 1990."

CHAPTER 214
(Com. Sub. for S. B. 280—By Senators Brackenrich and Holliday)

[Passed March 7, 1992; in effect May 2, 1992. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections twenty-three-b, twenty-three-c and twenty-three-d, relating to creating a whitewater commission within the division of natural resources; powers and duties; providing minimum use allocations for whitewater outfitters; providing civil and criminal penalties for violations; determinations based on prior enactments to remain in effect until amended; creating special revenue accounts; dedicating certain fees for whitewater purposes; bonds; revocation of licenses; and license carrying requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

§20-2-23b. Whitewater study and improvement fund.

§20-2-23c. Voluntary contributions to whitewater advertising and promotion fund.
§20-2-23d. Bond; revocation of license; licensing carrying requirement; criminal penalties.

§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

(a) There is hereby created a whitewater commission within the division of natural resources. The commission shall consist of the director of the division of natural resources or his or her designee; the director of the division of parks and tourism or his or her designee; three representatives of private river users who have no affiliation with any commercial river enterprise to be appointed by the governor: Provided, That no more than one representative of the private river users may be from each whitewater zone; and four persons representing four different licensed commercial whitewater outfitters currently operating within the state to be appointed by the governor. The superintendent of the New River Gorge national park or his or her designee shall be a nonvoting member of the commission. All appointed members of the commission shall be citizens and residents of West Virginia. Of the four representatives of commercial outfitters, two persons shall represent the small commercial whitewater outfitters in West Virginia who have a single license. The director of the division of natural resources shall serve as chairperson of the commission. Of the seven members of the commission first appointed by the governor, two shall be appointed for a term of one year, two for a term of two years and three for a term of three years. Thereafter, the terms of all appointed members of the commission are for three years. Members shall serve until their successors have been appointed and any vacancy in the office of a member shall be filled by appointment for the unexpired term. Members representing commercial outfitters who have served at least two years on the commission are not eligible for reappointment to a successive term.

(b) The commission has the following powers and duties:
(1) To investigate and study commercial whitewater rafting, outfitting and activities related thereto which take place along the rivers or waters of the state;

(2) To designate any such rivers or waters or any portions thereof as "whitewater zones" for which commercial whitewater rafting, outfitting and activities are to be investigated and studied, and to determine the order and the periods of time within which the investigations and studies are to be conducted. The commission shall first investigate and study those whitewater zones which it finds to present serious problems requiring immediate regulation, including, without limitation, safety hazards and problems of overcrowding or environmental misuse;

(3) To restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters seeking to operate in areas and portions of rivers and waters in this state designated whitewater zones by action of the director of the division of natural resources as authorized under prior enactment of this section and so designated by the filing of a written notice entered upon the records of the division containing the designation and reasonable description of the whitewater zone;

(4) To commission a three-year study to determine the physical carrying capacity for the New, Gauley, Cheat, Shenandoah and Tygart rivers and how each relates to the overall economic impact of the state and the safety of the general public: Provided, That if, during the three-year study period, the commission deems that overcrowding is not a problem on any whitewater zone, then it may issue a license;

(5) Based on the findings of the three-year study of carrying capacity, to formulate rational criteria for an allocation methodology including, but not limited to, a minimum allocation for each river studied;

(6) To implement the allocation methodology, which shall be implemented by the commission at the conclusion of the three-year study period and not later than the first day of July, one thousand nine hundred ninety-five, by rules promulgated pursuant to chapter twenty-
(7) To determine administrative policies relating to regulation of the whitewater industry and to administer such policies, except that the commission shall delegate to the director of the division of natural resources or his or her designee the authority to administer the day-to-day responsibilities of the commission pursuant to this section and may vest in the director of the division of natural resources or his or her designee the authority to make determinations with respect to which it is not practicable to convene or to poll the commission, within guidelines established by the commission;

(8) To review all contracts or agreements with governmental agencies related to whitewater studies or regulation, and any negotiations related thereto;

(9) To verify reports by outfitters of numbers of river users and guides and to establish a system for reporting, prior to the departure of any craft, the number of river users and guides on each whitewater expedition;

(10) To regulate the issuance, transfer, and renewal of licenses. However, licenses issued to commercial whitewater outfitters or use allocations or other privileges conferred by a license may be transferred, sold, offered as security to financial institutions or otherwise encumbered, upon notice in writing to the commission and the director of the division of natural resources, subject to the following limitations: (i) The commission may refuse a transfer upon a finding that there is reasonable cause to believe that the safety of members of the public may be adversely affected by the transfer; and (ii) the commission shall require that taxes, workers' compensation and other obligations due the state be paid prior to any transfer;

(11) To collect, for the study period established in subdivision (4) of this subsection, an annual license fee of five hundred dollars for each river on which a commercial whitewater outfitter operates. The annual per river license fee is limited to the Cheat, Gauley, New, Shenandoah and Tygart rivers. The annual license fee for a commercial whitewater outfitter operating on
a river not so designated is five hundred dollars regardless of the number of rivers operated on. A commercial whitewater outfitter who is operating on a river designated in this subdivision and who has paid the annual per river license fee may not be required to pay an additional annual license fee to operate on a nondesignated river. The commercial whitewater outfitter license shall be issued by the commission and is for a period of ten years: Provided, That an outfitter pays the required annual license fee. If an outfitter fails to pay the license fee, then the license shall be suspended until the license fee is paid. Licenses are subject to the bonding provisions set forth in section twenty-three-d of this article and the revocation provisions set forth in the rules promulgated by the director of the division of natural resources. License fees shall be used by the division of natural resources for the purpose of enforcing and administering the provisions of this section;

(12) To establish a special study and improvement fee to be paid by outfitters and to establish procedures for the collection and enforcement of the special study and improvement fee;

(13) To establish a procedure for hearings on violations of this section and rules promulgated thereunder and to establish civil penalties for violations of this section and rules promulgated thereunder; and

(14) To approve rules promulgated by the director of the division of natural resources pursuant to chapter twenty-nine-a of this code, with respect to commercial whitewater outfitters operating upon the waters of the state, whether or not such waters have been designated whitewater zones, which relate to: (i) Minimum safety requirements for equipment; (ii) standards for the size of rafts and number of persons which may be transported in any one raft; (iii) qualifications of commercial whitewater guides; and, with respect to waters designated whitewater zones, (iv) standards for the number of rafts and number of persons transported in rafts.

(c) The commission shall meet upon the call of the chairperson or a majority of the members of the
commission. However, the commission shall meet at
least quarterly and shall conduct business when a
majority of the members are present. At the meetings,
the commission shall review all data, materials and
relevant findings compiled relating to any investigation
and study then under consideration and, as soon as
practicable thereafter, the commission shall recommend
rules to govern and apply to the designated whitewater
zone(s). At least annually, the commission shall meet for
the purpose of considering and adjusting allocations. At
least annually, the commission shall review fees and
proposed expenditures. The commission may not limit
the number of commercial whitewater outfitters oper-
at ing on rivers not designated as whitewater zones, nor
may the commission limit the number of rafts or total
number of persons transported in rafts by commercial
whitewater outfitters on rivers not designated as
whitewater zones. Commission members shall be
reimbursed all reasonable and necessary expenses
incurred in the exercise of their duties.

(d) For the portions of the Gauley and New rivers
designated as whitewater zones, the minimum use
allocation conferred by a license, for the study period
established pursuant to subdivision (4), subsection (b) of
this section, is one hundred twenty for the Gauley and
one hundred fifty for the New, or an increased min-
imum allocation established by the board. The commis-
sion may permit additional allocations or licenses for
whitewater outfitters which are nonprofit entities
operating upon the waters of the state upon the effective
date of this section. For other waters designated
whitewater zones, the commission may increase but not
decrease allocations from those in effect on the effective
date of this section.

(e) Violation of this section or any rule promulgated
pursuant to this section constitutes a misdemeanor
punishable by the penalties set forth in section twenty-
three-d of this article.

(f) The director of the division of natural resources
shall promulgate, pursuant to the provisions of chapter
twenty-nine-a of this code, all rules necessary to
effectuate the purposes of this section and these rules
must be approved by the commission. The division of
natural resources shall enforce the provisions of this
section and rules promulgated pursuant to this section,
and shall provide necessary staff and support services
to the commission to effectuate the purposes of this
section.

(g) All orders, determinations, rules, permits, grants,
contracts, certificates, licenses, waivers, bonds, author-
izations and privileges which have been issued, made,
granted or allowed to become effective pursuant to any
prior enactments of this section by the governor, the
secretary of the department of commerce, labor and
environmental resources, the director of the division of
natural resources, the whitewater advisory board or by
a court of competent jurisdiction, and which are in effect
on the effective date of this section, shall continue in
effect according to their terms until modified, termi-
nated, superseded, set aside or revoked by the governor,
secretary, director or commission pursuant to this
section, by a court of competent jurisdiction, or by
operation of law.

§20-2-23b. Whitewater study and improvement fund.
1 There is hereby created in the state treasury a special
2 revenue account, which shall be an appropriated,
3 interest-bearing account, designated as the whitewater
4 study and improvement fund. All proceeds from this
5 fund shall be used exclusively for the purposes of the
6 administration, regulation, promotion and study of the
7 whitewater industry.

8 The special study and assessment fee collected by the
9 commission pursuant to the provisions of section twenty-
10 three-a of this article shall be deposited, within fifteen
11 days after receipt, to the whitewater study and improve-
12 ment fund and dedicated to the purposes of this section.

§20-2-23c. Voluntary contributions to whitewater adver-
tising and promotion fund.
1 There is hereby created in the state treasury a special
2 revenue account, which shall be an appropriated,
interest-bearing account designated as the "whitewater advertising and promotion fund". Each whitewater license holder may contribute any sum desired to this fund, which fund shall be used for the purpose of advertising and promoting whitewater in West Virginia.

§20-2-23d. Bond; revocation of license; licensing carrying requirement; criminal penalties.

(a) Immediately upon the issuance of a whitewater outfitter's license and before any whitewater outfitter's services are offered or rendered thereunder, the licensee shall execute a surety bond in the penal sum of one thousand dollars payable to the state of West Virginia and conditioned upon the faithful and reliable discharge of his or her services under and pursuant to the license. The bond shall be approved as to form by the attorney general and as to surety by the director, and when so executed and approved, shall be filed in the office of the director of the division of natural resources. The bond shall be for the life of the license.

(b) The whitewater commission is hereby authorized to revoke and cancel any whitewater outfitter's license for failure of the licensee to give the bond required by this section, for a licensee's violation or disregard of any of the provisions of this chapter, upon a licensee's conviction of a crime, or for any other reason or cause justifying refusal of the whitewater outfitter's license to the licensee upon a new application therefor. The commission shall afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

(c) No person shall act or serve as a whitewater outfitter, as defined in this article, without procuring and having on his or her person at the time a valid whitewater outfitter's license from the commission authorizing them to do so.

(d) Any person who violates any of the provisions of this section or of section twenty-three-a of this article, or any rule promulgated by the director of the division
of natural resources or who misrepresents any material fact in an application, record, report or other document filed or required to be maintained under the provisions of this article, or any rules promulgated hereunder by the director of the division of natural resources, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars per violation not to exceed a total penalty of seventy-five hundred dollars or by imprisonment in the county jail not exceeding six months, or both fined and imprisoned.

CHAPTER 215
(H. B. 4760—By Delegates Lane and Douglas)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, nine, ten and eleven, article three, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to testamentary additions to trusts; and the uniform testamentary additions to trusts act.

Be it enacted by the Legislature of West Virginia:

That sections eight, nine, ten and eleven, article three, chapter forty-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 3. PROVISIONS AS TO CONSTRUCTION.

§41-3-8. Testamentary additions to trusts.

§41-3-9. Effect on existing wills.

§41-3-10. Uniformity of application and construction.

§41-3-11. Short title.

§41-3-8. Testamentary additions to trusts.

(a) A will may validly devise or bequeath property to the trustee of a trust established or to be established:

(i) During the testator’s lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts; or (ii) at the
testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection (a) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

§41-3-9. Effect on existing wills.

Sections eight, nine, ten and eleven of this article apply to a will of a testator who dies after the effective date of this legislation.

§41-3-10. Uniformity of application and construction.

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

§41-3-11. Short title.

Sections eight through eleven of this article may be cited as the "Uniform Testamentary Additions to Trusts-Uniform Act (1991)".
CHAPTER 216
(H. B. 4720—By Delegates Phillips and P. White)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Mason County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to consider an excess levy for the fire departments in Mason County, from the third Tuesday of April until the last Thursday in May, one thousand nine hundred ninety-two.

Be it enacted by the Legislature of West Virginia:

MASSON COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED TO CONSIDER AN EXCESS LEVY FOR FIRE DEPARTMENTS.

§1. Extending time for Mason County Commission to meet as levying body for election to consider an excess levy for fire departments.

1 Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Mason County is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from the third Tuesday in April, until the last Thursday in May, one thousand nine hundred ninety-two, for the purpose of submitting to the voters of Mason County the consideration of an excess levy for fire departments.
RESOLUTIONS
(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 21
(By Mr. Speaker, Mr. Chambers, and Delegates Rowe and P. White)
[Adopted March 6, 1992]

Requesting the Joint Committee on Government and Finance to make a study of current child welfare statutes to determine how those statutes are affecting children and families.

WHEREAS, Children and the families who nurture them must be West Virginia's number one priority; and

WHEREAS, Parents have the primary responsibility for meeting the needs and addressing the development of their children; and

WHEREAS, The responsibility for the children of West Virginia and their families must be a shared partnership of all citizens, community organizations, business, labor and the religious community; and

WHEREAS, The state has a primary responsibility to protect children and to help strengthen and unify the family in situations where crisis in families leave them unable to meet their responsibility; and

WHEREAS, Significant progress has been made in the ability to assess family functioning and to provide home and community based services; and

WHEREAS, Major efforts are under way to protect persons from all types of family violence; and

WHEREAS, Recent administrative and legislative actions and judicial decisions have recognized the need for a comprehensive, coordinated, integrated, effective system to serve families; and

WHEREAS, The most recent major revision to the child welfare code was accomplished in 1977; 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 current statutes affecting families and children including, but not limited to, chapter forty-nine and chapter twenty-seven of the West Virginia code and to prepare a comprehensive revision of these statutes to assist children and families to be healthy, productive and responsible; and, be it

Further Resolved, That the Joint Committee on Government and Finance is also requested to appoint a subcommittee composed of five members of the Senate, five members of the House of Delegates and ten citizen members, five appointed by the President of the Senate and five appointed by the Speaker of the House of Delegates. Child and family advocates, the Department of Health and Human Resources, the Juvenile Justice Committee, the Supreme Court and the Judicial Association should be represented by the President and Speaker appointments; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1993, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION 28

(By Mr. Speaker, Mr. Chambers, and Delegates Anderson and Houvouras, on behalf of the entire membership.)

[Adopted February 11, 1991]

In Memory of Walter "Lefty" Rollins, former member of the House of Delegates, the State Senate and Majority Leader of the House of Delegates.

WHEREAS, The host of friends of Walter Rollins throughout West Virginia were deeply saddened by his death on February 9, 1992, despite the fact that many of them were aware that
he had been bearing the tortures of a serious malady for several years.

Walter Rollins was born on Monday, January 2, 1922, in Catlettsburg, Kentucky, the son of Walter F. Rollins, Sr., and Nellie (Hatfield) Rollins.

He was educated in the public schools of Wayne County, was graduated from Ceredo-Kenova High School, and attended West Virginia University and in 1942 was a member of the national championship basketball squad at WVU.

A veteran of World War II, he served from 1942 until 1946 in the U. S. Army Air Force, where he attained the rank of Staff Sergeant and received the World War II Victory Medal, American Theatre Service Ribbon and Good Conduct Medal. His military specialty was that of investigator.

During and after his military service, he pursued a career in the field of close-up magic, until he returned to West Virginia to work in the family business. He continued to use his talent as a magician while touring the Nation from the east coast to the west coast entertaining thousands of adults and children, always encouraging them to seek excellence in their pursuits.

In the spring of 1943, he was married to Martha Lacock. They had two sons, Walter Franklin Rollins III, who succumbed to cancer at the age of five years, and John Allen, who, with his mother, survives.

He was active in civic affairs, and was a member of Beta Theta Pi, the American Legion, VFW and the Masons.

A Democrat politically, his views and recommendations were sought and delivered forthrightly, whether those seeking them had his agreement or his opposition.

Satisfying a personal goal to serve the public of his State of West Virginia, he was elected to the House of Delegates in 1970, 1972 and 1974. He moved to the west side of the Capitol to serve in the State Senate in 1976. In 1984, he returned to the House of Delegates where he served until his death. Appointed Majority Whip of the 61st and 62nd Legislatures, he was subsequently appointed Majority Leader of the 70th Legislature.
An avid student of the legislative process and the rules of procedure, he accepted what may be called the rule of the democratic process. As a legislator, he was competent and informed, possessing a keen knowledge and understanding of the legislative process and legislative programs and problems. He was thoroughly informed as to the purpose and effect of proposed legislation. During his legislative service, he strove for the enactment of laws which would contribute to West Virginia's being a happier and more prosperous state.

The earthly, physical life of Walter "Lefty" Rollins has come to its close, but his memory will not soon be forgotten; therefore, be it

Resolved by the Legislature of West Virginia, in Joint Assembly convoked:

That this Legislature deplores the demise of Walter "Lefty" Rollins, notes his distinguished public service, lauds his high character and principles, recognizes the terrific grief being suffered by his family as a result of the loss of a beloved husband and father, and hereby conveys to the family the genuine sympathy of the individual members of the 70th Legislature.

COMMITTEE SUBSTITUTE FOR HOUSE CONCURRENT RESOLUTION 41

(By Delegate Compton, et al.)

[Adopted March 7, 1992]

Relating to the expression of the sense of the Legislature as to the proposal to construct a 765kv high voltage transmission line from Wyoming Station, Wyoming County, West Virginia, to Cloverdale Station, Botetourt County, Virginia, and to authorization for formation of a legislative committee.

WHEREAS, Appalachian Power Company and its parent company, American Electric Power, have proposed the construction of a 765kv high voltage transmission line from Wyoming Station, Wyoming County, West Virginia, to Cloverdale Station, Botetourt County, Virginia, of which line approximately 79 miles would be located in West Virginia
RESOLUTIONS

within Wyoming, Mercer, Summers and Monroe Counties; and

WHEREAS, Through letters and petitions directed to all branches of the state government, many governmental and private organizations, as well as thousands of individual West Virginians have asserted that the proposed transmission line is not needed or in the public interest, that the transmission line will have a negative impact on the economy, the communities and the environment of the State and the counties affected, that the proposed corridors cause unacceptable environmental degradation to the southeastern West Virginia region, and that the proposal should therefore be rejected by the Public Service Commission; and

WHEREAS, The 765kv transmission line proposal has created serious concerns among the people of the State as to the health and other environmental risks to the lands, waters and people of southeastern West Virginia presented by the proposed power line and its operation and maintenance, including exposure to herbicides through aerial application for right-of-way maintenance, exposure to electromagnetic fields, groundwater contamination, and other potential threats to the quality of life in that region of the State; and

WHEREAS, The right-of-way for the proposed transmission line is to be located in an area of the State notable for its scenic beauty and recognized as having a substantial and growing recreation and tourism industry, will occupy more than 1,900 acres of West Virginia agricultural lands, current or future residential areas, and recreation areas, including crossing the New River in an unspoiled, free-flowing area within the Bluestone Wildlife Management Area as well as crossing the proposed New River and Shawnee Parkways and the Appalachian National Scenic Trail, and could further adversely affect many thousands of additional acres through visual degradation to surrounding areas which are now noted for the unspoiled rural landscape characteristic of much of that said area impacted by the proposed transmission line route; and

WHEREAS, The Public Service Commission has indicated that it shall not require Appalachian Power Company to include a map or detailed description of the proposed corridors for the transmission line in its public notice of its application and has indicated that the transmission line may be located by the
Commission in a corridor not included in the said public notice of the application, thereby imposing the transmission line by eminent domain on property without specific notice to owners and the general public of such proposed corridor through the application and public notice thereof; and

WHEREAS, The proposed transmission line will enhance American Electric Power's capacity to transmit to the east coast electric power generated in the midwest by use of western coal or nuclear energy, and such enhancement may threaten that said market for West Virginia coal and electricity while decreasing the need to transport coal by rail to eastern power generating facilities, thereby threatening future employment in and tax revenues from the said industries by replacing "coal by rail" with "coal by wire"; and

WHEREAS, It has become a major point of contention as to whether or not the proposed 765kV transmission line will result in significant numbers of permanent jobs or other economic advantage to the State; and

WHEREAS, The statutes of this State authorize and require the Public Service Commission to determine whether the proposed transmission line or its location is against the public interest, including full and independent consideration of the environmental impact of the proposed transmission line; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby finds that the aforesaid concerns are all legitimate concerns relating to the public interest within the meaning of the applicable statutes; and, be it

Further Resolved, That a legislative committee is hereby authorized and directed to study economic, environmental and other issues of public interest relating to high voltage and other electric transmission lines within this State, including a review of the Public Service Commission as to its regulation of utilities planning or proposing such facilities and as to the policies, practices and scope of inquiry of the Commission in consideration of applications for such facilities, with such committee directed to report to the Legislature its findings
and recommendations on or before January 1, 1993; and, be it

Further Resolved, That in view of the scale of the 765kv transmission line proposal, its potential impacts on the lands, waters, people and economy of West Virginia, and the concerns expressed by the citizens of this State as to the said proposal, the Legislature requests that filing of an application to the Public Service Commission for the proposed transmission line be delayed until a date at least ninety days after submission of the report of that said committee; and, be it

Further Resolved, That in anticipation that such an application may nevertheless be filed before that date, the Legislature finds that the statutes of this State require that the Public Service Commission not approve any application for the aforesaid transmission line unless and until it is shown that the line and its proposed location meets all statutory requirements, including being found to be in the public interest within a broad scope of inquiry and with the process of evaluation of any such application including independent verification and analysis of all supporting data and argument submitted to show the need within this State for the line and independent professional evaluation utilizing the best technology available of both the methodology utilized and the data processed and submitted to fulfill the statutory requirement for an environmental impact statement relating to the transmission line; and, be it

Further Resolved, That the Legislature finds that both statutory and constitutional due process rights of citizens and property owners of this State require specific notice upon application of all potential corridors for such a transmission line and further finds the Public Service Commission's authority to modify a high voltage transmission line application does not extend to location of any such transmission line upon any property not subject to such specific notice; and, be it

Further Resolved, That the Legislature is opposed to approval of the proposed transmission line unless the proceeding used to consider the said application affords the property owners and citizens of this State the full and specific notice and the generous opportunity to be heard intended by statute
and required by the constitution, and unless it is shown that the project as proposed is consistent with the public interest, including documented economic advantage to the people of the State from construction of the proposed line sufficient to offset the negative economic impacts, and unless it is shown that the proposal avoids environmental impacts within this State which are neither necessary nor justified by the benefits of the proposed line.

HOUSE CONCURRENT RESOLUTION 49

(By Mr. Speaker, Mr. Chambers, and Delegates Anderson, Ashcraft, Murensky, Mezzatesta, J. Martin, Rowe, P. White, Burk and Faircloth)

[Adopted March 5, 1992]

Relating to creating a joint committee of members of the Senate and House of Delegates to investigate the labor-management dispute existing at Ravenswood Aluminum Corporation.

WHEREAS, There presently exists a labor-management dispute at the Ravenswood Aluminum Corporation production facility located at Ravenswood, Jackson County, West Virginia; and

WHEREAS, The management of such facility has granted the status of permanent employment to persons performing bargaining unit work in the place of employees not presently working on account of either a stoppage of work by employees or a cessation or withholding of work by the employer; and

WHEREAS, A proceeding to determine the legality of such employment practice is presently pending before the National Labor Relations Board who has exclusive jurisdiction to consider whether such practice is lawful; and

WHEREAS, The legality of the actions notwithstanding, the Legislature finds and declares that offering or granting the status of permanent employment to persons performing bargaining unit work for an employer during a stoppage of work by employees or a cessation or withholding of work by
the employer is disruptive to the labor and business community in the State of West Virginia and is costly to the treasury of the State and, therefore, has an ultimate adverse impact upon all of the citizens of this State; and

WHEREAS, The conduct of employers offering or granting permanent employment status to persons performing bargaining unit work in the place of employees not presently working fosters an atmosphere of hopelessness and despair which is conducive to violence and other harmful acts, thus endangering the health and safety of the citizens of this State and necessitating the need for additional protection by law-enforcement officers and officials; and

WHEREAS, Such conduct by employers further results in the economic deprivation of the basic fundamentals of human survival for the replaced workers which must, therefore, be provided or subsidized by the State, through its social agencies and programs to assure the healthy existence of these citizens; and

WHEREAS, As a result of such economic and safety needs, the funds of all citizens of this State are diminished and unavailable for other legitimate public purposes; and

WHEREAS, The Legislature hereby further finds and declares that, in light of the adverse impact and economic loss to the State of West Virginia, the state has a duty, which does not impinge upon the jurisdiction of the National Labor Relations Board, to investigate the nature and cause and to consider the feasibility of recovering all funds so expended by the State in the event such conduct on behalf of employers is declared unlawful; therefore, be it

Resolved by the Legislature of West Virginia:

That there is hereby created a Joint Committee of the Senate and House of Delegates consisting of five members of the Senate, to be designated by the President of the Senate, and five members of the House of Delegates, to be designated by the Speaker of the House of Delegates, who shall receive fifty dollars per diem for each day performing duties hereunder and actual expenses not to exceed seventy dollars per day plus mileage, and who shall be empowered (1) to investigate and determine the nature and cause of the said labor-management
dispute; (2) to ascertain the actual and potential costs to the State by reason of the payment of unemployment compensation, aid to families with dependent children, overtime payments to the division of public safety or other law-enforcement officials and any other public costs attributable to such labor-management dispute; (3) to hold hearings thereon; (4) to make findings of fact and conclusions based upon such investigations and hearings which shall include a determination of the feasibility of recovering the funds so expended, recommendations concerning the recoupment of these funds and a determination of the impact of such labor-management dispute upon the community of Ravenswood, its neighboring communities and, ultimately, upon the State of West Virginia; (5) to determine and make recommendations as to legislation prohibiting replacement workers and whether such legislation would conflict with federal law; and (6) to report, on or before the second Wednesday of January, 1993, to the Governor and Legislature on its findings and any recommendations which the committee may deem proper; and, be it

Further Resolved, That in carrying out its duties pursuant to this resolution, the committee is authorized:

(1) To examine witnesses, to send for persons and papers, documents and other physical evidence, to order the attendance of any witness, or the production of any paper, document and other physical evidence, and to exercise all other powers described under the provisions of section five, article one, chapter four of the Code of West Virginia;

(2) To issue summonses, subpoenas and subpoenas duces tecum and to enforce obedience to its summonses and subpoenas in accordance with the provisions of section five, article one, chapter four of the code of West Virginia or by invoking the aid of the courts of this State;

(3) To administer oaths or affirmations in accordance with the provisions of section six, article one, chapter four of the code of West Virginia; and

(4) To determine whether all or any portion of a meeting or hearing should be held in an executive session, notwithstanding the provisions of any rule of the Senate or of the House of Delegates.
Committee Substitute for Senate Concurrent Resolution 9

(By Senators Claypole, Craigo, M. Manchin, Heck, Humphreys, Burdette, Mr. President, Tomblin, Wehrle, Wagner, Blatnik, Holliday, Wiedebusch, Jones, Lucht, Hawse, Withers, Chafin, Pritt, Bailey, Macnaughtan, Wooton, J. Manchin, Anderson, Whitlow, Chernenko, Dalton, Dittmar, Sharpe, Spears, Felton, Minard, Brackenrich and Helmick)

[Adopted February 7, 1992]

Urging the Congress of the United States to enact the provisions of S. 1989 and H.R. 4013 to ensure continued health care benefits for retired coal miners.

Whereas, A federal commission established by U.S. Secretary of Labor Elizabeth Dole recommended that Congress adopt legislation to ensure the continued provision of health benefits to retired coal miners who receive such benefits from the United Mine Workers of America health and retirement funds; and

Whereas, This legislation, introduced by Senator Jay Rockefeller of West Virginia (S. 1989) and Congressman John Murtha of Pennsylvania (H.R. 4013), would require all companies to pay a fair share of the cost of providing health benefits to their former employees and place an equitable fee on the entire coal industry to pay for the cost of "orphan" retirees who have no company to pay for benefits; and

Whereas, Thirty-three thousand seven hundred seventy-three citizens of this state receive their health care from the UMWA funds; and

Whereas, The UMWA funds currently are experiencing serious financial difficulties; and

Whereas, The Rockefeller/Murtha legislation has been endorsed by both labor and management in the coal industry; and

Whereas, Among those in the United States Congress who are supporting the legislation are the following: Senators
Byrd, Dixon, Riegle, Rockefeller, Simon, Spector and Wofford; and Congressmen Browder, Bruce, Callahan, Clay, Costello, Durbin, Erdreich, Evans, Wise, Gaydos, McCloskey, Mollohan, Mrazek, Murphy, Murtha, Owens, Rahall, Staggers and Volkmer; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby expresses its support for and strongly urges the Congress of the United States to enact S. 1989 and H.R. 4013 into law; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to each member of the state congressional delegation, the governor and the legislative bodies of every coal-producing state with a recommendation that those legislatures adopt similar resolutions of support for S. 1989 and H.R. 4013.

SENATE CONCURRENT RESOLUTION 40

(By Senators Wehrle, Craigo and Bailey)

[Adopted March 6, 1992]

Directing the Public Service Commission to study the feasibility of implementing a telecommunication device for the deaf (TDD) program for eligible residents of this state.

WHEREAS, Many citizens of this state are unable to communicate with others by telephone due to hearing and speech deficits; and

WHEREAS, Modern technology has developed a telecommunication device for the deaf (TDD) which is an electrical device that uses a keyboard, acoustic coupler, display screen or braille display to transmit and receive messages by telephone; and

WHEREAS, Telephone companies have the expertise and equipment necessary to provide eligible West Virginians with these devices to enable them to live more independent and productive lives; therefore, be it

Resolved by the Legislature of West Virginia:
That the Public Service Commission is hereby directed to undertake a study of the feasibility of implementing a telecommunication device for the deaf (TDD) program for eligible residents of this state and report to the regular session of the Legislature, 1993, on its findings, recommendations and conclusions; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Public Service Commission.

HOUSE RESOLUTION 10
(By Mr. Speaker, Mr. Chambers, and Delegate Gallagher, et al.)
[Adopted February 7, 1992]
Recognizing West Virginia University on the occasion of its one hundred twenty-fifth birthday.

WHEREAS, West Virginia was founded as the thirty-fifth state of the Union in 1863 amid the tumultuous period of the war between the states; and

WHEREAS, In the preceding year the Morrill Land Grant College Act of 1862 became law; and

WHEREAS, That Act was extended to the new State of West Virginia to assist in establishing an Agricultural College; and

WHEREAS, The Federal government deeded to West Virginia 150,000 acres of Iowa and Minnesota farmland—30,000 acres for each of the two United States Senators and the three Representatives from West Virginia; and

WHEREAS, Governor Arthur I. Boreman proceeded to liquidate the real estate at fifty-three cents per acre, yielding the West Virginia college fund $79,000; and

WHEREAS, The West Virginia Legislatures of 1866 and 1867 struggled to make provisions for carrying out the intent of the Morrill Land Grant College Act, deciding where to locate the college, what words and in what order should make up the name, how the new institution would be governed, and what would be the source of funds to put the project in operation; and
WHEREAS, Many members of both the West Virginia Senate and House of Delegates played important roles in the proceedings resulting in heated arguments for locating the new college in any number of the State's counties, taking two years to reach a decision of location and name; and

WHEREAS, The Monongalia County delegation to the Legislature conveyed an offer of two school properties worth $51,000 and other assets of cash, bonds, bank stock and bills receivable of $10,000 of the Monongalia Academy and the Woodburn Female Seminary, both schools in Morgantown; and

WHEREAS, The West Virginia Legislature requested but failed to secure from the federal government another 300,000 acres of surplus land to sell for cash to support starting the college; and

WHEREAS, On February 7, 1867, in Wheeling, the West Virginia Legislature established the Agricultural College of West Virginia at the chosen location of Morgantown, vesting control in a Board of Visitors, composed of one member from each of the eleven senatorial districts; and

WHEREAS, One year later, at the request of the first president of the new college, the Reverend Alexander Martin, the West Virginia Legislature changed the name of the Agricultural College of West Virginia to West Virginia University to more nearly reflect the broader mandate given it in its charter; and

WHEREAS, When the Legislature established West Virginia University as the Agricultural College of West Virginia, it ensured that the new State of West Virginia had a public institution of higher learning that "would live through the ages"; and

WHEREAS, During these past one hundred twenty-five years, West Virginia University, which began with two donated buildings and only a handful of students and faculty, has grown into a first class institution with a national reputation, diverse curriculum, over twenty-two thousand students, one thousand acre campus, and two regional campuses—Potomac State College at Keyser and West Virginia University at Parkersburg, plus the over five hundred acre campus of Jackson's Mill, the State 4-H Camp and Conference Center at Weston; and
WHEREAS, West Virginia University's accomplishments are many and varied in teaching, research and public service, more recently establishing the Mary Babb Randolph Cancer Center, the National Research Center for Coal and Energy, the Center for Concurrent Engineering, and the NASA software facility, to name just a few; and

WHEREAS, West Virginia University has excelled in academics, producing twenty-three Rhodes Scholars, one British Marshall scholarship recipient, and twelve Truman Scholars; and

WHEREAS, West Virginia University student John Unger of Martinsburg was among 20 students picked from across the nation to appear in Time Magazine's College Achievement Award 1990 issue, and the January 31, 1992 issue of USA Today, which recognized Unger as one of the nation's top 20 undergraduates from a field of 1,253 who are academic and community leaders; and

WHEREAS, West Virginia University ensures that the human potential of West Virginia sons and daughters is fulfilled, establishing the WVU Scholars program to attract the brightest youths, annually granting 1.8 million dollars in scholarships to 1,800 deserving students; therefore, be it

Resolved by the Legislature of West Virginia:

That on this the seventh day of February, 1992, the West Virginia House of Delegates recognizes West Virginia University on the occasion of its one hundred twenty-fifth birthday, the quasquicentennial year of service to the State of West Virginia, to these United States and to the world.

COMMITTEE SUBSTITUTE FOR HOUSE RESOLUTION 18

(By Delegates Houvouras, Anderson, Stemple and Burk)

[Adopted March 4, 1992]

Amending House Rule No. 94, relating to number of sponsors on a bill.

Resolved by the House of Delegates:

That House Rule No. 94 be amended to read as follows:
Joint Sponsors of Bill

94. A bill may be introduced bearing the names of not more than seven members as joint sponsors of the bill.

SENATE RESOLUTION 3
(By Senator Chafin)
[ Adopted January 16, 1992]

Amending Senate Rule No. 54, relating to guests and privilege of the floor.

Resolved by the Senate:
That Senate Rule No. 54 be amended to read as follows:

Guests and Privilege of the Floor

54. No person except members of the House of Delegates, former members of the West Virginia Legislature who are not lobbyists, duly accredited representatives of the press, radio and television and legislative officers and employees engaged in the proper discharge of their duties shall be admitted within the Senate Chamber while the Senate is in session. The rear or east balcony of the Senate Chamber shall be reserved for guests of the members of the Senate, and admission thereto shall be by pass signed by the President and the member seeking admission of the guest.

SENATE RESOLUTION 8
(By Senators Chafin, Wagner, Bailey, Sharpe, Hawse, Anderson, Humphreys, Boley, J. Manchin, Blatnik, Wiedebusch, Brackenrich, Burdette, Mr. President, Chernenko, Claypole, Craigo, Dalton, Dittmar, Felton, Heck, Helmick, Holliday, Jones, Lucht, M. Manchin, Minard, Pritt, Spears, Tomblin, Wehrle, Whitlow, Withers and Wooton)
[ Adopted January 16, 1992]

Requesting the public employees insurance board to reconsider its action imposing a significant premium increase on retired public employees.

Whereas, The PEIA has by prior action imposed a signif-
icant premium increase on the retired public employees of the State of West Virginia; and

WHEREAS, Retired public employees are generally on a fixed income and, as a group, least financially able to bear such increased expense; and

WHEREAS, Retired public employees are older West Virginians; therefore, be it

Resolved by the Senate:

That the public employees insurance board do reconsider and rescind its prior action to significantly increase the premiums paid by retired public employees in the State of West Virginia.

ENROLLED

HOUSE JOINT RESOLUTION 109

(By Mr. Speaker, Mr. Chambers, and Delegate J. Martin)

[Adopted February 29, 1992.]

Proposing an amendment to the Constitution of the State of West Virginia, authorizing appropriations and/or the issuance and sale of additional state bonds in an amount not exceeding four million dollars for the purpose of paying bonuses to certain veterans or to relatives of certain veterans; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment 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, or at any special election held prior thereto, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is as follows:
VETERANS BONUS AMENDMENT

(Persian Gulf, Lebanon, Grenada and Panama)

The Legislature shall provide by law, either for the appropriation from the general revenues of the State, or for the issuance and sale of state bonds, which shall be in addition to all other state bonds heretofore issued, or a combination of both as the Legislature may determine, for the purpose of paying a cash bonus to veterans of the armed forces of the United States who (1) served on active duty, or who were members of reserve components called to active duty by the President of the United States under Title 10, United States Code section 782(D), 783, or 783(B), during the Persian Gulf conflict, Operation Desert Shield/Desert Storm, between the first day of August, one thousand nine hundred ninety and the date determined by the president or congress of the United States as the end of the involvement of the United States armed forces in the Persian Gulf conflict, both dates inclusive; or (2) veterans, active service members, or members of reserve components, of the armed forces of the United States, who served on active duty in one of the military operations for which he or she received a campaign badge or expeditionary medal during the periods hereinafter described. For purposes of this amendment, periods of active duty in a campaign or expedition are designated as: The conflict in Panama, between the twentieth day of December, one thousand nine hundred eighty-nine, through the thirty-first day of January, one thousand nine hundred ninety, both dates inclusive; the conflict in Grenada, between the twenty-third day of October, one thousand nine hundred eighty-three, and the twenty-first day of November, one thousand nine hundred eighty-three, both dates inclusive; and the conflict in Lebanon, between the twenty-fifth day of August, one thousand nine hundred eighty-two, and the twenty-sixth day of February, one thousand nine hundred eighty-four, both dates inclusive. For purposes of this amendment not more than one bonus shall be paid to or on behalf of the service of any one veteran. In order to be eligible to receive a bonus, such persons must have been bona fide residents of the State of West Virginia at the time of their entry into such active service and for a period of at least six months immediately prior thereto, who have not been separated from such service under conditions other than
honorable. Such bonus shall also be paid to any veteran, otherwise qualified under the two sentences next preceding, who was discharged within ninety days after entering the armed forces because of a service-connected disability. The amount of such bonus shall be five hundred dollars per eligible person who was in active service, inside the combat zone designated by the President or Congress of the United States at anytime during the dates specified hereinabove. In the case of the Persian Gulf conflict, the amount of bonus shall be three hundred dollars per eligible person who was in active service outside of the combat zone designated by the President or Congress of the United States during the dates specified hereinabove. The bonus to which any deceased veteran would have been entitled, if living, shall be paid to the following surviving relatives of such veterans, if such relatives are residents of the State when such application is made and if such relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or, if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there be more than one member of a class, the bonus shall be paid to each member according to his proportional share. Where a deceased veteran's death was connected with such service and resulted from such service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of one thousand dollars in lieu of any bonus to which the deceased might have been entitled if living.

The principal amount of any bonds issued for the purpose of paying the bonuses provided for in this amendment shall not exceed the principal amount of four million dollars, but may be funded or refunded either on the maturity dates of said bonds or on any date on which said bonds are callable prior to maturity, and if any of said bonds have not matured or are not then callable prior to maturity, the Legislature may nevertheless provide at any time for the issuance of refunding bonds to fund or refund such bonds on the dates when said bonds mature or on any date on which said bonds are callable prior to maturity and for the investment or reinvestment of the proceeds of such refunding bonds in direct obligations of
the United States of America until the date or dates upon which such bonds mature or are callable prior to maturity. The principal amount of any refunding bonds issued under the provisions of this paragraph shall not exceed the principal amount of the bonds to be funded or refunded thereby.

The bonds may be issued from time to time for the purposes authorized by this amendment as separate issues or as combined issues.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of this amendment, it shall at the same time provide for the levy, collection and dedication of an additional tax, or enhancement to such other tax as the Legislature may determine, in such amount as may be required to pay annually the interest on such bonds and the principal thereof within and not exceeding fifteen years, and all such taxes or charges so levied shall be irrevocably dedicated for the payment of the principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes or charges shall be enforceable in any court of competent jurisdiction by any of the holders of said bonds. Any revenue generated in excess of that which is required to pay the bonuses provided herein and to pay any administrative cost associated with such payment shall be used to pay the principal and interest on any bonds issued as soon as is economically practicable.

The Legislature shall have the power to enact legislation necessary and proper to implement the provisions of this amendment.

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. 2" and designated as the "Veterans Bonus Amendment," and the purpose of the proposed amendment is summarized as follows: "To permit the appropriation of general revenues or the sale of state bonds for the payment of bonuses and death benefits to veterans of the conflicts in the Persian Gulf, Lebanon, Panama and Grenada or to their relatives."
Proposing an amendment to the Constitution of the State of West Virginia, repealing sections three, four, five and six, article thirteen thereof, relating to the transfer of title to real estate obtained by the State of West Virginia by way of forfeiture, nonpayment of taxes or designation of the same as waste, unappropriated or escheated lands; the establishment of said State's title to said property until sold as part of judicial proceedings; the disposition of surplus receipts for the sale of such land; the forfeiture of real estate to said State for failure by the owner thereof to have the same entered on county land books; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment 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 three, four, five and six, article thirteen, be repealed and that such amendment do take effect on the first day of July, one thousand nine hundred ninety-three.

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 Number 3” and is designated as the “Landowners Protection Amendment.” The purpose of the proposed amendment is summarized as follows: “To amend the state constitution by repealing outdated provisions related to tax-delinquent property. Repeal of these sections will allow for the implementation of laws to protect landowner interests and to simplify the redemption or purchase of tax-delinquent property.”
AN ACT supplementing, amending, reducing, expiring and transferring specified unexpended amounts from account no. 8009-99, abandoned and unclaimed property; account no. 8121-06, social security contributions; account no. 7840-20I, Barboursville veterans' home; account no. 8079-06I, West Virginia radiologic technologist board of examiners; account no. 8090-07I restoration tax rec. Mingo county; account no. 8090-08I, county tax fund; account no. 8102-15I, West Virginia board of dental examiners; account no. 8105-30I, board of pharmacy; account no. 8106-35I, board of practical nurses; account no. 8110-55I, board of examiners for registered nurses; account no. 8130-05I, board of chiropractic examiners; account no. 8148-55I, gilding the dome program; account no. 8216-19I, health facility licensure certification; account no. 8222-05I, West Virginia prison industries; account no. 8240-20I, Stonewall Jackson memorial; account no. 8240-21I, Stonewall Jackson memorial fund; account no. 8241-24I, adult literacy education program; account no. 8245-07I, department of education - West Virginia FFA/FHA camp; account no. 8245-12I, department of education -
cedar lakes improvement; account no. 8250-081, department of employment security; account no. 8260-11I, department of veterans' affairs; account no. 8260-13I, department of veterans' affairs; account no. 8265-06I, public employees insurance board expense fund; account no. 8275-09I, state board of risk and insurance management; account no. 8275-10I, state board of risk and insurance management; account no. 8350-12I, public safety motor vehicle fund; account no. 8351-29I, department of public safety criminal investigations; account no. 8352-12I, department of public safety barracks replacement and construction; account no. 8355-10I, drunk driving prevention fund; account no. 8392-06I, department of banking revolving fund; account no. 8395-08I, department of banking; account no. 8412-23I, court of claims - crime victims reparation; account no. 8418-10I, attorney general - antitrust enforcement fund; account no. 8418-13I, pre-need burial contract regulation fund; account no. 8500-30I, West Virginia department of health; account no. 8554-06I, Blennerhassett historical park commission; account no. 8595-07I, WPBY-TV grant expense; account no. 8597-23I, West Virginia public radio - mountain stage; account no. 9500-08I, parking lot operations; account no. 9500-12I, cafeteria; account no. 9500-15I, state building commission; account no. 9500-31I, department of finance and administration - debt service pass through, and transferring as provided herein, such specified amounts for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to account no. 4050, department of health and human resources, division of human services, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the amount of seven hundred fifty-six thousand five hundred fourteen dollars and fifty-eight cents from account no. 8009-99, abandoned and unclaimed property; the amount of three hundred twenty-one thousand five hundred seventy-one dollars and seventy-three cents from account no. 8121-06,
social security contributions; the amount of two thousand nine hundred sixty-seven dollars and fifty cents from account no. 7840-201, Barboursville veterans’ home; the amount of two hundred thirty-five dollars and eighty-seven cents from account no. 8079-061, West Virginia radiologic technologists board of examiners; the amount of two thousand six hundred seven dollars and sixty-three cents from account no. 8090-071, restoration tax rec. Mingo county; the amount of two thousand six hundred sixty-two dollars and sixty-six cents from account no. 8090-081, county tax fund; the amount of two thousand one hundred twenty-eight dollars and thirty cents from account no. 8102-151, West Virginia board of dental examiners; the amount of twenty-one thousand ninety-four dollars and sixty-two cents from account no. 8105-301, board of pharmacy; the amount of one thousand nine hundred eighty-eight dollars and eighty-eight cents from account no. 8106-351, board of practical nurses; the amount of twelve thousand thirty-five dollars and twenty cents from account no. 8110-551, board of examiners-registered nurses; the amount of two hundred eleven dollars from account no. 8130-051, board of chiropractic examiners; the amount of six dollars and forty-seven cents from account no. 8148-551, gilding the dome program; the amount of one thousand one hundred thirty-three dollars and sixty cents from account no. 8216-191, health facilities licensure certification; the amount of two thousand six hundred forty-six dollars and seventy-nine cents from account no. 8222-051, West Virginia prison industries; the amount of one thousand sixty-one dollars and two cents from account no. 8240-201, Stonewall Jackson memorial; the amount of eight hundred thirty-three dollars and forty cents from account no. 8241-241, adult literacy education program; the amount of seven dollars and seventy cents from account no. 8245-071, department of education - West Virginia FFA/FHA camp; the amount of three thousand two hundred ninety-nine dollars and six cents from account no. 8250-081, department of employment security; the amount of forty-two thousand ninety-three dollars and sixty-seven cents from account no. 8260-111, department of veterans’ affairs; the amount of sixty-one thousand six
hundred eighty-two dollars and twenty-one cents from account no. 8260-13I, department of veterans' affairs; the amount of forty-nine thousand three hundred eighty-two dollars and eight cents from account no. 8265-06I, public employees insurance board expense fund; the amount of seven hundred eleven dollars and forty-nine cents from account no. 8275-09I, state board of risk and insurance management; the amount of one hundred fourteen dollars and seventy-seven cents from account no. 8275-10I, state board of risk and insurance management; the amount of eleven thousand nine hundred thirteen dollars and sixty-six cents from account no. 8350-12I, public safety motor vehicle fund; the amount of nine thousand seven hundred twenty-nine dollars and one cent from account no. 8351-29I, department of public safety criminal investigations; the amount of twenty-seven thousand two hundred sixty-three dollars and four cents from account no. 8352-12I, department of public safety barracks replacement and construction; the amount of forty-two thousand eight hundred nine dollars and eighty-eight cents from account no. 8355-10I, drunk driving prevention fund; the amount of four thousand eight hundred twenty dollars and eleven cents from account no. 8392-06I, department of banking revolving fund; the amount of fourteen thousand eight hundred ninety-nine dollars and sixty-seven cents from account no. 8395-08I, department of banking; the amount of fourteen thousand dollars and eighty-eight cents from account no. 8412-23I, court of claims - crime victims reparation; the amount of five hundred fifty dollars and thirty-six cents from account no. 8418-13I, attorney general - antitrust enforcement fund; the amount of five thousand ninety-two dollars and eighty-nine cents from account no. 8418-10I, court of claims - antitrust enforcement fund; the amount of five hundred seventy-four thousand fifty-eight dollars and sixty-one cents from account no. 8500-30I, West Virginia department of health; the amount of four hundred sixty-seven dollars and one cent from account no. 8554-06I, Blennerhassett historical park commission; the amount of twelve dollars and sixteen cents from account no. 8597-23I, West Virginia public radio - mountain stage; the amount of one thousand six hundred twenty dollars and ninety-one cents from account no. 9500-08I, parking lot operations; the amount of one thousand four hundred eighty-
nine dollars and forty-eight cents from account no. 9500-121, cafeteria; the amount of sixty-six dollars and two cents from account no. 9500-151, state building commission; the amount of two thousand one hundred seventy-nine dollars and eight cents from account no. 9500-311, department of finance and administration - debt service pass through, be transferred and added to account no. 4050, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 4050 as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES
5 64—Division of Human Services
6 (WV Code Chapters 9, 48 and 49)
7 Acct. No. 4050
8
9 Federal Funds Fiscal Year 1991-92
10 General Revenue Fund Fiscal Year 1991-92
11
12 6 Medical Services ........ $ — $ 2,000,000
13
14 The purpose of this supplementary appropriations bill is to transfer two million dollars from the accounts specified herein to supplement account no. 4050 as set forth herein.

CHAPTER 2
(H. B. 2—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 14, 1992; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring specified unexpended amounts from account no. 8121-06, social security contributions, and transferring.
as provided herein, such specified amounts for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the governor's office, civil contingent fund, account no. 1240, and to the department of public safety, division of corrections, account no. 3770, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The Legislature finds that the amounts collected in account no. 8121-06, social security contributions, exceed the amounts necessary to effectuate the purposes of the fund and should be redesignated; therefore:

Be it enacted by the Legislature of West Virginia:

That the amount of one million two hundred thousand dollars be transferred from account no. 8121-06, social security contributions, to be added to account no. 1240, governor's office, civil contingent fund, and to be added to account no. 3770, department of public safety, division of corrections, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, as follows:

1 TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

7—Governor's Office—

Civil Contingent Fund

(WV Code Chapter 5)

Acct. No. 1240

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
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<td>Fiscal Year</td>
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1 Civil Contingent Fund—Total ........ $  -- $ 600,000
The purpose of this supplementary appropriation bill is to transfer specified amounts from account no. 8121-06, social security contributions, to supplement and amend account no. 1240, governor's office, civil contingent fund, by adding six hundred thousand dollars to items as specified herein, and to supplement and amend account no. 3770, department of public safety, division of corrections, by adding six hundred thousand dollars to items as specified herein, such amounts to be transferred and available for expenditure immediately upon the effective date of this bill.

CHAPTER 3

(H. B. 3—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 14, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to the issuance of revenue bonds by the school building authority; providing for the transfer of unencumbered interest from trustees to the general revenue fund of the state; and setting forth the purpose of such transfer.

Be it enacted by the Legislature of West Virginia:

That article nine-d, 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 seventeen, to read as follows:
ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-17. Transfer of unencumbered interest from trustees to general revenue fund; purpose of transfer.

On or after the first day of July, one thousand nine hundred ninety-two, the authority shall transfer to the general revenue fund of the state, from accounts held by any trust company or companies or any bank or banks empowered to act as trustee for the holders of bonds issued pursuant to the provisions of this article, the amount of one million dollars held by such institutions as interest accumulated from investments made by such institutions while acting as custodians or safeguards of funds of the authority or the proceeds of bonds issued in accordance with the provisions of this article: Provided, That such transfer shall be effected only to the extent that the accumulated interest to be transferred is wholly unencumbered and is not otherwise committed for the payment of bonds or the completion of authorized projects, designated for transfer to any existing special funds, sinking funds, reserve funds or any other moneys or funds, or in any other manner required to be held so as to protect the rights and remedies of a trust company or bank as trustee or the rights and remedies of the bondholders.

The purpose of the transfer of funds required by this section is to facilitate the appropriation of a like amount to the school building capital improvements fund, within the state budget for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-two, to be used as debt service for revenue bonds to be issued by the authority pursuant to the provisions of section eight of this article to finance needs projects to be selected by the authority which have not heretofore been funded because of the unavailability of necessary funding, and to pay the costs and reserves of such bond issues. The proceeds of any revenue bonds issued by the authority for additional projects authorized pursuant to this section shall not be deemed available for distribution by the authority within the meaning of section fifteen of this article. The proceeds of such revenue
bonds shall be allocated and expended solely on the basis
of need and efficient use of resources, such basis being
determined by the authority in accordance with the
provisions of section fifteen of this article.

CHAPTER 4
(S. B. 1—By Senator Burdette, Mr. President)

[Passed March 14, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, 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 eight; to amend and reenact
sections two, four and eight, article three of said
chapter; to further amend said article by adding thereto
two new sections, designated sections fourteen and
fifteen; to amend and reenact sections two, three and
eight, article five of said chapter; to amend and reenact
section four, article six of said chapter; to amend and
reenact sections one, two, three, five and six, article
seven of said chapter; to further amend said article by
adding thereto a new section, designated section eight;
to amend and reenact section two, article eight of said
chapter; to amend and reenact sections one, five, eight,
nine, sixteen, seventeen, twenty, twenty-three and
twenty-four, article nine of said chapter; and to further
amend said article by adding thereto five new sections,
designated sections twenty-nine, thirty, thirty-one,
three-two and thirty-three, 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 the agencies to
promulgate certain legislative rules in the form that the
rules were filed in the state register; authorizing certain
of the agencies to promulgate legislative rules as
amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing and authorizing certain of the agencies to promulgate certain legislative rules on file in the office of the secretary of state during the first extraordinary session of the Legislature held in the year one thousand nine hundred ninety-two; authorizing the board of risk and insurance management to promulgate legislative rules relating to the discontinuation of the professional malpractice program, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to the reporting of state assets by financial institutions, as modified; authorizing the ethics commission to promulgate legislative rules relating to contributions, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to gifts, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to interests in public contracts, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to lobbying, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to private gain, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to voting, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to employment, as modified and amended; authorizing the division of banking to promulgate legislative rules relating to the West Virginia consumer credit and protection act, as modified; authorizing the division of banking to promulgate legislative rules relating to lease financing transactions, as modified; authorizing the division of banking to promulgate legislative rules relating to the operation of state-chartered financial institutions in West Virginia, as modified; authorizing the division of banking to promulgate legislative rules relating to the West Virginia industrial bank and industrial loan company act, as modified; authorizing
the division of banking to promulgate legislative rules relating to the West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven, as modified; authorizing the division of banking to promulgate legislative rules relating to permissible additional charges in connection with a consumer credit sale, as modified; authorizing the division of energy to promulgate legislative rules relating to the standards for certification of blasters for surface coal mines and surface areas of underground coal mines, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special motorboating, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special fishing, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to boating, as modified; authorizing and directing the division of natural resources to promulgate legislative rules relating to water pollution control permit fee schedules, as amended; authorizing the division of tourism and parks to promulgate legislative rules relating to the public use of West Virginia state parks, state forests and state hunting and fishing areas under the division of tourism and parks, as modified and amended; authorizing the public energy authority to promulgate legislative rules relating to the establishment of rules and procedure for the exercise of the power of eminent domain for qualified projects, as modified; authorizing the public energy authority to promulgate legislative rules relating to the establishment of a fee schedule and cost allocations to the issuance of bonds by the West Virginia public energy authority, as modified; authorizing the division of health to promulgate legislative rules relating to specialized health procedures, as modified; authorizing the division of health to promulgate legislative rules relating to emergency medical services, as modified; authorizing and directing the division of health to promulgate legislative rules relating to swimming pools and bathing beaches, as amended; authorizing the secretary of the department of health and human resources to promul-
gate legislative rules relating to retail food store sanitation, 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 review for automatic rate changes, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to certificates of need, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to exemptions for shared services, as modified and amended; authorizing the health care cost review authority to promulgate legislative rules relating to the development of life care retirement centers, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the conversion of acute care beds to skilled nursing care beds, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to financial disclosure, as modified and amended; authorizing the human rights commission to promulgate legislative rules relating to sexual harassment, as modified; authorizing the human rights commission to promulgate legislative rules relating to the exemption of private clubs, as modified; authorizing the human rights commission to promulgate legislative rules relating to religious discrimination, as modified; authorizing the human rights commission to promulgate legislative rules relating to waiver of rights; authorizing the division of public safety to promulgate legislative rules relating to the conversion of public safety to promulgate legislative rules relating to contracted police or security services, as modified; authorizing the division of public safety to promulgate legislative rules relating to the carrying of handguns by retired or medically discharged members, as modified; authorizing the division of public safety to promulgate legislative rules relating to modified vehicle inspections, as amended; authorizing the alcohol beverage control commission to promulgate legislative rules relating to the retail sale of wine in grocery stores, wine specialty shops and private wine restaurants; authorizing the insurance commissioner to promulgate legisla-
tive rules relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to examiners' compensation, qualifications and classification, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to permanent regulations on medicare supplement insurance, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to "tail" malpractice insurance covering certain medical and allied health care providers, as modified; authorizing the board of investments to promulgate legislative rules relating to the establishment of imprest funds, as modified; authorizing the board of investments to promulgate legislative rules relating to the administration of the consolidated pension fund by the West Virginia board of investments, as modified; authorizing the board of investments to promulgate legislative rules relating to the procedures for processing payments from the state treasury, as modified; authorizing the board of investments to promulgate legislative rules relating to the selection of state depositories for disbursement accounts through competitive bidding, as modified; authorizing the board of investments to promulgate legislative rules relating to the administration of the consolidated fund by the West Virginia board of investments, as modified; authorizing the board of investments to promulgate legislative rules relating to the selection of state depositories for receipt accounts, as modified and amended; authorizing the board of investments to promulgate legislative rules relating to the procedures for the deposit of moneys with the board of investments and the treasurer's office by state agencies, 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; authorizing the state tax commissioner to promulgate legislative rules relating to the valuation of timberland and managed timberland, as modified; authorizing the state tax commissioner
promulgate legislative rules relating to bingo, as modified; authorizing the state tax commissioner to promulgate legislative rules relating to the property transfer tax, as modified; authorizing the division of tax to promulgate legislative rules relating to the municipal business and occupation tax, as modified and amended; authorizing the division of tax to promulgate legislative rules relating to the soft drinks tax, as modified and amended; authorizing the division of tax to promulgate legislative rules relating to the corporation net income tax, as modified and amended; authorizing the state tax commissioner to promulgate legislative rules relating to the appraisal of producing and reserve oil and natural gas property for periodic statewide reappraisals for ad valorem property tax purposes, as modified; authorizing the state tax commissioner to promulgate legislative rules relating to the severance tax, as modified; authorizing the division of tax to promulgate legislative rules relating to the business franchise tax, as modified; authorizing the division of tax to promulgate legislative rules relating to exceptions to confidentiality of taxpayer information and disclosure of certain taxpayer information, as modified; authorizing the division of tax to promulgate legislative rules relating to the consumers sales and service tax and use tax, as modified and amended; authorizing the property valuation training and procedures commission to promulgate legislative rules relating to tax map sales, as modified; authorizing the division of motor vehicles to promulgate legislative rules relating to the denial, suspension, revocation or nonrenewal of driving privileges, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to commercial feed, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to wood destroying insect treatment standards, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the fee structure for the pesticide control act of 1990, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the commissioner of
agriculture to promulgate legislative rules relating to the West Virginia plant pest act, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the licensing of pesticide businesses, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to certified pesticide applicators, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the assessment of civil penalties and the procedures for consent agreements and negotiated settlements, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the aerial application of herbicides to rights-of-way, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to frozen desserts and imitation frozen desserts, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to the West Virginia apiary law of 1991, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the disposal of dead poultry, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to the licensing of livestock dealers, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the procedures, criteria and curricula for the examination and licensure of barbers, beauticians and manicurists, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to a fee schedule, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to licensing schools of barbering and beauty culture; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the operation of barber shops, beauty shops and schools of barbering and beauty culture; authorizing the board of barbers and beauticians to promulgate legislative rules relating to operational standards for schools of barbering and beauty culture, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the qualifications, training.
examination and licensing of instructors in barbering and beauty culture, as modified; authorizing the board of examiners in counseling to promulgate legislative rules relating to licensing, as modified; authorizing the governor's committee on crime, delinquency and correction to promulgate legislative rules relating to protocol for law enforcement response to domestic violence, as modified and amended; authorizing the board of medicine to promulgate legislative rules relating to continuing education for physicians and podiatrists, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to the policies and procedures for the development and maintenance of educational programs in practical nursing, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to policies regulating licensure of the licensed practical nurse, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to legal standards of nursing practice for the licensed practical nurse, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to fees for services rendered by the board, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to continuing competence, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to computers, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to wholesale drug distributors, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to mail order houses, as modified; authorizing the real estate commission to promulgate legislative rules relating to the requirements in licensing real estate brokers and salesmen and the conduct of brokerage businesses, as modified; authorizing the secretary of state to promulgate legislative rules relating to absentee voting by military voters who are members of reserve units called to active duty; authorizing the board of
accountancy to promulgate legislative rules relating to professional conduct, as modified; authorizing the board of architects to promulgate legislative rules relating to the board, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to the board, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to requirements of licensure and certification, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to the renewal of licensure or certification, as modified; authorizing the board of veterinary medicine to promulgate legislative rules relating to the organization and operation of the board, as modified; authorizing the board of veterinary medicine to promulgate legislative rules relating to a schedule of fees, as modified; authorizing the board of veterinary medicine to promulgate legislative rules relating to standards of practice, as modified and amended; authorizing the board of veterinary medicine to promulgate legislative rules relating to the registration of veterinary technicians, as modified; and authorizing the contractor licensing board to promulgate legislative rules relating to the West Virginia contractor's licensing act, as modified and amended.

Be it enacted by the Legislature of West Virginia:

That sections five and seven, 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 eight; that sections two, four and eight, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections fourteen and fifteen; that sections two, three and eight, article five of said chapter be amended and reenacted; that section four, article six of said chapter be amended and reenacted; that sections one, two, three, 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 eight; that section two, article eight
of said chapter be amended and reenacted; that sections one, five, eight, nine, sixteen, seventeen, twenty, twenty-three and twenty-four, article nine of said chapter be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections twenty-nine, thirty, thirty-one, thirty-two and thirty-three, 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.

§64-2-5. Board of risk and insurance management.

§64-2-7. Secretary of the department of administration.


§64-2-5. Board of risk and insurance management.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the board of risk and insurance management (mine subsidence), are authorized.

(b) The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the state board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-six, relating to the state board of risk and insurance management (mine subsidence insurance program), are authorized.
(c) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred eighty-nine, modified by the board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-nine, relating to the board of risk and insurance management (West Virginia board of risk and insurance management), are authorized.

(d) The legislative rules filed in the state register on the eleventh day of September, one thousand nine hundred ninety-one, modified by the board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred ninety-two, relating to the board of risk and insurance management (discontinuation of professional malpractice program), 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 communication 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.

(d) The legislative rules filed in the state register on the nineteenth day of June, one thousand nine hundred ninety-one, 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 thirtieth day of August, one thousand nine hundred ninety-one, relating to the secretary of the department of administration (reporting of state assets by financial institutions), are authorized.


(a) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, one thousand nine hundred ninety-one, relating to the ethics commission (contributions), are authorized, with the amendment set forth below:

On page one, subsection 3.4, by striking out the words “use their official title or position in the endorsement or support of” and inserting in lieu thereof “endorse”.

(b) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, one thousand nine hundred ninety-one, relating to the ethics commission (gifts), are authorized, with the amendments set forth below:
On page two, subsection 3.1, by striking out the word "significant";

On page two, section four, subsection 4.1, by striking out "$20" and inserting in lieu thereof "$25";

On page three, subsection 4.2, after the words "hotel room" by inserting a period and striking out the remainder of the sentence;

On page three, subsection 5.1, by striking out the word "unlawful" and inserting in lieu thereof "improper";

On page three, subsection 5.1, after the words "health club fees" by striking out the period and adding ", unless such expenses are offered to all of the panelists or speakers.

On page four, subsection 6.2, by striking out the word "unlawful" and inserting in lieu thereof "improper".

And,

On page four, section 7, at the end of the section by striking out the period and adding the following: ": Provided, That public officials and public employees may accept complimentary tickets to sporting events, if the tickets are incidental to the conduct of their official or ceremonial duties."

(c) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, one thousand nine hundred ninety-one, relating to the ethics commission (interest in public contracts), are authorized, with the amendment set forth below:

On page two, subsection 6.2, by striking out the words "complete in every particular and including the exact" and inserting in lieu thereof "including the".

(d) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
thirty-first day of October, one thousand nine hundred
ninety-one, relating to the ethics commission (lobbying),
are authorized, with the amendment set forth below:

On page three, subsection 4.3, after the words “copies
of forms” by inserting a period and striking out the
remainder of the sentence.

(e) The legislative rules filed in the state register on
the thirty-first day of January, one thousand nine
hundred ninety-one, modified by the ethics commission
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
seventeenth day of December, one thousand nine
hundred ninety-one, relating to the ethics commission
(private gain), are authorized, with the amendments set
forth below:

On page one, subsection 2.2, after the words “A public
official” by inserting “acting in his or her capacity as
a public official”;

On page one, subsection 2.2, after the words “the
public official.” by adding a new sentence to read as
follows: “The provisions of this subsection shall not apply
to a public official acting in his or her private capacity.”;

On pages one and two, by striking out all of section
three;

On pages two through four, by renumbering the
remaining sections;

On page two, subsection 4.1, by striking out the words
“persons in high office” and inserting in lieu thereof “a
public official or public employee”; 

On page two, subsection 4.1, by striking out the words
“close friends” and inserting in lieu thereof “cohabitat-
ing sexual partners”;

On page two, subsection 4.2, after the word “sister”
by striking out the remainder of the sentence and
inserting in lieu thereof “or spouse.”;
On page two, subsection 4.3, by striking out the words “close friend” and inserting in lieu thereof “cohabitating sexual partner”;

On page three, subdivision 4.3.b, by striking out the words “close friend” and inserting in lieu thereof “cohabitating sexual partner”;

On page three, by striking out all of paragraph 4.3.b.2 and inserting in lieu thereof a new paragraph 4.3.b.2 to read as follows:

“A public official or public employee should at least have some independent person take part in the selection. He or she should avoid using a subordinate for the independent person.”;

On page three, by striking out all of subsection 4.4 and inserting in lieu thereof a new subsection to read as follows:

“All hiring by public officials and public employees of relatives prior to the twenty-ninth day of February, one thousand nine hundred ninety-two is not subject to review under the ethics act, in Chapter 6B of the W. Va. Code.”;

On page three, subsection 4.5, by striking out the words “close friend” and inserting in lieu thereof “cohabitating sexual partner”;

On page three, after subsection 4.5, by adding thereto a new subsection, designated subsection 4.6, to read as follows:

“It is improper for a public official or public employee to terminate the employment of a person without sufficient cause for the purpose of hiring a relative, friend or political supporter.”;

On page three, subsection 5.2, after the words “supervisor during work hours.”, by adding the following sentence: “This subsection does not apply to de minimus work or services.”;

On page four, by striking out all of subsection 6.2 and inserting in lieu thereof a new subsection 6.2, to read
as follows:

"6.2 Improper Use - Public officials and public employees shall not use government property for personal projects or activities that result in private gain. This subsection does not apply to the de minimus use of government property."

And,

On page four, by striking out all of section 9 and inserting in lieu thereof a new section 9 to read as follows:

"Full-time appointed public officials and part-time and full-time public employees may not receive private compensation for performing private work during public work hours. This section shall not apply to de minimus private work."

(f) The legislative rules filed in the state register on the thirty-first day of January, one thousand ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of December, one thousand ninety-one, relating to the ethics commission (voting), are authorized, with the amendments set forth below:

On page one, subsection 2.2, by striking out the second and third paragraphs of subsection 2.2;

And,

On page one, after subsection 2.3, by adding a new subsection, designated subsection 2.4 to read as follows:

"2.4 In any case where a Senator or Delegate is voting as part of their official duties of office, the members of the Senate and the members of the House of Delegates are governed by the rules of their respective houses. The provisions of subsection 2.3 of this rule shall not apply to members of the Legislature when acting as a member thereof."

(g) The legislative rules filed in the state register on
the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of December, one thousand nine hundred ninety-one, relating to the ethics commission (employment), are authorized, with the amendments set forth below:

On page two, subsection 3.3, by striking out the words “if there is a reasonable probability that the person will be regulated. There must be” and inserting in lieu thereof “upon”;

On page two, subdivision 4.2.c, after the word “prohibition” by inserting the words “for all practical purposes”;

On page three, by striking out all of subsections 4.5, 4.6 and 4.7;

And,

On page three, by renumbering the remaining subsections.

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-2. Division of banking.
§64-3-4. Division of energy.
§64-3-8. Division of natural resources.
§64-3-14. Division of tourism and parks.
§64-3-15. Public energy authority.

§64-3-2. Division of banking.

(a) The legislative rules filed in the state register on the eleventh day of June, one thousand nine hundred eighty-two, relating to commissioner of banking (communication terminals and interchange systems), are authorized.

(b) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the commissioner of banking (consumer credit sales), are authorized.
(c) The legislative rules filed in the state register on the nineteenth day of August, one thousand nine hundred eighty-three, relating to the commissioner of banking (legal lending limit), are authorized.

(d) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-six, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-six, relating to the commissioner of banking (implementing the West Virginia community reinvestment act), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-eight, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-eight, relating to the commissioner of banking (subsidiary bank holding the stock of its parent company as collateral), are authorized.

(f) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (West Virginia consumer credit and protection act), are authorized.

(g) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (lease financing transactions), are authorized.

(h) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (operation of state-chartered financial institutions in West Virginia), are authorized.

(i) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (West Virginia industrial bank and industrial loan company act), are authorized.

(j) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven), are authorized.

(k) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (permissible additional charges in connection with a consumer credit sale), 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 amendments set
forth below:

Page viii, place an * in front of section 32.02.
Page ix, after section 35.04 add the following:
“*35.05 Extra Powers of the Administrator ...... 64.”
Page 1, section 1.03 in the list of additional regula-
tions, add 35.05; in the list of revised regulations, add
32.02, 32.03 and 33.00.
Page 52, section 32.04 and section 32.05 add at the end
of (ii) the words “and (iii) definition of proration unit.”
Page 53, section 33 after the word “definitions” add
the following sentence: “The following definitions are
applicable to these regulations used for purposes of
implementing the Natural Gas Policy Act of 1978 and
are not intended to be used in any other context.”
Page 55, section 33.02 (b)(16) after the word “forma-
tions” in the third lines of (i) and (ii), add the words “for
which a well has been.”
Page 64, after section 35.04 add the following section:
“35.05 Extra Powers of the Administrator.

The administrator may also certify or provide a
waiver for a well located within a proration unit as
defined in 32.02 (b)(16) or any other well sought to be
certified under these regulations after notice and
hearing.”
(d) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (oil and gas wells and other wells), are authorized.

(e) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the oil and gas division of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (certification of gas wells), are authorized.

(f) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (underground injection control), are authorized.

(g) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (state national pollutant discharge elimination system (NPDES) program), are authorized.
(h) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (standards for certification of coal mine electricians), are authorized with the following amendments:

Page one, §2.1, subsection (a), following the second word, “electrician” by striking the colon and inserting the following: “under the supervision required by section 4.1(d) of these rules” 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.”;

And,

Page five, §4.1, subsection (d), line three, following the words “certified electrician prior” by inserting the words “to any work being performed and again prior.”

(i) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (safety training program for prospective underground coal miners in West Virginia), are authorized.

(j) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (miscellaneous water pollution control), are authorized.

(k) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (dam control), are authorized.

(l) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the 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 examin-
ers 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 refilled 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 refilled 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 objec-
tions of the West Virginia Legislature and refilled 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 refilled 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 refilled 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 committee 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 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 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
(z) The legislative rules filed in the state register on the eleventh day of July, one thousand nine hundred ninety-one, 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-second day of October, one thousand nine hundred ninety-one, relating to the division of energy (standards for certification of blasters for surface coal mines and surface areas of underground coal mines), are authorized.

§64-3-8. Division of natural resources.

(a) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred eighty-three, relating to the department of natural resources (surface mining), are authorized with the amendments set forth below:

Page 3-4, §3E.01 by adding after the word “engineer” the words “or licensed land surveyor.”

Page 3-5, §3E.02, subsection (a), by adding after the word “mining” the words “or civil.”

And,

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 pre-filing 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."
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 amendment 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 amendment 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 eighty-five, modified by the department of natural resources to meet the objections.
ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-17. Transfer of unencumbered interest from trustees to general revenue fund; purpose of transfer.

1. On or after the first day of July, one thousand nine hundred ninety-two, the authority shall transfer to the general revenue fund of the state, from accounts held by any trust company or companies or any bank or banks empowered to act as trustee for the holders of bonds issued pursuant to the provisions of this article, the amount of one million dollars held by such institutions as interest accumulated from investments made by such institutions while acting as custodians or safeguards of funds of the authority or the proceeds of bonds issued in accordance with the provisions of this article:

Provided, That such transfer shall be effected only to the extent that the accumulated interest to be transferred is wholly unencumbered and is not otherwise committed for the payment of bonds or the completion of authorized projects, designated for transfer to any existing special funds, sinking funds, reserve funds or any other moneys or funds, or in any other manner required to be held so as to protect the rights and remedies of a trust company or bank as trustee or the rights and remedies of the bondholders.

The purpose of the transfer of funds required by this section is to facilitate the appropriation of a like amount to the school building capital improvements fund, within the state budget for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-two, to be used as debt service for revenue bonds to be issued by the authority pursuant to the provisions of section eight of this article to finance needs projects to be selected by the authority which have not heretofore been funded because of the unavailability of necessary funding, and to pay the costs and reserves of such bond issues. The proceeds of any revenue bonds issued by the authority for additional projects authorized pursuant to this section shall not be deemed available for distribution by the authority within the meaning of section fifteen of this article. The proceeds of such revenue
bonds shall be allocated and expended solely on the basis of need and efficient use of resources, such basis being determined by the authority in accordance with the provisions of section fifteen of this article.

CHAPTER 4
(S. B. 1—By Senator Burdette, Mr. President)

[Passed March 14, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, 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 eight; to amend and reenact sections two, four and eight, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections fourteen and fifteen; to amend and reenact sections two, three and eight, article five of said chapter; to amend and reenact section four, article six of said chapter; to amend and reenact sections one, two, three, five and six, article seven of said chapter; to further amend said article by adding thereto a new section, designated section eight; to amend and reenact section two, article eight of said chapter; to amend and reenact sections one, five, eight, nine, sixteen, seventeen, twenty, twenty-three and twenty-four, article nine of said chapter; and to further amend said article by adding thereto five new sections, designated sections twenty-nine, thirty, thirty-one, thirty-two and thirty-three, 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 the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules...
refiled in the state register on the seventh day of August, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (boating regulations), are authorized with the amendment set forth below:

On page 16, section 6.2, line 3 by inserting following the period "This regulation does not apply to licensed outfitters and guides." These rules were proposed by the director of the department of natural resources pursuant to section seven, article one and section twenty-two, article seven, chapter twenty of this code.

(x) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-eight, relating to the department of natural resources (hazardous waste management), are authorized.

(y) The legislative rules filed in the state register on the thirty-first day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (boating), are authorized.

(z) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-eight, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (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 W. Va. 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 amendments 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>
<tr>
<td>1000 to 1499</td>
<td>$ 500</td>
</tr>
<tr>
<td>1500 to 1999</td>
<td>$ 750</td>
</tr>
<tr>
<td>2000 to 2499</td>
<td>$ 1000</td>
</tr>
<tr>
<td>2500 to 2999</td>
<td>$ 1250</td>
</tr>
<tr>
<td>3000 to 3499</td>
<td>$ 1500</td>
</tr>
<tr>
<td>3500 to 3999</td>
<td>$ 1750</td>
</tr>
<tr>
<td>4000 to 4499</td>
<td>$ 2000</td>
</tr>
<tr>
<td>4500 to 4999</td>
<td>$ 2250</td>
</tr>
<tr>
<td>greater than 5000</td>
<td>$ 2500</td>
</tr>
</tbody>
</table>

INDUSTRIAL OR OTHER WASTE FACILITIES

<table>
<thead>
<tr>
<th>Average Discharge Volume (gallons per day)</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1,000</td>
<td>$ 50</td>
</tr>
<tr>
<td>1,001 to 10,000</td>
<td>$ 500</td>
</tr>
<tr>
<td>10,001 to 50,000</td>
<td>$ 1000</td>
</tr>
<tr>
<td>greater than 50,000</td>
<td>$ 2500</td>
</tr>
</tbody>
</table>

(ii) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-nine, relating to the
director of the department of natural resources (revocation of hunting and fishing licenses), are authorized.

(jj) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-nine, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the division of natural resources (state water pollution control revolving fund program), are authorized.

(kk) The legislative rules filed in the state register on the twenty-ninth day of March, 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 thirtieth day of August, one thousand nine hundred ninety, relating to the division of natural resources (assessment of civil administrative penalties), are authorized.

(II) 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 amendment 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 (under-
ground storage tanks), are authorized with the amend-
ment 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 (Noti-
fication 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."

(oo) 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.

(pp) 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.
(qq) The legislative rules filed in the state register on the first day of July, one thousand nine hundred ninety-one, 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 nineteenth day of September, one thousand nine hundred ninety-one, relating to the division of natural resources (special motorboating regulations), are authorized.

(rr) The legislative rules filed in the state register on the first day of May, one thousand nine hundred ninety-one, 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 July, one thousand nine hundred ninety-one, relating to the division of natural resources (special fishing regulations), are authorized with the amendment set forth below:

On page one, by striking out subsection 2.1 and inserting in lieu thereof, a new subsection 2.1, to read as follows:

"2.1 "Daylight hours" means the time period between sixty minutes before sunrise and sixty minutes after sunset."

(ss) The legislative rules filed in the state register on the first day of July, one thousand nine hundred ninety-one, 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-first day of November, one thousand nine hundred ninety-one, relating to the division of natural resources (boating regulations), are authorized.

(tt) The Legislature hereby authorizes and directs the division of natural resources to promulgate the legislative rule relating to water pollution control permit fee schedules, 47 CSR 26, effective the twenty-second day of April, one thousand nine hundred ninety-one, with the amendment set forth below:

On page eight, subdivision 7.4.1, at the end of the
subdivision by striking the period and adding the following:

"Provided, That if the chief determines that a facility is in substantial compliance with its existing permit, the fee is one thousand two hundred fifty dollars ($1,250.00)."

§64-3-14. Division of tourism and parks.

1 The legislative rules filed in the state register on the twenty-sixth day of April, one thousand nine hundred ninety-one, modified by the division of tourism and parks to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-one, relating to the division of tourism and parks (public use of West Virginia state parks, state forests and state hunting and fishing areas under the division of tourism and parks), are authorized with the amendment set forth below:

On page five, subsection 2.21 by striking out the words "and Tomlinson Run".

§64-3-15. Public energy authority.

(a) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred ninety, modified by the public energy authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-one, relating to the public energy authority (establishment of rules and procedure for the exercise of the powers of eminent domain for qualified projects), are authorized.

(b) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred ninety, modified by the public energy authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-one, relating to the public energy authority (establishment of a fee schedule and cost allocations to
19 the issuance of bonds by the West Virginia public
20 energy authority), 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.

§64-5-2. State board of health; division of health.

1 (a) The legislative rules filed in the state register on
2 the second day of June, one thousand nine hundred
3 eighty-two, relating to the state board of health (waste
4 water treatment works operations), are authorized.
5
6 (b) The legislative rules filed in the state register on
7 the second day of June, one thousand nine hundred
8 eighty-two, relating to the state board of health
9 (laboratory reporting of syphilis and gonorrhea), are
10 authorized.

11 (c) The legislative rules filed in the state register on
12 the second day of June, one thousand nine hundred
13 eighty-two, relating to the state board of health (public
14 water supply operators) with the modification of §11.02
15 as presented to the legislative rule-making review
16 committee on the ninth day of November, one thousand
17 nine hundred eighty-two, are authorized.
18
19 (d) The legislative rules filed in the state register on
20 the twenty-second day of October, one thousand nine
21 hundred eighty-two, relating to the state board of health
22 (sewage systems) with the modification presented to the
23 legislative rule-making review committee on the sixth
24 day of December, one thousand nine hundred eighty-
25 two, are authorized except lines ten through seventeen,
26 page eight of the rules shall be stricken in their entirety
27 and the remaining paragraphs renumbered.
28
29 (e) The legislative rules filed in the state register on
30 the second day of June, one thousand nine hundred
31 eighty-two, relating to the state board of health
32 (approval of laboratories), are authorized.
33
34 (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 amendment set forth below:

Page 45, §12.8.2. In the first sentence delete the words “without delay” and insert in lieu thereof the words “within twenty-four hours after receiving a report of a complaint.”

(o) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (procedures for recovery of corneal tissue for transplant), are authorized.

(p) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-three, relating to the state board of health (well water regulations), are authorized with the amendments set forth below:

§4.1. In the first sentence delete the word “obtaining” and insert in lieu thereof the words “applying for”. In the second sentence after “4.3” add “and 4.5.”

§4.2. At the end of the second sentence, strike the period and add the words “unless emergency conditions prevail as noted under §4.3.”

With the balance of §4.2 and create a new §4.3 with the following changes: In the first sentence delete the word “deadline” and insert in lieu thereof the word “requirements.” Add after the first sentence the sentence, “Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity or public health threats.” In the third sentence delete the word “exceed” and insert in lieu thereof the words “be made in excess of.”
Renumber §4.3 as §4.4 and add the following two sentences at the end of the section: "Such standards shall constitute the minimum standards for the installation, the alteration or the deepening of water wells. Any plans approved by the director pursuant to these regulations shall be in substantial compliance with the heretofore mentioned standards."

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as §4.8 and §4.8 as §4.9.

And,

§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
eighth-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-
(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 fifteenth day of September, one thousand nine hundred eighty-eight, relating to the state board of health (public water supply operators), are authorized.

(II) The legislative rules filed in the state register on the nineteenth day of October, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, one thousand nine hundred eighty-eight, relating to the state board of health (volatile synthetic organic chemicals), are authorized.

(mm) The legislative rules filed in the state register on the second day of January, one thousand nine hundred ninety, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of January, one thousand nine hundred ninety, relating to the division of health (asbestos abatement licensing), are authorized.

(nn) The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-nine, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred eighty-nine, relating to the division of public health (AIDS-related medical testing and 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 commit-
tee 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 64-30C.

<table>
<thead>
<tr>
<th>Type of System</th>
<th>Fees for Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I (New or Modified)</td>
<td>$100</td>
</tr>
<tr>
<td>Class II (New or Modified)</td>
<td>$100</td>
</tr>
<tr>
<td>Home Aeration Unit</td>
<td>$100</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.

(vv) The legislative rules filed in the state register on the twenty-eighth day of December, 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 twenty-sixth day of July, one thousand nine hundred ninety-one, relating to the division of health (specialized health procedures), are authorized.

(ww) The legislative rules filed in the state register on the second 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 sixteenth day of May, one thousand nine hundred ninety-one, relating to the division of health (emer...
medical services), are authorized.

(xx) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred ninety-one, modified by the secretary of the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of January, one thousand nine hundred ninety-two, relating to the secretary of the department of health and human resources (retail food store sanitation), are authorized.

(yy) The Legislature hereby authorizes and directs the division of health to promulgate the legislative rule relating to swimming pools and bathing beaches, 64 CSR 16, effective the fifth day of May, one thousand nine hundred eighty, with the amendment set forth below:

On page five, section 11.3 by striking out the period following the word “beach” and adding the following: "Provided, That at hotels, motels, apartment complexes, or condominiums which have swimming pools of five feet or less in depth at the deepest point, employment of lifeguards is recommended but not mandatory, whether or not the establishment charges an admission fee (gate receipt, annual pass or membership dues). If no lifeguards are employed, the management shall post a sign in a prominent location near the swimming pool stating “SWIM AT YOUR OWN RISK - ALL PERSONS UNDER THE AGE OF 14 MUST BE ACCOMPANIED BY AN ADULT.”

§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.

(e) The legislative rules filed in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-five, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia health care cost review authority (interim standards for lithotripsy services), are authorized.

(f) The legislative rules filed in the state register on the third day of September, one thousand nine hundred eighty-seven, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-eight, relating to the West Virginia health care cost review authority (exemptions from certificate of need review), are authorized.

(g) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred eighty-nine, relating to the health care cost review authority (financial disclosure), are authorized.

(h) The legislative rules filed in the state register on the fourteenth day of August, one thousand
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 authority (health services offered by health professionals), are authorized.

(l) 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.

(m) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, 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 eighth day of November, one thousand nine hundred ninety-one, relating to the health care cost review authority (health services offered by health professionals), are authorized.

(n) The legislative rules filed in the state register on the first day of May, one thousand nine hundred ninety-one, 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-second day of July, one thousand nine hundred ninety-one, relating to the health care cost review authority (review for automatic rate changes), are authorized.
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130 (o) The legislative rules filed in the state register on
131 the ninth day of August, one thousand nine hundred
132 ninety-one, modified by the health care cost review
133 authority to meet the objections of the legislative rule-
134 making review committee and refiled in the state
135 register on the sixteenth day of October, one thousand
136 nine hundred ninety-one, relating to the health care cost
137 review authority (certificate of need), are authorized.
138
139 (p) The legislative rules filed in the state register on
140 the twelfth day of August, one thousand nine hundred
141 ninety-one, modified by the health care cost review
142 authority to meet the objections of the legislative rule-
143 making review committee and refiled in the state
144 register on the sixteenth day of October, one thousand
145 nine hundred ninety-one, relating to the health care cost
146 review authority (exemption for shared services), are
147 authorized with the amendments set forth below:
148
149 On page six, subsection 4.4, after the words “Charles-
150 ton newspapers”, by striking out the word “and” and
151 inserting in lieu thereof a comma;
152
153 On page six, subsection 4.4, after the words “State
154 Register” by adding the words “and a newspaper of
155 general circulation within the area of the facility.”;
156
157 On page seven, subsection 4.5, after the words “notice
158 in the Saturday Charleston newspapers”, by striking out
159 the word “and” and inserting in lieu thereof a comma;
160
161 On page seven, subsection 4.5, before the words “the
162 state agency shall within ten”, by striking out the
163 comma and inserting the words “and a newspaper of
164 general circulation within the area of the facility”;
165
166 And,
167
168 On page seven, subsection 4.5, after the words
169 “decision in the Saturday Charleston newspapers”, by
170 striking out the remainder of the sentence and inserting
171 in lieu thereof the following: “, the state register and a
172 newspaper of general circulation within the area of the
173 facility.”.
174
175 (q) The legislative rules filed in the state register on
the twenty-seventh day of June, one thousand nine
hundred ninety-one, 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-third day of September, one
thousand nine hundred ninety-one, relating to the health
care cost review authority (development of life care
retirement centers), are authorized.

(r) The legislative rules filed in the state register on
the twenty-seventh day of June, one thousand nine
hundred ninety-one, 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-third day of September, one
thousand nine hundred ninety-one, relating to the health
care cost review authority (conversion of acute care beds
to skilled nursing care beds), are authorized.

(s) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
ninety-one, 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 tenth day of January, one thousand nine
hundred ninety-two, relating to the health care cost
review authority (financial disclosure), are authorized
with the amendment set forth below:

On page eighteen, after subsection 5.3, by adding
thereto a new subsection, designated subsection 5.4, to
read as follows:

"5.4 A covered facility which is a nonprofit, commu-

nity-based primary care center providing primary care
services without regard to ability to pay which provides
the board with a year-end audited financial statement
prepared in accordance with generally accepted audit-
ing standards and with governmental auditing stand-
ards issued by the comptroller general of the United
States shall be considered to have complied with the
disclosure requirements of sections 3 and 4 of this rule."

(a) 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 committee 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.

(b) The legislative rules filed in the state register on the twenty-second day of March, one thousand nine hundred ninety-one, modified by the human rights 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 ninety-one, relating to the human rights commission (sexual harassment), are authorized.

(c) The legislative rules filed in the state register on the twenty-second day of March, one thousand nine hundred ninety-one, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the human rights commission (exemption of private clubs), are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of March, one thousand nine hundred ninety-one, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the human rights commission (religious discrimination), are authorized.

(e) The legislative rules filed in the state register as an emergency rule on the twenty-second day of March, one thousand nine hundred ninety-one, relating to the human rights commission (waiver of rights under the human rights act), are authorized.
ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-4. Division of public safety.

1 (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.

(e) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred
ninety-one, 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 nineteenth day of November, one thousand nine hundred ninety-one, relating to the division of public safety (contracted police or security services), are authorized.

(f) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, 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 nineteenth day of November, one thousand nine hundred ninety-one, relating to the division of public safety (carrying of handguns by retired or medically discharged members), are authorized.

(g) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred ninety-two, relating to the division of public safety (modified vehicle inspections), are authorized with the amendments set forth below:

On page two, paragraph 2.2.3.3, by striking out the words "two licensed inspector mechanics" and inserting in lieu thereof "one licensed inspector mechanic";

And,

On page two, paragraph 2.2.3.4, by striking out the word "two-car" and inserting in lieu thereof "one-car".

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.
§64-7-3. Board of investments.
§64-7-5. Racing commission.
§64-7-6. Tax department.
§64-7-8. Property valuation training and procedures commission.

§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
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:

On page twelve, section four, subsection 4.8.1, after
the word "stored" by changing the period to a colon and
adding the following: "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."

(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.

(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 autho-
rized.
(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.

(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.

(k) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, relating to the alcohol beverage control commission (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.

(l) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the
(m) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the insurance 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 ninety-two, relating to the insurance commissioner (examiners' compensation, qualifications and classification), are authorized.

(n) The legislative rules filed in the state register on the seventeenth day of July, one thousand nine hundred ninety-one, modified by the insurance 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 ninety-two, relating to the insurance commissioner (permanent regulations on Medicare supplement insurance), are authorized.

(o) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the insurance 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 ninety-two, relating to the insurance commissioner ("tail" malpractice insurance covering certain medical and allied health care providers), are authorized.

§64-7-3. Board of investments.

(a) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (selection of state depositories for disbursement accounts through competitive bidding), are authorized.

(b) The legislative rules filed in the state register on the third day of January, one thousand nine hundred
eighty-four, relating to the state board of investments
(administration of the consolidated fund), are
authorized.

(c) The legislative rules filed in the state register on
the ninth day of January, one thousand nine hundred
ninety, modified by the state board of investments to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-fourth day of January, one thousand nine
hundred ninety, relating to the state board of invest-
ments (administration of the consolidated fund), are
authorized.

(d) The legislative rules filed in the state register on
the ninth day of January, one thousand nine hundred
ninety, modified by the state board of investments to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-fourth day of January, one thousand nine
hundred ninety, relating to the state board of invest-
ments (administration of the consolidated pension fund),
are authorized.

(e) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (establishment of imprest funds), are
authorized.

(f) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (administration of the consolidated pension
fund by the West Virginia state board of investments),
are authorized.
(g) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (procedures for processing payments from
the state treasury), are authorized.

(h) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (selection of state depositories for disburse-
ment accounts through competitive bidding), are
authorized.

(i) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legisla
tive rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (administration of the consolidated fund by
the West Virginia state board of investments), are
authorized.

(j) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (selection of state depositories for receipt
accounts), are authorized with the amendment set forth
below:

On page three, section four, by striking out the period
after the word “agency” and adding the words “but shall select a depository in the same community or geographical area as the agency.”

(k) The legislative rules filed in the state register on the thirtieth day of November, one thousand nine hundred ninety, modified by the state board of investments to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of May, one thousand nine hundred ninety-one, relating to the state board of investments (procedures for deposit of moneys with the board of investments and treasurer's office by state agencies), 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
(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 (greyhound racing), 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 amendment 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 period following, 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.
(aa) The legislative rules filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-one, modified by the racing commission 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-one, relating to the racing commission (thoroughbred racing), are authorized.

(bb) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-one, relating to the West Virginia racing commission (greyhound racing), are authorized.

§64-7-6. Tax department.

(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the state tax commissioner (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized with the amendments set forth below:

On page 8, section 11.04(b)(2), definition of “Active Mining Property,” at the end of the first paragraph following the period, by adding the following: “In the application of the herein provided valuation formula on 'active mining property,' the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is ‘metallurgical’ or ‘steam’.”

On page 9, section 11.04(b)(3), definition of “Active Reserves,” at the end of the subsection, following the period, by adding the following: “In the application of the herein provided valuation formula on ‘active reserves,’ the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is ‘metallurgical’ or ‘steam’.”

On page 11, section 11.04(b)(11), definition of “Mineable Coal,” by striking the subsection and substituting in lieu thereof the following: “(11) Mineable Coal. Coal which can be mined under present day mining technology and economics.”
On page 25, section 11.04(c)(2)(C), entitled "Property Tax Component," by striking the subsection and inserting in lieu thereof the following: "(C) Property Tax Component — This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property."

On page 30, section 11.04(c)(4), entitled "Valuation of Mined-Out/Unmineable/Barren Coal Properties," by striking the numbers "$5.00" and inserting in lieu thereof the following: "$1.00."

On page 31, section 11.04(c)(5)(B), by striking the words and numbers "Five Dollars ($5.00)" and inserting in lieu thereof the following: "One Dollar ($1.00)."

On page 53, section 11.05(h) by striking the symbol and figures "($5.00)" and inserting in lieu the following: "($1.00)."

On page 73, section 11.06(h) by striking the symbol and figures "$5.00" and inserting in lieu the following: "$1.00."

On page 81, section 11.07(e)(15)(B)(4) at the end of the second sentence remove the period after the word "property" and insert the words "unless the land is used for some other purpose in which case it will be taxed according to its actual use."

On page 86, section 11.07(k) delete all of subsection (k).

On page 110, section 11.08(c)(4) by striking the symbol and figures "$5.00" and inserting in lieu thereof the following: "$1.00."

On page 111, section 11.08(c)(5)(B) by striking the symbol and figures "$5.00" and inserting in lieu thereof the following: "$1.00."

And,

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 commis-
sioner (estimated personal income tax), are authorized
with the amendments set forth below:

55.02(a)(2)(on page 182.2) line 18, after the word
“profession” strike the words “on his own account” and
the comma(.)

55.12(b)(1)(page 182.35) at the end of the section,
change the period to a comma, and add the following
language: “and in the case of a court appointed agent,
a copy of the court order of appointment is sufficient.”
And,

55.12(c)(page 182.36) after the word “for,” strike the
word “erroneous.”

(c) The legislative rules filed in the state register on
the twenty-eighth day of September, one thousand nine
hundred eighty-four, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the fourteenth day of November, one
thousand nine hundred eighty-four, and on the twenty-
first day of March, one thousand nine hundred eighty-
five, relating to the state tax commissioner (estimated
corporation net income tax), are authorized.

(d) The legislative rules filed in the state register on
the twelfth day of March, one thousand nine hundred
eighty-five, relating to the state tax commissioner
(identification and appraisal of farmland subsequent to
the base year of statewide reappraisal), are authorized
and directed to be promulgated with the following
amendments:

Title page, Subject; following the word “Farmland.”
insert the words “and of Structures Situated Thereon.”

Page i, Subject; following the word “Farmland.”
insert the words “and of Structures Situated Thereon.”

Page i, TABLE OF CONTENTS, Section 10: follow-
ing 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
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 word "purposes" and add the words "or any nonfarm use."

Page 10.19, Section 10.05(c)(2); following the words "Provided, That no" delete the word "reason" and insert in lieu thereof the words "individual event."

Page 10.20, Section 10.05(c)(4)(C); following the words
“(1,000) minimum production value” insert the words “or the small farm five hundred dollars ($500) minimum production and sale.”

Page 10.23, Section 10.05(d)(3)(B), third sentence; following the word “If” insert the words “timber from.”

Page 10.26, Section 10.05(f)(2) is amended in its entirety to read as follows:

“(2) Farm buildings. — Rental value of farm buildings and other improvements on the farmland shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation.¹ Both of these determinations shall be made in accordance with the tax department’s real property appraisal manual² as filed in the state register in accordance with chapter 29A of the code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situated 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.”

And,

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 commis-
sioner (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 commis-
sioner (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 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 county commis-
sions 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 commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (administrative review of appraisals by the state tax commissioner), are authorized.

(j) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (additional review and implementation of property appraisals), are authorized.

(k) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, relating to the state tax commissioner (guidelines for assessors to assure fair and uniform personal property values), are authorized.

(l) The legislative rules filed in the state register on the
the eighteenth day of August, one thousand nine
hundred eighty-six, modified by the state tax commis-

tioner 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 commis-
sioner 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 commis-
sioner (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 commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-second day of January, one
thousand nine hundred eighty-eight, relating to the state
tax commissioner (consumers sales and service tax and
use tax), are authorized.

(q) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-seven, modified by the state tax commis-
373 sioner to meet the objections of the legislative rule-
374 making review committee and refiled in the state
375 register on the thirteenth day of January, one thousand
376 nine hundred eighty-eight, relating to the state tax
377 commissioner (appraisal of property for periodic
378 statewide reappraisals for ad valorem property tax
379 purposes), are authorized.

380 (r) The legislative rules filed in the state register on
381 the fourteenth day of August, one thousand nine
382 hundred eighty-seven, modified by the state tax commis-
383 sioner to meet the objections of the legislative rule-
384 making review committee and refiled in the state
385 register on the twelfth day of January, one thousand
386 nine hundred eighty-eight, relating to the state tax
387 commissioner (severance tax), are authorized.

388 (s) The legislative rules filed in the state register on
389 the second day of September, one thousand nine
390 hundred eighty-eight, modified by the state tax commis-
391 sioner to meet the objections of the legislative rule-
392 making review committee and refiled in the state
393 register on the twenty-fourth day of February, one
394 thousand nine hundred eighty-nine, relating to the state
395 tax commissioner (solid waste assessment fee), are
396 authorized.

397 (t) The legislative rules filed in the state register on
398 the twelfth day of August, one thousand nine hundred
399 eight-eight, modified by the state tax commissioner to
400 meet the objections of the legislative rule-making review
401 committee and refiled in the state register on the
402 twenty-first day of September, one thousand nine
403 hundred eighty-eight, relating to the state tax commis-
404 sioner (electronic data processing system network for
405 property tax administration), are authorized.

406 (u) The legislative rules filed in the state register on
407 the nineteenth day of September, one thousand nine
408 hundred eighty-eight, modified by the state tax commis-
409 sioner to meet the objections of the legislative rule-
410 making review committee and refiled in the state
411 register on the twenty-fourth day of February, one
412 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
(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.

(hh) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred, 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-sixth day of April, one thousand nine hundred ninety-one, relating to the state tax commissioner (valuation of timberland and managed timberland), are authorized.

(ii) The legislative rules filed in the state register on the twenty-second day of April, one thousand nine hundred ninety-one, 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 sixteenth day of September, one thousand nine hundred ninety-one, relating to the state tax commissioner (bingo rules and regulations), are authorized.

(jj) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-one, 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 sixteenth day of September, one thousand nine hundred ninety-one, relating to the state tax commissioner (property transfer tax), are authorized.

(kk) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the
of January, one thousand nine hundred ninety-two, relating to the division of tax (municipal business and occupation tax), are authorized with the amendments set forth below:

On page forty-six, section 2g, by striking out all of subsection 2g.3;

And,

On pages forty-six and forty-seven, by renumbering the remaining subsections.

(11) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the division of tax 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-two, relating to the division of tax (soft drinks tax), are authorized with the amendments set forth below:

On page six, subsection 5.2, in the section heading, by striking out the word “breakfast” and inserting in lieu thereof “certain bottled”;

And,

On page six, subsection 5.2, after the word “mixes” by inserting the words “low-alcoholic brewed beverages such as near beer.”

(mm) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the division of tax 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-two, relating to the division of tax (corporation net income tax), are authorized with the amendment set forth below:

On page twelve, subdivision 6.4.3, by striking out all of subdivision 6.4.3.

(nn) The legislative rules filed in the state register on the eighteenth day of June, one thousand nine hundred ninety-one, 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 January, one thousand nine hundred ninety-two,
relating to the state tax commissioner (appraisal of
producing and reserve oil and natural gas property for
periodic statewide reappraisals for ad valorem property
tax purposes), are authorized.

(oo) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
ninety-one, 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 January, one thousand nine hundred ninety-two,
relating to the state tax commissioner (severance tax),
are authorized.

(pp) The legislative rules filed in the state register on
the eighth day of August, one thousand nine hundred
ninety-one, modified by the division of tax to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the tenth day of
January, one thousand nine hundred ninety-two, relat-
ing to the division of tax (business franchise tax), are
authorized.

(qq) The legislative rules filed in the state register on
the eighth day of August, one thousand nine hundred
ninety-one, modified by the division of tax to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the tenth day of
January, one thousand nine hundred ninety-two, relat-
ing to the division of tax (exceptions to confidentiality
of taxpayer information and disclosure of certain
taxpayer information), are authorized.

(rr) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
ninety-one, modified by the division of tax to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the thirteenth day
of January, one thousand nine hundred ninety-two,
relating to the division of tax (consumers sales and
service tax and use tax), are authorized with t
amendments set forth below:

On page six, by deleting all of subdivisions 2.25.2 and 2.25.4;

On page six, subsection 2.25 by renumbering the remaining subdivisions;

On page forty-five, paragraph 8.1.1.1, after the words “licensed social workers”, by inserting “enrolled agents, professional foresters,”;

On page forty-five, paragraph 8.1.1.1, after the word “electricians”, by striking out the words “enrolled agents”;

On page forty-five, paragraph 8.1.1.1, after the word “musicians” by striking out the word “auctioneers,”;

On page fifty-six, subdivision 9.2.19, after the word “laws” by striking out the colon and inserting the following “, such as, for example, sales by credit unions under W. Va. Code §31-10-33 the sale of services by owners, trainers or jockeys which are essential to the effective conduct of a horse or dog racing meeting under W. Va. Code §19-23-12, or the commission of an auctioneer licensed under W. Va. Code §19-2C-1 et seq.”;

On page one hundred five, subsection 33.5, by striking out the words “child care”;

On page one hundred ten, subsection 38.1 after the words “daily charge.”, by inserting the following sentence: “The daily charge subject to the consumers sales and service tax does not include complimentary items such as shampoo, coffee and newspapers given to guests by hotels and motels.”;

On page one hundred forty-three, subsection 86.1, after the word “auctioneer” by inserting the following “licensed under W. Va. Code §19-2C-1 et seq.”;

On page one hundred forty-three, subsection 86.1, after the word “is” by inserting the word “not”;

On page one hundred forty-three, subsection 86.2 after the word “tax” by inserting the following “on the full
sales price of the sales”;

On page one hundred forty-three, subsection 86.3, in the last sentence after the word “services” by inserting the following “by an auctioneer not licensed in accordance with the W. Va. Code §19-2C-1 et. seq.”;

On page one hundred forty-three, subsection 86.3, in the last sentence after the word “sold” by striking out the period and adding the following “: Provided, That an auctioneer licensed in accordance with W. Va. Code §19-2C-1 et seq. is not required to collect sales tax on such fees or commissioners.”;

And,

On page one hundred forty-three, subsection 86.4, by striking out the first sentence and inserting, in lieu thereof, the following sentence: “An auctioneer is taxable on all of his or her purchases except purchases for resale.”

§64-7-8. Property valuation training and procedures commission.

The legislative rules filed in the state register on the seventeenth day of April, one thousand nine hundred ninety-one, modified by the property valuation training and procedures commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of July, one thousand nine hundred ninety-one, relating to the property valuation training and procedures commission (tax map sales), are authorized.

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-2. Division of motor vehicles.

(a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

By inserting the words “licensed in the United States”
after the phrase “physician of the applicant’s choice,” on page five, line two, and page seven, line one; and by striking out the words “licensed vision specialist” and inserting in lieu thereof the words “an optometrist or ophthalmologist licensed in the United States,” on page five, line three, and on page seven, line two.

(b) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (driving under the influence, driver’s license revocation administrative hearings), are authorized.

(c) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the department of motor vehicles (safety and treatment program), are authorized.

(d) The legislative rules filed in the state register on the sixteenth day of June, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (compulsory insurance), are authorized.

(e) The legislative rules filed in the state register on the twentieth day of November, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (titling a vehicle), are authorized.

(f) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (compulsory motor vehicle liability insurance), are authorized.

(g) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, one thousand nine
hundred eighty-five, relating to the commissioner of motor vehicles (eligibility for reinstatement following suspension or revocation of driving privileges), are authorized.

(h) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (eligibility for reinstatement following suspension or revocation of driving privileges), are authorized.

(i) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (seizure of a driver's license and issuance of a temporary driver's license), are authorized.

(j) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (federal safety standards inspection program), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred eighty-seven, relating to the commissioner of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized with the amendments set forth below:

On page 7, section 7.2 after the words "75 m.p.h.", add the words "except on highways where the established speed limit is 65 m.p.h., and conviction was in"
of 80 m.p.h.,"

And,

On page 14, section 8.1 by inserting the words "not to exceed fifteen hours" after the word "course" and in section 8.2 by inserting the words "not to exceed fifteen hours" after the word "course".

(l) The legislative rules filed in the state register on the twenty-second day of November, one thousand nine hundred eighty-eight, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred eighty-nine, relating to the commissioner of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized.

(m) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-one, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of September, one thousand nine hundred ninety-one, relating to the division of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized with the amendment set forth below:

"On page nine, after the words "Following too closely", by striking out the number "3" and inserting in lieu thereof the number "2".

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.
§64-9-8. West Virginia board of examiners in counseling.
§64-9-16. Board of medicine.
§64-9-17. West Virginia board of examiners for licensed practical nurses.
§64-9-20. Board of pharmacy.
§64-9-23. Real estate commission.
§64-9-29. Board of accountancy.
§64-9-1. Commissioner of agriculture.

(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
(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 (animal disease control), 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 (meat inspection), 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 (agricultural liming materials), 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.

(x) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (commercial feed), are authorized with the amendments set forth below:

On page two, after subsection 3.3., by adding a new subsection, designated subsection 3.4., to read as follows:

"3.4. The commissioner will not assess a tonnage fee on any commercial feed or feed ingredients used in the manufacture of poultry contract feed."

On page five, after subsection 4.3.m., by adding a new subsection, designated subsection 4.3.n., to read as follows:

"4.3.n. The commissioner will consider poultry contract feed to be customer-formula feed."

And,

On page eight, after subsection 5.5., by adding a new subsection, designated subsection 5.6., to read as follows:

"5.6. Poultry contract feed labels shall conform to the requirements of West Virginia Code §19-14-8(d), except that:

5.6.a. the name of the grower or feeder will substitute for the requirements for the name of the purchaser; and,

5.6.b. the net weight (avoir du pois) of the commercial feed and each feed ingredient used in the feed shall not be required to be listed."

(y) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred ninety-one, 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 second day of August, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (wood destroying insect treatment standards), are authorized.

(z) The legislative rules filed in the state register on the twentieth day of December, 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 thirtieth day of April, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (fee structure for the pesticide control act of 1990), are authorized.

(aa) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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 twelfth day of November, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (animal disease control), are authorized.

(bb) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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 tenth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (West Virginia plant pest act), are authorized.

(cc) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-one, 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 sixteenth day of October, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (licensing of pesticide businesses), are authorized.

(dd) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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 second day of October, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (certified pesticide applicators), are authorized.

(ee) The legislative rules filed in the state register on
the eighth day of August, one thousand nine hundred ninety-one, 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-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (assessment of civil penalties and procedures for consent agreements and negotiated settlements), are authorized.

(ff) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (aerial application of herbicides to rights-of-way), are authorized.

(gg) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (frozen desserts and imitation frozen desserts), are authorized, with the amendment set forth below:

On page twelve, by striking out all of section 15 and substituting a new section 15, to read as follows:


15.1. The commissioner may assess a violation of W. Va. Code §19-11B-1 et seq. or of these rules against the manufacturer of product and/or the distributor of the mix used to manufacture the product.

15.2. The commissioner will assess any violations of W. Va. Code §19-11B-1 et seq. or of this rule to the distributor for mix sampled from unopened containers. The company will not be assessed additional cumulative
notices of violations until the commissioner has determined that the firm has had adequate notice of the previous notice, generally 10 days from the mailing of the notice of violation.

15.3. Whenever one of the last five consecutive official product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded, the commissioner shall send a written “First Notice” to the manufacturer or distributor whichever is appropriate. This notice shall notify the manufacturer or distributor of the violation of W. Va. Code §19-11B-1 et seq. or of these rules and the enforcement policy established by this section of the rule.

15.4. Whenever two of the last five consecutive official product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded the commissioner shall send a written “Second Notice” to the manufacturer or distributor whichever is appropriate.

15.4.a. The commissioner shall collect additional official product sample(s) within 21 days of the sending of a Second Notice to the manufacturer or distributor, but shall not collect product samples before the lapse of 7 days from the sending of a Second Notice.

15.5. Whenever three of the last five consecutive official product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded the commissioner shall send a written “Third Notice” to the manufacturer or distributor whichever is appropriate.

15.5.a. The commissioner shall collect additional official product sample(s) within 21 days of the sending of the Third Notice to the manufacturer or distributor, but shall not collect additional product samples before the lapse of 7 days from the date of sending of the notice.

15.6. The commissioner will issue a “Shut-down Order” for a period of 24 hours to a manufacturer or distributor when the record of the firm indicates that effective action has not been taken to correct the causes
of the violations, for instance when three out of the last five samples from the same machine are violative. The "Shut-down Order" will normally be issued with the "Third Notice". The "Shut-down Order" will give the reasons for the order, state the portion of the manufacturing or distributing operation that is prohibited from operating while the order is in effect, give conditions of the order, state the length of time that the Shut-down Order will be in effect and specify a time and place for a hearing to be held in this matter. Except that in the case where the public health, safety or welfare is at risk, the commissioner will issue an immediate Shut-down Order and give notice to the manufacturer or distributor under the provisions of subdivision 15.6.a. of this rule.

15.6.a. The commissioner will issue an immediate Shut-down Order without giving the manufacturer or distributor the opportunity to be heard where there is a hazard to the public health, safety or welfare. In these cases, the manufacturer or distributor will be given the opportunity to request a hearing before the commissioner after the notification of the order is received by the manufacturer or distributor. All Shut-down Orders issued due to noncompliance with subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are considered to involve a risk to the public health, safety or welfare.

15.6.b. The manufacturer or distributor will be responsible for causing all operations covered by the Shut-down Order to cease and follow all other conditions of the order. At the end of the period of the order, the manufacturer or distributor may resume operations without further action by the commissioner.

15.7. If after a Shut-down Order has been issued the commissioner finds that effective corrective action has not been taken, he may issue a suspension of the Frozen Desserts Manufacturer Permit. The suspension shall state the time that the suspension will become effective, give the reasons for the suspension and specify a time and place for a hearing to be held in this matter. Except that in the case of a summary suspension the commissioner will give the manufacturer the opportunity to request a hearing in this matter subsequent to the
notification of the suspension.

15.7.a. All suspensions due to nonconformance to subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are summary suspensions.

15.7.b. A suspension of the Frozen Desserts Manufacturer Permit remains in effect until the manufacturer submits and the commissioner accepts a written plan of correction and a request for a reinstatement of the permit.

15.7.c. The commissioner has seven days from the date of receipt of this application to respond to a suspension in the case of violations of subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule and fourteen days to respond for all other violations of W. Va. Code §19-11B-1 et seq. or these rules. The commissioner will accept or deny the application for a reinstatement of the permit and will give the terms and conditions under which the permit will be reinstated.

15.8. If the commissioner finds that after the firm has resumed production following a suspension of their Frozen Desserts Manufacturer Permit that effective corrective action has not been taken, then the commissioner will hold a hearing to determine if the Frozen Desserts Manufacturer Permit should be revoked.

15.9. Persons who manufacture a product on an intermittent or infrequent basis, so that the standard enforcement policy cannot apply, will enter into a consent agreement with the commissioner for correction of all items found to be not in conformance with W. Va. Code §19-11B-1 et seq. or these rules.

15.10. Whenever an antibiotic or pesticide residue test is found to be above tolerance, the commissioner shall notify the manufacturer and/or distributor immediately of this fact and shall begin an investigation to determine the cause of the residue. The commissioner shall require that any person found to be responsible for the residue shall correct the cause of the residue prior to the resumption of the manufacturing or distribution of the product.
15.11. A person who performs a recall by voluntarily removing product from sale and distribution in an effective manner so as to limit the potential harm to the health and well-being of the public may be eligible for exemptions from the normal enforcement policy. The commissioner shall consider the facts of each case when making a decision on an exemption.

15.12. The commissioner may apply the enforcement policy in a liberal manner in cases where all official product sample results that involve a product in the form actually sold to the public have been found to be in conformance with W. Va. Code §19-11B-1 et seq. or these rules.

15.13. The commissioner may suspend the standard enforcement policy in cases where such action is necessary to protect the public health, safety or welfare.

15.14. Resamples will only be taken from machines that were shown to be producing violative product the previous visit, except for resamples needed to check that the nonviolative status is being maintained according to the following schedule:

15.14.a. After a first notice and one nonviolative sample, resamples will be taken between 5 to 6 months after the nonviolative sample.

15.14.b. After a second notice and one nonviolative sample, resamples will be taken between 3-4 months after the nonviolative sample.

15.14.c. Other resamples may be considered necessary to determine that the nonviolative status is being maintained."

(hh) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (West Virginia apiary law of 1991), a authorized.
(ii) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (disposal of dead poultry), are authorized with the amendments set forth below:

On page two, section two, by adding a new subsection to read as follows:

"2.8 "Disposal pit" means an opening dug in the ground to a minimum depth of six feet, containing a minimum capacity of 150 cubic feet, covered with a minimum of 12 inches of dirt, and provided with one or more openings for the introduction of poultry. The openings shall be a minimum size of eight inches square and equipped with tight lids. A disposal pit shall be located in a site which will prevent contamination of the groundwater or the surface water. This site should conform to the standards established in this rule."

On page two, subsection 3.1 after the word "incinerator," by adding the words "disposal pit,"

And,

On page two, by adding a new section, designated section 4, to read as follows:

"§61-1C-4. Standards for Site Location for Disposal Pits.

4.1 No part of a disposal pit system shall be located in a poorly drained or filled area, or in any area where seasonal flooding occurs.

4.2 No part of a disposal pit system shall be located within 10 feet of a building, foundation or property line.

4.3 No part of a disposal pit system shall be located within 50 feet of a public water supply line or within 10 feet of a private water supply system.

4.4 A disposal pit shall be located at least 50 feet from
464 a private well or groundwater supply.

465 4.5 There shall be a minimum of three feet between
466 the bottom of a disposal pit and seasonal groundwater
467 or rock, shale or any other impermeable layer.

468 4.6 The evaluation of the site for installation of a
469 disposal pit shall be based upon percolation test results.
470 Percolation tests shall be performed in the following
471 manner:

472 4.6.1 Location - At least two holes shall be placed
473 over the selected site. The results of these two test holes
474 will be averaged.

475 4.6.2 Holes shall be dug or bored from six to eight
476 inches in diameter at the site where the disposal pit will
477 be installed. The holes should be at least 24 inches in
478 depth.

479 4.6.3 The bottom and sides of the holes shall be
480 scratched with a sharp pointed instrument or wire
481 brush to remove any smeared soil surfaces which
482 interfere with the absorption of water into the soil.

483 4.6.4 Loose dirt shall be removed from the bottom
484 of the test holes and two inches of coarse sand or fine
485 gravel shall be placed into the holes to prevent sealing.

486 4.6.5 An eight or ten penny nail shall be placed
487 in the wall of each hole exactly six inches above the level
488 of sand or gravel.

489 4.6.6 The test hole shall be completely filled with
490 water to ground level. Water in the hole shall be kept
491 to a depth of at least 12 inches for a minimum period
492 of four hours before beginning the percolation rate
493 measurement.

494 4.7 Percolation rate measurement - Upon completion
495 of the above, the water depth in the holes shall be
496 adjusted to the level of the nail. The number of minutes
497 it takes for this six inches of water (all the water) to be
498 absorbed into the soil shall be accurately determined.
499 This time in minutes, divided by six, gives the rate of
500 fall per inch. The average rate of fall must be between
501 five minutes and 60 minutes."
(jj) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, 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-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (licensing of livestock dealers), 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 automati-
(c) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (operation of barber shops and schools of barbering), are authorized with the amendment set forth below:

On page 5, by inserting a new section, designated section 3-3-6, to read as follows:

"§3-3-6. Repeal of rule — This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(d) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (curriculum and minimum requirements, subjects and hour schedule, rules and regulations for schools of beauty culture operation in West Virginia: joint barbers and beauticians license), are authorized with the 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, 1991, unless extended prior to that date by an act of the Legislature."

(e) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state
register on the eighth day of December, one thousand
nine hundred eighty-eight, relating to the board of
barbers and beauticians (operation of beauty shops and
schools of beauty culture), are authorized with the
amendments set forth below:

On page 4, by inserting a new section, designated
section 3-4-6, to read as follows:

§3-4-6. Repeal of rule — This rule will automatically be repealed on July 1, 1991, unless extended prior
to that date by an act of the Legislature.”

And,

On page 4, by inserting a new subsection, designated
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 refilled 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 automatically
be repealed on July 1, 1992, unless extended prior
to that date by an act of the Legislature."

(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 automati-
(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."

(l) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-one, 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 thirty-first day of December, one
thousand nine hundred ninety-one, relating to the board
of barbers and beauticians (procedures, criteria and
curricula for examination and licensure of barbers,
beauticians and manicurists), are authorized.

(m) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-one, 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 twenty-sixth day of December, one
thousand nine hundred ninety-one, relating to the board
of barbers and beauticians (fee schedule), are authorized
with the amendment set forth below:

On page one, subsection 2.14. by striking out “$5.00”
and inserting in lieu thereof “$10.00”.

(n) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-one, relating to the board of barbers and
beauticians (licensing schools of barbering and beauty
culture), are authorized.

(o) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-one, relating to the board of barbers and
beauticians (operation of barber, beauty shops and
schools of barbering and beauty culture), are authorized.

(p) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-one, 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 thirty-first day of December, one
thousand nine hundred ninety-one, relating to the board
of barbers and beauticians (operational standards for
schools of barbering and beauty culture), are authorized.

(q) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-one, 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 thirty-first day of December, one
thousand nine hundred ninety-one, relating to the board
of barbers and beauticians (qualifications, training,
examining and licensing of instructors in barbering
and beauty culture), are authorized.

§64-9-8. West Virginia board of examiners in counseling.

(a) The legislative rules filed in the state register on
the twentieth day of March, one thousand nine hundred
eighty-nine, modified by the West Virginia board of
examiners in counseling to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twelfth day of September, one
thousand nine hundred eighty-nine, relating to the West
Virginia board of examiners in counseling (licensing),
are authorized.

(b) The legislative rules filed in the state register on
the eighteenth day of July, one thousand nine hundred
ninety-one, modified by the board of examiners in
counseling to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixth day of December, one thousand
nine hundred ninety-one, relating to the board of
examiners in counseling (licensing), are authorized.

§64-9-9. Governor's committee on crime, delinquency and
 corrections.

(a) The legislative rules filed in the state register on
the twenty-fifth day of July, one thousand nine hundred
eighty-eight, modified by the governor's committee on
crime, delinquency and corrections to meet the objec-
tions of the legislative rule-making review committee
and refiled in the state register on the twentieth day of
September, one thousand nine hundred eighty-eight,
relating to the governor's committee on crime, delin-
quency and corrections (basic training academy, annual
in-service and biennial in-service training standards),
are authorized.

(b) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
ninety-one, modified by the governor's committee on
crime, delinquency and corrections to meet the objec-
tions of the legislative rule-making review committee
and refiled in the state register on the fifteenth day of
January, one thousand nine hundred ninety-two, relat-
ing to the governor's committee on crime, delinquency
and corrections (protocol for law-enforcement response
to domestic violence), are authorized with the amend-
ments set forth below:

On page 1, section 2.1 by striking out the words
"member of the Department of Natural Resources,”;

On page 1, by striking out subsection 2.2.4;

On page 1, by striking out section 3;

On page 4, section 6.2.1 after the word “home” by
adding “or business”;

On page 6, section 6.4.6 by striking out the word
“abuse”;

On page 6, section 7.2.3 after the words “protective
order” by adding “and the officer has actual knowledge
that a valid protective order exists.”;

On page 6, by striking out sections 7.2.4 and 7.2.5;

On page 7, by striking out section 7.3.5;

On page 8, section 7.5, following the word “prosecu-
tion”, by striking out the period and by adding the
following proviso: “: Provided, That this section does not
authorize a search of the premises unless a search
warrant has been obtained or consent was given by the
occupant of the premises.”;

On page 8, by striking out sections 7.6 and 7.7;

On page 8, section 8.1 by striking out the words “the
officer determines that a warrantless arrest is approp-
riate or that”;

On page 8, section 8.1 by striking out the words “in
the event that a warrantless arrest for a misdemeanor
is authorized”;

On page 8, section 8.1 by striking out the word “If”
from the sentence "If a warrant is necessary";
On page 9, by adding the following:
“9.1.4 Advise the victim or victims that upon request of the victim or victims the officer will provide transportation for, or facilitate transportation of the 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.
9.1.5 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.”;
On page 10, section 10.7.1 by striking out the words “should arrest the assailant upon probable cause to believe that a crime has been committed” and inserting in lieu thereof the following “should arrest the assailant if the officer observes the commission of a crime”;
On page 11, section 11.3 by striking out the word “advise” and inserting in lieu thereof the word “inform”; And,
On page 11, section 11.3 by striking out the remainder of section 11.3 beginning with the words “the condition may include”.
§64-9-16. Board of medicine.
1 (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.

(a) 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."

And,

Section 3.3 to read as follows: "Physicians or podiatrists who are not registered with the Board as dispensing physicians may not dispense legend drugs. However, the following activities by a physician or podiatrist shall be exempt from the requirements of sections 3 through 8 applicable to dispensing physicians:

a. Legend drugs administered to the patient, which are not controlled substances 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 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 (certification, disciplinary and complaint procedures: physician assistants), are authorized.

(i) The legislative rules filed in the state register on the tenth day of July, one thousand nine hundred ninety-one, 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 third day of September, one thousand nine hundred ninety-one, relating to the board of medicine (continuing education for physicians and podiatrists), are authorized.

§64-9-17. West Virginia board of examiners for licensed practical nurses.

(a) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (policies relating to licensure of the licensed practical nurse), are authorized.

(b) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (legal standards of nursing practice for the licensed practical nurse), are
(c) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (fees for services rendered by the board), are authorized.

(d) The legislative rules filed in the state register on the eleventh day of July, one thousand nine hundred ninety-one, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-one, relating to the West Virginia board of examiners for licensed practical nurses (policies and procedures for development and maintenance of educational programs in practical nursing), are authorized.

(e) The legislative rules filed in the state register on the eleventh day of July, one thousand nine hundred ninety-one, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-one, relating to the West Virginia board of examiners for licensed practical nurses (policies regulating licensure of the licensed practical nurse), are authorized.

(f) The legislative rules filed in the state register on the eleventh day of July, one thousand nine hundred ninety-one, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of September, one thousand nine hundred ninety-one, relating to the West Virginia board of examiners for licensed practical nurses (legal standards of nursing practice for the licensed practical nurse), are authorized.

(g) The legislative rules filed in the state register on the eleventh day of July, one thousand nine hundred
ninety-one, modified by the West Virginia board of
examiners for licensed practical nurses to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the nineteenth day
of September, one thousand nine hundred ninety-one,
relating to the West Virginia board of examiners for
licensed practical nurses (fees for services rendered by
the board), are authorized.

(h) The legislative rules filed in the state register on
the eleventh day of July, one thousand nine hundred
ninety-one, modified by the West Virginia board of
examiners for licensed practical nurses to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the twenty-fourth
day of September, one thousand nine hundred ninety-
one, relating to the West Virginia board of examiners
for licensed practical nurses (continuing competence),
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 phar-
macy 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 objec-
tions 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.

(d) The legislative rules filed in the state register on
the eleventh day of March, one thousand nine hundred
ninety-one, modified by the board of pharmacy to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-fourth day of May, one thousand nine hundred
ninety-one, relating to the board of pharmacy (computer
regulations), are authorized.

(e) The legislative rules filed in the state register on
the twenty-eighth day of August, one thousand nine
hundred ninety-one, 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
eighth day of January, one thousand nine hundred
ninety-two, relating to the board of pharmacy (licensure
of wholesale drug distributors), are authorized.

(f) The legislative rules filed in the state register on
the twenty-eighth day of August, one thousand nine
hundred ninety-one, 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
eighth day of January, one thousand nine hundred
ninety-two, relating to the board of pharmacy (mail
order house), are authorized.

§64-9-23. Real estate commission.

(a) The legislative rules filed in the state register on
the fourth day of December, one thousand nine hundred
eighty-nine, modified by the real estate commission to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the eighth
day of January, one thousand nine hundred ninety,
relating to the real estate commission (renewal of license
- continuing education), are authorized.

(b) The legislative rules filed in the state register on
the twenty-fifth day of July, one thousand nine hundred
ninety-one, modified by the real estate commission to

(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.

(e) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred ninety, relating to the secretary of state (absentee voting by military voters who are members of reserve units called to active duty), are authorized.

§64-9-29. Board of accountancy.

The legislative rules filed in the state register on the fifth day of December, one thousand nine hundred ninety, modified by the board of accountancy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of June, one thousand nine hundred ninety-one, relating to the board of accountancy (professional conduct), are authorized.

§64-9-30. Board of architects.

The legislative rules filed in the state register on the twenty-fourth day of January, one thousand nine hundred ninety-one, modified by the board of architects to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of July, one thousand nine hundred ninety-one, relating to the board of architects (rules of the West Virginia board of architects), are authorized.

§64-9-31. Real estate appraiser licensing and certification board.

(a) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (rules and regulations of the real estate appraiser licensing and certification board), are authorized.

(b) The legislative rules filed in the state register on
13 the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (requirements of licensure and certification), are authorized.

(c) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (requirements of licensure and certification), are authorized.

§64-9-32. Board of veterinary medicine.

(a) The legislative rules filed in the state register on the nineteenth day of August, one thousand nine hundred ninety-one, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of January, one thousand nine hundred ninety-two, relating to the board of veterinary medicine (organization and operation of the board), are authorized.

(b) The legislative rules filed in the state register on the nineteenth day of August, one thousand nine hundred ninety-one, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of January, one thousand nine hundred ninety-two, relating to the board of veterinary medicine (schedule of fees), are authorized.

(c) The legislative rules filed in the state register on the nineteenth day of August, one thousand nine hundred ninety-one, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of January, one thousand nine hundred ninety-two, relating to the board of veterinary medicine (schedule of fees), are authorized.
medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of January, one thousand nine hundred ninety-two, relating to the board of veterinary medicine (standards of practice), are authorized with the amendments set forth below:

On page eight, section 3.8., by adding a new subdivision, designated subdivision 2, to read as follows:

"2) All dental surgery shall be carried out by a licensed veterinarian or a veterinary assistant under the supervision of a licensed veterinarian."

And,

On page eight by renumbering the remaining subdivision.

(d) The legislative rules filed in the state register on the nineteenth day of August, one thousand nine hundred ninety-one, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of January, one thousand nine hundred ninety-two, relating to the board of veterinary medicine (registration of veterinary technicians), are authorized.

§64-9-33. Contractor licensing board.

The legislative rules filed in the state register on the fourth day of October, one thousand nine hundred ninety-one, modified by the contractor licensing board 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 ninety-two, relating to the contractor licensing board (West Virginia contractor's licensing act), are authorized with the amendment set forth below:

On page nine, subsection 5.3, by striking out the words "of $100.00" and inserting in lieu thereof "as established by the board".
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See **TEACHERS' RETIREMENT**.

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*Note: The table above is a representation of the index entries related to various professions and occupations, specifically focusing on Audiology, speech-language pathology, and Chiropractors. The entries include details such as license renewal, continuing education requirements, and various disciplinary actions.*
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- **Licensure**
- **Application**
- **Fee**
- **Standards**
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- **Prescription**
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**Registered professional nurses—(continued):**

- Prescriptive authority
- Collaborative relationship
- Prescriptive practice
- Physician and advanced nurse practitioner

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**Sanitarians**

- Registration
- Application
- Fee
- Board
- Composition
- Duties
- Members
- Terms
- Organization
- Examination
- Qualifications
- Reciprocity
- Suspension, revocation
- Title
- Use
- Violation
- Penalty

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**Sanitarian-in-training**

- Registration
- Application
- Fee
- Qualifications
- Renewal
- Suspension, revocation

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### PUBLIC EMPLOYEES:

**Layoffs**

- Recall
  - Qualified employees
    - Preference
    - Fitness
    - Seniority
    - Twelve-month period
    - Rejection
    - Grounds
    - Reverse order

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- Insurance Fund
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- Transfer of funds to...

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