ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1993
First Extraordinary Session, 1993
Volume I
Chapters 1—127
FOREWORD

These volumes contain the Acts of the First Regular Session and the First Extraordinary Session of the 71st Legislature, 1993.

First Regular Session, 1993

The First Regular Session of the 71st Legislature convened on January 13, 1993, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 3rd day of November, 1992, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 10, 1993, as provided by the aforesaid section of the Constitution. Reconvenering, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 10, 1993. However, the session was extended by concurrent action of the two houses (S. C. R. 28) for the purpose of consideration of specific matters enumerated within the resolution. The Legislature adjourned sine die on April 24, 1993.

Bills totaling 1,410 were introduced in the two houses during the session (823 House and 587 Senate). The Legislature passed 185 bills, 121 House and 64 Senate. The Governor vetoed four House bills: H. B. 2610, Attorney fees and expenses awarded against the State; H. B. 2618, Dietitians and nutritionists licensure and board; H. B. 2620, Requiring that coal severance taxes received by counties and municipalities be budgeted in the same manner as other revenues deposited in the county or municipal general fund; and H. B. 2781, Relating to the sale of tax liens on land for which taxes have become delinquent and to the sale of escheated lands. One bill, H. B. 2701, Designating students entitled to vote for school mascot and school colors at the new Summers County High School, became law without the signature of the Governor, leaving a net total of 181 bills which became law. One Senate bill, S. B. 542, Medicaid Tax Revenue, was vetoed.

[iii]
Two bills were vetoed (S. B. 377, Relating to recommendations of higher education advocacy team, and S. B. 576, Limiting liability of landowners allowing property used for military purposes), amended and repassed in an effort to meet the Governor’s objections. Both bills were subsequently approved by him.

There were 67 concurrent resolutions introduced during the session, 35 House and 32 Senate, of which 23 House and 11 Senate were adopted. 18 House Joint and 6 Senate Joint resolutions were introduced, proposing amendments to the State Constitution. No Joint Resolutions were adopted by the Legislature. The House had 31 House resolutions and the Senate had 42 Senate resolutions, of which 21 House and 31 Senate were adopted.

The Senate failed to pass 64 House bills passed by the House, and 60 Senate bills failed passage by the House. Two Senate bills and six House bills died in conference.

**First Extraordinary Session, 1993**

The Proclamation calling the Legislature into Extraordinary session at 6:00 P.M., May 16, 1993, contained ten items for consideration.

The Legislature passed 10 bills, 8 House and 2 Senate. The House adopted two House resolutions and the Senate adopted five Senate resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on May 27, 1993.

* * * * * * * * * *

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

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

**Donald L. Kopp,**

*Clerk of the House and Keeper of the Rolls.*
## TABLE OF CONTENTS

### ACTS AND RESOLUTIONS

#### Regular Session, 1993

#### First Extraordinary Session, 1993

---

### GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>*SB14</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Unlawful purchase, consumption, possession, sale and serving of alcoholic liquor by minor</td>
<td></td>
</tr>
</tbody>
</table>

**ALCOHOLIC LIQUOR**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>*HB2196</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Division of Corrections, Correctional Units, Acct. No. 3770</td>
<td></td>
</tr>
</tbody>
</table>

**APPROPRIATIONS**

Supplemental

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>*HB2197</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Department of Military Affairs and Public Safety, Acct. No. 5700</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>*SB273</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Department of Transportation, Division of Highways, Acct. No. 6700</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>*SB267</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Department of Transportation, Division of Motor Vehicles, Acct. No. 6710</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>HB2812</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Public Service Commission, Acct. No. 8280</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>HB2772</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Department of Transportation, Division of Motor Vehicles—Driver's License Reinstatement Fund, Acct. No. 8422</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>SB587</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Division of Health, Substance Abuse Prevention and Treatment, Acct. No. 8501</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>SB586</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>Division of Health, Community Mental Health Services, Acct. No. 8505</td>
<td></td>
</tr>
</tbody>
</table>
**Table of Contents**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>SB342</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Orders of Commissioner of Banking Matter of Public Record</td>
<td>24</td>
</tr>
<tr>
<td>11.</td>
<td>*HB2595</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Valuation of Real Estate by Fair Value Approach</td>
<td>31</td>
</tr>
<tr>
<td>12.</td>
<td>*HB2249</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Loans to Banking Officers and Directors Covered by Federal Requirements of Law</td>
<td>33</td>
</tr>
<tr>
<td>13.</td>
<td>*HB2250</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Joint Deposit Accounts</td>
<td>44</td>
</tr>
<tr>
<td>14.</td>
<td>*HB2002</td>
<td></td>
</tr>
<tr>
<td></td>
<td>School Building Authority and Issuance of Certain Revenue Bonds</td>
<td>46</td>
</tr>
<tr>
<td>15.</td>
<td>*SB487</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Per Diem Increase for Board Members and Establishing the Tenants' Rights to Cable Services Act</td>
<td>68</td>
</tr>
<tr>
<td>16.</td>
<td>*SB407</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preneed Burial Goods and Related Contracts</td>
<td>79</td>
</tr>
<tr>
<td>17.</td>
<td>HB2512</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Membership of Board of Directors of Homes and Asylums of Fraternal Orders</td>
<td>92</td>
</tr>
<tr>
<td>18.</td>
<td>SB464</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Purpose of the Children's Fund</td>
<td>93</td>
</tr>
<tr>
<td>19.</td>
<td>HB2691</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Predispositional Detention of Juveniles and Providing for a Descriptive Catalogue of Juvenile Programs and Services</td>
<td>94</td>
</tr>
<tr>
<td>20.</td>
<td>SB573</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Claims Against Numerous State Agencies and Directing the Payment Thereof</td>
<td>98</td>
</tr>
<tr>
<td>21.</td>
<td>HB2686</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Claims for Compensation of Innocent Victims of Crime</td>
<td>106</td>
</tr>
<tr>
<td>22.</td>
<td>HB2687</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Claims Against the Department of Education, the Division of Human Services, the Division of Corrections and the Division of Culture and History</td>
<td>108</td>
</tr>
<tr>
<td>23.</td>
<td>*HB2219</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Charge and Collection of Late Payment Penalty Fee for Financed Merchandise</td>
<td>111</td>
</tr>
<tr>
<td>Chapter</td>
<td>Bill No.</td>
<td>Topic</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>24.</td>
<td>HB2761</td>
<td>Solicitation or Cashing of Postdated Checks and Penalties for Violations</td>
</tr>
<tr>
<td>25.</td>
<td>*SB84</td>
<td>Defense to Persons Who Rely on Formal Opinions of the Attorney General and Examination Reports and Declaratory Rulings Issued by the Commissioner of Banking</td>
</tr>
<tr>
<td>26.</td>
<td>HB2516</td>
<td>Reducing Requirements for Memoranda of Leases</td>
</tr>
<tr>
<td>27.</td>
<td>*SB122</td>
<td>Jail and Correctional Facility Standards</td>
</tr>
<tr>
<td>28.</td>
<td>*HB2075</td>
<td>Execution of Warrants by Correctional Officers</td>
</tr>
<tr>
<td>29.</td>
<td>*HB2126</td>
<td>Injunctive Relief Under the Open Governmental Proceedings Law</td>
</tr>
<tr>
<td>30.</td>
<td>*HB2023</td>
<td>Offense of Stalking and Providing Penalties</td>
</tr>
<tr>
<td>31.</td>
<td>*HB2314</td>
<td>Criminal Offense of Assault and Battery Against a Police Officer</td>
</tr>
<tr>
<td>32.</td>
<td>*HB2268</td>
<td>Criminal Offense of Assault or Battery Against an Athletic Official</td>
</tr>
<tr>
<td>33.</td>
<td>HB2652</td>
<td>Offense of Burglary and Daytime Entering Without Breaking</td>
</tr>
<tr>
<td>34.</td>
<td>HB2102</td>
<td>Criminal Penalties for the Fraudulent Use, Forgery or Traffic of Counterfeit Credit Cards</td>
</tr>
<tr>
<td>35.</td>
<td>SB584</td>
<td>Sex Offender Registration Act</td>
</tr>
<tr>
<td>36.</td>
<td>SB366</td>
<td>Limitation on Parolee’s Place of Residence</td>
</tr>
<tr>
<td>37.</td>
<td>SB577</td>
<td>Commissioner of Corrections Authorized to Charge Parolees Under the Supervision of the Division of Corrections</td>
</tr>
<tr>
<td>38.</td>
<td>*HB2671</td>
<td>Responsibility and Authority of the Division of Culture and History</td>
</tr>
<tr>
<td>Chapter</td>
<td>Bill No.</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>----------</td>
<td>------</td>
</tr>
<tr>
<td><strong>DOMESTIC RELATIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39.</td>
<td>*HB2185</td>
<td>157</td>
</tr>
<tr>
<td></td>
<td>Enforcement of Child Support Obligations and Providing for the Reporting of Overdue Support Information to Credit Bureaus</td>
<td></td>
</tr>
<tr>
<td>40.</td>
<td>HB2024</td>
<td>174</td>
</tr>
<tr>
<td></td>
<td>Requiring Applications for a Marriage License to Include a Statement Concerning Freedom From Violence and Abuse Within the Married State</td>
<td></td>
</tr>
<tr>
<td>41.</td>
<td>*HB2427</td>
<td>176</td>
</tr>
<tr>
<td></td>
<td>Telephone Authorization for Arrest for Assault or Battery in Domestic Violence Matters</td>
<td></td>
</tr>
<tr>
<td><strong>ECONOMIC DEVELOPMENT ACT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>42.</td>
<td>HB2741</td>
<td>179</td>
</tr>
<tr>
<td></td>
<td>Repeal of Economic Development Programs</td>
<td></td>
</tr>
<tr>
<td><strong>EDUCATION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>43.</td>
<td>*HB2160</td>
<td>180</td>
</tr>
<tr>
<td></td>
<td>Policies to Promote School Board Effectiveness</td>
<td></td>
</tr>
<tr>
<td>44.</td>
<td>*HB2224</td>
<td>202</td>
</tr>
<tr>
<td></td>
<td>Discretionary Admittance by County Boards of Education of Children Suspended or Expelled From Another School</td>
<td></td>
</tr>
<tr>
<td>45.</td>
<td>*HB2124</td>
<td>205</td>
</tr>
<tr>
<td></td>
<td>Certain Retirees of the Teacher's Retirement System Permitted to Teach Up to Twelve Semester Hours at the Higher Education Level</td>
<td></td>
</tr>
<tr>
<td>46.</td>
<td>*HB2482</td>
<td>214</td>
</tr>
<tr>
<td></td>
<td>Providing Supported Employment Services to Persons With Disabilities</td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>*SB377</td>
<td>217</td>
</tr>
<tr>
<td></td>
<td>Higher Education Advocacy Team Recommendations</td>
<td></td>
</tr>
<tr>
<td>48.</td>
<td>HB2460</td>
<td>316</td>
</tr>
<tr>
<td></td>
<td>Reductions In Force of Professional Educators to be Based Solely Upon Seniority</td>
<td></td>
</tr>
<tr>
<td>49.</td>
<td>HB2782</td>
<td>322</td>
</tr>
<tr>
<td></td>
<td>Defining Service Personnel Classifications and Providing Methods of Determining Seniority</td>
<td></td>
</tr>
<tr>
<td><strong>ELECTIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50.</td>
<td>*SB315</td>
<td>341</td>
</tr>
<tr>
<td></td>
<td>General Revision of the Election Laws</td>
<td></td>
</tr>
<tr>
<td><strong>ELEVATOR SAFETY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>51.</td>
<td>*HB2184</td>
<td>409</td>
</tr>
<tr>
<td></td>
<td>Elevator Safety Act</td>
<td></td>
</tr>
<tr>
<td><strong>ENVIRONMENTAL PROTECTION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52.</td>
<td>SB474</td>
<td>417</td>
</tr>
<tr>
<td></td>
<td>Promulgation of Legislative Rules by Division of Environmental Protection Relating to Surface Mining and Reclamation</td>
<td></td>
</tr>
</tbody>
</table>
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>ESTATES AND TRUSTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>*HB2130</td>
<td>Expanded Accounting by Fiduciaries for Settlement of Estates</td>
<td>418</td>
</tr>
<tr>
<td>54</td>
<td>HB2251</td>
<td>Specific Statutory Powers of Fiduciaries to Respond to Environmental Problems</td>
<td>419</td>
</tr>
<tr>
<td>55</td>
<td>HB2095</td>
<td>Powers of Fiduciaries or Trustees Under Trust Agreements or Wills Which May be Incorporated by Reference in the Trust Instruments</td>
<td>422</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FAMILY LAW MASTERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>56</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FIRE PREVENTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>58</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HAZARDOUS MATERIALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>59</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HEALTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>60</td>
</tr>
<tr>
<td>61</td>
</tr>
<tr>
<td>62</td>
</tr>
<tr>
<td>63</td>
</tr>
<tr>
<td>64</td>
</tr>
<tr>
<td>65</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HORSE AND DOG RACING</th>
</tr>
</thead>
<tbody>
<tr>
<td>66</td>
</tr>
<tr>
<td>Chapter</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>67.</td>
</tr>
<tr>
<td>68.</td>
</tr>
<tr>
<td>69.</td>
</tr>
<tr>
<td>70.</td>
</tr>
<tr>
<td>71.</td>
</tr>
<tr>
<td>72.</td>
</tr>
<tr>
<td>73.</td>
</tr>
<tr>
<td>74.</td>
</tr>
<tr>
<td>75.</td>
</tr>
<tr>
<td>76.</td>
</tr>
<tr>
<td>77.</td>
</tr>
<tr>
<td>78.</td>
</tr>
<tr>
<td>79.</td>
</tr>
<tr>
<td>80.</td>
</tr>
<tr>
<td>81.</td>
</tr>
<tr>
<td>82.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>83.</td>
</tr>
<tr>
<td>84.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>85.</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Title and Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>86.</td>
<td>HB2429</td>
<td>Repeal of Article Creating the Legislative Committee on Pensions and Retirement 797</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>LIENS</strong></td>
</tr>
<tr>
<td>87.</td>
<td>*HB2596</td>
<td>Defining Suggestee's Obligation When Served With a Summons on a Suggestion Filed by a Judgment Creditor 797</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>LOTTERY</strong></td>
</tr>
<tr>
<td>88.</td>
<td>SB559</td>
<td>Composition and Appointment of the Lottery Commission 801</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>MAGISTRATES</strong></td>
</tr>
<tr>
<td>89.</td>
<td>*HB2277</td>
<td>Imposition of Alternative Sentences and Home Confinement by Magistrates 804</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>MENTALLY ILL</strong></td>
</tr>
<tr>
<td>90.</td>
<td>SB75</td>
<td>Alternative Transportation Systems to Mental Health Facilities or State Hospitals 813</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>MINES AND MINERALS</strong></td>
</tr>
<tr>
<td>91.</td>
<td>HB2807</td>
<td>Coal Mine Health and Safety Regulations and Procedures 814</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>MOTOR VEHICLES</strong></td>
</tr>
<tr>
<td>92.</td>
<td>SB509</td>
<td>Use of Alternative Fuels in State-Owned Vehicles 821</td>
</tr>
<tr>
<td>93.</td>
<td>*HB2120</td>
<td>Special Registration Plates for Honorably Discharged Veterans 826</td>
</tr>
<tr>
<td>94.</td>
<td>SB508</td>
<td>Intergovernmental Relations Alternative Fuel Vehicles 839</td>
</tr>
<tr>
<td>95.</td>
<td>*HB2230</td>
<td>Charge Limit for Towing, Preservation and Storage of Abandoned or Junked Vehicles 843</td>
</tr>
<tr>
<td>96.</td>
<td>*HB2228</td>
<td>Perfection of Deferred Purchase Money Liens or Encumbrances 846</td>
</tr>
<tr>
<td>97.</td>
<td>*SB112</td>
<td>Licensure of Automobile Auction Businesses 847</td>
</tr>
<tr>
<td>98.</td>
<td>*SB133</td>
<td>Mandatory Suspension of Driver's License for Fraudulent Use 862</td>
</tr>
<tr>
<td>99.</td>
<td>HB2680</td>
<td>Permissible Number of Motorcycle Passengers, Use of Sidecars and Safety Belt Requirements 866</td>
</tr>
<tr>
<td>100.</td>
<td>*HB2098</td>
<td>Mandatory Use of Seat Belts 868</td>
</tr>
<tr>
<td>101.</td>
<td>HB2591</td>
<td>Single State Registration System 872</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>MUNICIPALITIES</strong></td>
</tr>
<tr>
<td>102.</td>
<td>HB2685</td>
<td>Taxation of Aircraft Repair Business Activities 873</td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>103.</td>
<td>SB96</td>
<td>Participation of Members of Fire Departments in Political Activities</td>
<td>876</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>NATURAL RESOURCES</strong></td>
<td></td>
</tr>
<tr>
<td>104.</td>
<td>HB2266</td>
<td>Killing of Deer or Other Wildlife Causing Certain Damage</td>
<td>877</td>
</tr>
<tr>
<td>105.</td>
<td>*HB2116</td>
<td>Awarding of Service Revolver to Conservation Officers Upon Retirement and Furnishing Uniform for Burial</td>
<td>879</td>
</tr>
<tr>
<td>106.</td>
<td>HB2661</td>
<td>Amending Previously Filed Legislative Rule Relating to Water Pollution Control Permit Fees</td>
<td>880</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>PROFESSIONS AND OCCUPATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>107.</td>
<td>HB2248</td>
<td>Physician Assistant-Midwives</td>
<td>895</td>
</tr>
<tr>
<td>108.</td>
<td>SB416</td>
<td>Licensure of Independent Clinical Social Workers</td>
<td>903</td>
</tr>
<tr>
<td>109.</td>
<td>*HB2565</td>
<td>Regulating the Tatoo Studio Business</td>
<td>916</td>
</tr>
<tr>
<td>110.</td>
<td>*SB54</td>
<td>Real Estate Brokers Licensing</td>
<td>924</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>PUBLIC EMPLOYEES</strong></td>
<td></td>
</tr>
<tr>
<td>111.</td>
<td>HB2568</td>
<td>Payment of Supplemental Benefits from the Public Employees Retirement Fund</td>
<td>945</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>PUBLIC SAFETY</strong></td>
<td></td>
</tr>
<tr>
<td>112.</td>
<td>SB471</td>
<td>Creating a Grievance Procedure Recommendation Board and Review Procedures</td>
<td>947</td>
</tr>
<tr>
<td>113.</td>
<td>HB2234</td>
<td>Age Requirements for Members of the Division of Public Safety</td>
<td>951</td>
</tr>
<tr>
<td>114.</td>
<td>HB2293</td>
<td>Sale of Surplus Real Property by the Superintendent of Public Safety</td>
<td>953</td>
</tr>
<tr>
<td>115.</td>
<td>*SB53</td>
<td>West Virginia Law-Enforcement Mutual Assistance Act</td>
<td>957</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>RAILROADS</strong></td>
<td></td>
</tr>
<tr>
<td>116.</td>
<td>*HB2206</td>
<td>Train Locomotive Crew Requirements</td>
<td>961</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>REAL PROPERTY</strong></td>
<td></td>
</tr>
<tr>
<td>117.</td>
<td>SB576</td>
<td>Limiting Liability of Landowners for Land Used for Military Purposes</td>
<td>963</td>
</tr>
<tr>
<td>118.</td>
<td>*HB2483</td>
<td>Factory-Built Home Site Rentals</td>
<td>967</td>
</tr>
<tr>
<td>119.</td>
<td>*SB265</td>
<td>Landlords and Tenants of Mobile Home Parks</td>
<td>975</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>RECORDS AND PAPERS</strong></td>
<td></td>
</tr>
<tr>
<td>120.</td>
<td>HB2628</td>
<td>Recordation of Certified Copies of Certain Instruments</td>
<td>976</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>RENT-TO-OWN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>121.</td>
<td>*SB108</td>
<td>977</td>
</tr>
<tr>
<td>ROADS AND HIGHWAYS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>122.</td>
<td>*HB2513</td>
<td>1015</td>
</tr>
<tr>
<td>SECURITIES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>123.</td>
<td>*HB2304</td>
<td>1017</td>
</tr>
<tr>
<td>SOLID WASTE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>124.</td>
<td>*SB288</td>
<td>1024</td>
</tr>
<tr>
<td>125.</td>
<td>SB289</td>
<td>1035</td>
</tr>
<tr>
<td>126.</td>
<td>*HB2445</td>
<td>1044</td>
</tr>
<tr>
<td>127.</td>
<td>*SB400</td>
<td>1059</td>
</tr>
<tr>
<td>STEEL FUTURES PROGRAM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>128.</td>
<td>*HB2285</td>
<td>1061</td>
</tr>
<tr>
<td>SUNSET</td>
<td></td>
<td></td>
</tr>
<tr>
<td>129.</td>
<td>HB2063</td>
<td>1066</td>
</tr>
<tr>
<td>130.</td>
<td>HB2740</td>
<td>1067</td>
</tr>
<tr>
<td>131.</td>
<td>HB2141</td>
<td>1082</td>
</tr>
<tr>
<td>132.</td>
<td>HB2654</td>
<td>1084</td>
</tr>
<tr>
<td>133.</td>
<td>HB2139</td>
<td>1086</td>
</tr>
<tr>
<td>134.</td>
<td>HB2653</td>
<td>1088</td>
</tr>
<tr>
<td>135.</td>
<td>HB2140</td>
<td>1088</td>
</tr>
<tr>
<td>136.</td>
<td>*HB2008</td>
<td>1089</td>
</tr>
<tr>
<td>137.</td>
<td>HB2612</td>
<td>1093</td>
</tr>
<tr>
<td>138.</td>
<td>HB2118</td>
<td>1097</td>
</tr>
<tr>
<td>139.</td>
<td>SB460</td>
<td>1098</td>
</tr>
<tr>
<td>140.</td>
<td>SB7</td>
<td>1099</td>
</tr>
<tr>
<td>Chapter</td>
<td>Bill No.</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>141</td>
<td>SB2</td>
<td>Soil Conservation Committee Continued</td>
</tr>
<tr>
<td>142</td>
<td>*HB2590</td>
<td>Division of Natural Resources Continued</td>
</tr>
<tr>
<td>143</td>
<td>HB2015</td>
<td>Water Resources Board Continued</td>
</tr>
<tr>
<td>144</td>
<td>SB72</td>
<td>Oil and Gas Conservation Commission Continued</td>
</tr>
<tr>
<td>145</td>
<td>SB110</td>
<td>Oil and Gas Inspectors' Examining Board Continued</td>
</tr>
<tr>
<td>146</td>
<td>SB4</td>
<td>Public Service Commission Continued</td>
</tr>
<tr>
<td>147</td>
<td>HB2034</td>
<td>Potomac River Basin Membership Continued</td>
</tr>
<tr>
<td>148</td>
<td>SB23</td>
<td>Legislative Oversight Commission on Education Accountability Continued</td>
</tr>
<tr>
<td>149</td>
<td>SB3</td>
<td>Board of Architects Continued</td>
</tr>
<tr>
<td>150</td>
<td>*SB127</td>
<td>Board of Architects Continued, Regulatory Authority and Compensation of Members</td>
</tr>
<tr>
<td>151</td>
<td>SB9</td>
<td>Board of Examiners of Land Surveyors Continued</td>
</tr>
<tr>
<td>152</td>
<td>SB28</td>
<td>Board of Banking and Financial Institutions Continued</td>
</tr>
<tr>
<td>153</td>
<td>SB13</td>
<td>Family Protection Services Board Continued</td>
</tr>
<tr>
<td>154</td>
<td>HB2036</td>
<td>Child Advocate Office Continued</td>
</tr>
<tr>
<td>155</td>
<td>SB20</td>
<td>Family Law Masters System Continued</td>
</tr>
</tbody>
</table>

**TAXATION**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>SB463</td>
<td>General Expansion and Revision of the Tax Laws of the State</td>
<td>1132</td>
</tr>
<tr>
<td>157</td>
<td>*HB2088</td>
<td>Ten-Year Limitation on Tax Liens</td>
<td>1218</td>
</tr>
<tr>
<td>158</td>
<td>*HB2303</td>
<td>Providing an Increase in the Gasoline Tax</td>
<td>1223</td>
</tr>
<tr>
<td>159</td>
<td>*HB2451</td>
<td>Brewpubs, Barrel Tax and Reporting Requirements</td>
<td>1228</td>
</tr>
<tr>
<td>160</td>
<td>SB70</td>
<td>Personal Income Tax Terms</td>
<td>1231</td>
</tr>
<tr>
<td>161</td>
<td>SB71</td>
<td>Business Franchise Tax Terms</td>
<td>1232</td>
</tr>
<tr>
<td>162</td>
<td>HB2773</td>
<td>Sheriffs Relieved of Requirements to Pay Court Costs in Tax Suits</td>
<td>1235</td>
</tr>
</tbody>
</table>

**TREE FRUIT INDUSTRY**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>163</td>
<td>HB2082</td>
<td>Tree Fruit Industry Self-Improvement Assessment Program</td>
<td>1236</td>
</tr>
</tbody>
</table>

**UNCLAIMED PROPERTY**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>164</td>
<td>*SB430</td>
<td>Disclosure of Certain Business Registration Information for Recovery of Unclaimed Property</td>
<td>1239</td>
</tr>
<tr>
<td>Chapter</td>
<td>Bill No.</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td><strong>UNEMPLOYMENT COMPENSATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>165.</td>
<td>HB2626</td>
<td>Extension of Unemployment Benefits and Redefining &quot;Employment&quot;</td>
<td>1256</td>
</tr>
<tr>
<td><strong>UNIFORM COMMERCIAL CODE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>166.</td>
<td>*HB2494</td>
<td>Negotiable Instruments</td>
<td>1284</td>
</tr>
<tr>
<td><strong>VENDORS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>167.</td>
<td>*SB568</td>
<td>Corporation Eligibility for Resident Vendor Preference</td>
<td>1375</td>
</tr>
<tr>
<td>168.</td>
<td>SB572</td>
<td>Exceptions on Purchases From the Handicapped</td>
<td>1380</td>
</tr>
<tr>
<td><strong>WILLS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>169.</td>
<td>HB2638</td>
<td>Intestate Succession and Right of a Surviving Spouse to the Elective Share</td>
<td>1381</td>
</tr>
<tr>
<td><strong>WINE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>170.</td>
<td>*HB2636</td>
<td>Limited Quantity Shipment of Wine From Other States to Adults in this State</td>
<td>1401</td>
</tr>
<tr>
<td><strong>WORKERS' COMPENSATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>171.</td>
<td>HB2802</td>
<td>General Revision of the Workers' Compensation Statutes</td>
<td>1402</td>
</tr>
<tr>
<td><strong>LOCAL LAWS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>BECKLEY-RALEIGH COUNTY HUMANE AUTHORITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>172.</td>
<td>HB2600</td>
<td>Establishment and Operation</td>
<td>1484</td>
</tr>
<tr>
<td><strong>JEFFERSON COUNTY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>173.</td>
<td>HB2504</td>
<td>Conveyance of a Parcel of County-Owned Land to the Jefferson County Fairgrounds</td>
<td>1485</td>
</tr>
<tr>
<td>174.</td>
<td>HB2705</td>
<td>Extending Time for Excess Levy for Schools</td>
<td>1487</td>
</tr>
<tr>
<td><strong>MARSHALL COUNTY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>175.</td>
<td>SB526</td>
<td>Marshall County Activities Development Authority Membership Increased</td>
<td>1488</td>
</tr>
<tr>
<td><strong>MONONGALIA COUNTY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>176.</td>
<td>HB2783</td>
<td>City of Morgantown Authorized to Hire Nonresidents as Police Officers</td>
<td>1489</td>
</tr>
<tr>
<td><strong>OHIO COUNTY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>177.</td>
<td>SB19</td>
<td>Residency Requirements for Membership on the City of Wheeling Centre Market Commission</td>
<td>1490</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>OHIO VALLEY REGIONAL TRANSPORTATION AUTHORITY</strong></td>
<td></td>
</tr>
<tr>
<td>178.</td>
<td>*HB2456</td>
<td>1491</td>
</tr>
<tr>
<td></td>
<td>Time Extension for Continuing Additional Levy...</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>SHAWNEE PARKWAY AUTHORITY</strong></td>
<td></td>
</tr>
<tr>
<td>179.</td>
<td>SB55</td>
<td>1492</td>
</tr>
<tr>
<td></td>
<td>Creation and Functions of Authority................</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>SUMMERS COUNTY</strong></td>
<td></td>
</tr>
<tr>
<td>180.</td>
<td>HB2701</td>
<td>1495</td>
</tr>
<tr>
<td></td>
<td>Summers County High School Mascot and Colors to be Decided by Student Vote</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TYLER COUNTY</strong></td>
<td></td>
</tr>
<tr>
<td>181.</td>
<td>HB2651</td>
<td>1496</td>
</tr>
<tr>
<td></td>
<td>Time Extension for Excess Levy for Library, Streets, Parks and Pool, Emergency Squad and Fire Department in the City of Sistersville</td>
<td></td>
</tr>
</tbody>
</table>

## RESOLUTIONS

(Only resolutions of general interest are included herein)

<table>
<thead>
<tr>
<th>Number</th>
<th>House Concurrent</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Urging the President and Congress to Select a Route Between Morgantown and Pittsburgh for the Federal Magnetic Elevated Train System Pilot Program to be Powered by Electricity Produced from Coal</td>
<td>1497</td>
</tr>
<tr>
<td>5</td>
<td>Amending Joint Rules of the Senate and House of Delegates, by Adding Thereto a New Rule Creating the Joint Committee on Pensions and Retirement</td>
<td>1498</td>
</tr>
<tr>
<td>*9</td>
<td>Requesting the State Board of Education and Division of Corrections to Undertake a Study to Develop a Plan to Require Public School and State Prison Cafeterias to Provide Unused, Cooked Food to Community Agencies Providing Food for Persons in Need</td>
<td>1500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number</th>
<th>Senate Concurrent</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Commemorating the Passing of E. Hansford McCourt, Former Legislator and President of the Senate</td>
<td>1501</td>
</tr>
<tr>
<td>28</td>
<td>Providing for an Extension of the Regular Session of the Seventy-First Legislature</td>
<td>1502</td>
</tr>
<tr>
<td>32</td>
<td>Commemorating the Public Service of Earl M. Vickers, Former Member of the House of Delegates and Retiring Director of Legislative Services</td>
<td>1503</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number</th>
<th>House</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Creating a Select Committee on Health Care Policies</td>
<td>1505</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number</th>
<th>Senate</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>Commemorating the Life and Public Service of the Honorable J. C. Dillon, Jr., Former Member and Clerk of the Senate</td>
<td>1505</td>
</tr>
</tbody>
</table>
# Table of Contents

## First Extraordinary Session, 1993

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Appropriations</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>*HB105</td>
<td>Budget Bill, Making Appropriations of Public Money for the Fiscal Year Beginning July 1, 1993</td>
<td>1509</td>
</tr>
<tr>
<td>2.</td>
<td>HB109</td>
<td>Supplementing, Amending, Reducing, Expiring and Transferring Specified Amounts From Various Accounts to Acct. No. 4050, Department of Health and Human Resources, Division of Human Services</td>
<td>1629</td>
</tr>
<tr>
<td>3.</td>
<td>HB108</td>
<td>Supplementing, Amending and Transferring Specified Unexpended Amounts to Acct. No. 9132, Division of Human Services</td>
<td>1631</td>
</tr>
<tr>
<td>4.</td>
<td>*SB6</td>
<td>Charitable Bingo and Charitable Raffle Boards and Games</td>
<td>1632</td>
</tr>
<tr>
<td>5.</td>
<td>HB100</td>
<td>Promulgation of Legislative Rules for Various State Agencies</td>
<td>1645</td>
</tr>
<tr>
<td>6.</td>
<td>HB110</td>
<td>Promulgation of Legislative Rules by the Air Pollution Control Commission, Operation of Coal Preparation Plants and Coal Handling Operations</td>
<td>1803</td>
</tr>
<tr>
<td>7.</td>
<td>*SB2</td>
<td>State Medicaid Program and Funding Therefor</td>
<td>1804</td>
</tr>
<tr>
<td>8.</td>
<td>*HB104</td>
<td>School Aid Formula for Public Education and the Financing Thereof</td>
<td>1899</td>
</tr>
<tr>
<td>9.</td>
<td>HB106</td>
<td>Repeal of Section Prohibiting the Imposition of More Restrictive Laws, Rules or Regulations on the Use, Sale or Distribution of Tobacco Products</td>
<td>1956</td>
</tr>
<tr>
<td>10.</td>
<td>HB101</td>
<td>Providing for the Payment of the Veterans' Bonus to Veterans of the Persian Gulf, Panama, Grenada and Lebanon Conflicts</td>
<td>1957</td>
</tr>
</tbody>
</table>
## MEMBERS OF THE SENATE

### REGULAR SESSION, 1993

**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

<table>
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<th>District</th>
<th>Name</th>
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(D) Democrats
(R) Republicans

TOTAL 34
### OFFICERS

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

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### House of Delegates

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<td>Fifty-fourth</td>
<td>John Overington (R)</td>
<td>Martinsburg</td>
<td>67th-70th</td>
</tr>
<tr>
<td>Fifty-fifth</td>
<td>John Dolye (D)</td>
<td>Shepherdstown</td>
<td>66th</td>
</tr>
<tr>
<td>Fifty-sixth</td>
<td>Dale Manuel (D)</td>
<td>Charles Town</td>
<td>69th-70th</td>
</tr>
</tbody>
</table>

*1Appointed to fill the vacancy created by the resignation of Ebb K. Whitley, Jr.*

*2Appointed to fill the vacancy created by the death of Michael A. Heston*

(D) Democrats ........................................................................................................ 79
(R) Republicans ......................................................................................................... 21
TOTAL ......................................................................................................................... 100
COMMITTEES OF THE
HOUSE OF DElegates
Regular Session, 1993

STANDING

Agriculture and Natural Resources

D. Miller (Chair of Agriculture), Compton (Vice Chair of Agriculture), Love (Chair of Natural Resources), Johnson (Vice Chair of Natural Resources), Beach, Campbell, Fragale, Heck, Linch, McGraw, Nicol, Pethel, Preece, Proudfoot, Schoonover, Stewart, Talbott, Vest, Warner, Anderson, Border, Evans, Leggett, Riggs and Willison.

Banking and Insurance

Williams (Chair of Banking), Flanigan (Vice Chair of Banking), Phillips (Chair of Insurance), Gallagher (Vice Chair of Insurance), Beane, Carper, Collins, S. Cook, Dempsey, Douglas, Farris, Huntwork, Louisos, Michael, Moore, Rutledge, Sorah, Staton, Tribett, Vest, Ashley, McKinley, Harrison, Riggs and L. White.

Constitutional Revision

Brown (Chair), Pethel (Vice Chair), Beane, Browning, Ellis, Houvouras, Huffman, Kessel, Linch, Lindsey, Manuel, Moore, Petersen, Preece, Prezioso, Pulliam, Ryan, Tribett, H. White, Faircloth, Harrison, McKinley, Overington, Trump and Wallace.

Education

Ashcraft (Chair), Prezioso (Vice Chair), Adkins, Beach, Bennett, Compton, Ellis, Everson, Fealy, Lindsey, Nicol, Paxton, Pettit, Preece, Proudfoot, Schoonover, Spencer, Talbott, Williams, Yeager*, Anderson, Harrison, Henderson, Overington and Richards.

*Delegate Yeager was appointed to fill the vacancy created by the resignation of Delegate Ebb K. Whitley, Jr.
Finance

Kiss (Chair), Browning (Vice Chair), Campbell, D. Cook, S. Cook, Doyle, Farris, Flanigan, Hendricks, Johnson, Leach, Mezzatesta, D. Miller, Petersen, Pettit, Rutledge, Ryan, Warner, H. White, P. White, Burk, Leggett, McKinley, M. Miller and Wallace.

Government Organization

Martin (Chair), Michael (Vice Chair), Beane, Carper, Dempsey, Fantasia*, Fragale, Heck, Higgins, Louisos, Love, McGraw, Oliverio, Preece, Pulliam, Smith, Stewart, Varner, Vest, Border, Evans, Facemyer, Nesbitt, Walters and Willison.

*Delegate Fantasia was appointed to fill the vacancy created by the death of Delegate Michael A. Heston.

Health and Human Resources

P. White (Chair), S. Cook (Vice Chair), Brown, Brum, Compton, Douglas, Doyle, Ellis, Fantasia*, Fealy, Flanigan, Gallagher, Huffman, Kessel, Leach, McGraw, Mezzatesta, Pettit, Pulliam, Spencer, Facemyer, Henderson, M. Miller, Richards and Walters.

*Delegate Fantasia was appointed to fill the vacancy created by the death of Delegate Michael A. Heston.

Industry and Labor

Spencer (Chair), Schoonover (Vice Chair), Adkins, Campbell, D. Cook, Farris, Heck, Hendricks, Higgins, Louisos, D. Miller, Oliverio, Paxton, Petersen, Phillips, Reed, Stewart, Varner, Whitman, Yeager*, Facemyer, Henderson, Nesbitt, Overington and Walters.

*Delegate Yeager was appointed to fill the vacancy created by the resignation of Delegate Ebb K. Whitley, Jr.

Judiciary

Rowe (Chair), Staton (Vice Chair), Brum, Brown, Collins, Douglas, Gallagher, Huffman, Huntwork, Kessel, Linch, Manuel, Moore, Pethel, Phillips, Pino, Reed, Sorah, Tribett, Whitman, Ashley, Faircloth, Riggs, Trump and L. White.
Political Subdivisions

Manuel (Chair), Collins (Vice Chair), Beach, Bennett, Doyle, Everson, Fantasia*, Huntwork, Johnson, Lindsey, Nicol, Oliverio, Pettit, Pino, Proudfoot, Reed, Ryan, Smith, H. White, Yeager*, Anderson, Faircloth, Richards, Trump and Willison.

*Delegate Fantasia was appointed to fill the vacancy created by the death of Delegate Michael A. Heston.

*Delegate Yeager was appointed to fill the vacancy created by the resignation of Delegate Ebb K. Whitley, Jr.

Roads and Transportation

Carper (Chair), Warner (Vice Chair), Adkins, Brum, Bennett, D. Cook, Dempsey, Everson, Fealy, Fragale, Hendricks, Higgins, Leach, Love, Paxton, Pino, Smith, Talbott, Varner, Whitman, Border, Evans, Leggett, Nesbitt and Wallace.

Rules

Chambers (Chair), Ashcraft, Hovouras, Kiss, Martin, Mezzatesta, Rowe, Staton, P. White, Burk, Ashley and Faircloth.

JOINT

Enrolled Bills

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

Government and Finance

Chambers (Chair), Ashcraft, Hovouras, Kiss, Rowe, Burk and Ashley.

Legislative Rule-making Review

Gallagher (Chair), Douglas (Vice Chair), Compton, Huntwork, Burk and Faircloth.

Pensions and Retirement

Browning (Chair), Prezioso (Vice Chair), Lindsey, Campbell, Smith, Ashley and Wallace.
HOUSE OF DELEGATES COMMITTEES

Rules
Chambers (Cochair), Houvouras and Burk.

SELECT
Select Committee on Health Care Policies
Martin (Chair), P. White, (Vice Chair), Beane, Brown, Campbell, Carper, Compton, S. Cook, Douglas, Doyle, Fragale, Gallagher, Huntwork, Kessel, Mezzatesta, Michael, Petersen, Phillips, Pulliam, Vest, Ashley, Border, Burk, Faircloth and Walters.

STATUTORY LEGISLATIVE COMMISSIONS
Interstate Cooperation
Pethtel (Cochair), Beach, Brown, Doyle, Farris, Sorah and L. White.

Juvenile Law
Brown (Cochair), Douglas and Trump.

Special Investigations
Chambers (Cochair), Martin, Rowe, Faircloth and Trump.

Clerk’s Note: Michael A. Heston, 43rd Delegate District, died while in office on February 15, 1993.
Nick Fantasia was appointed in his stead.
Committees: Government Organization, Health and Human Resources and Political Subdivisions.
Ebb K. Whitley, Jr., 22nd Delegate District, resigned from office on February 26, 1993.
Emily W. Yeager was appointed in his stead.
Committees: Education, Industry and Labor and Political Subdivisions.
COMMITTEES OF THE SENATE
Regular Session, 1993

STANDING

Agriculture
Whitlow (Chair), Withers (Vice Chair), Anderson, Bailey, Chafin, Dittmar, Helmick, Holliday, Minard and Ross.

Banking and Insurance
Minard (Chair), Helmick (Vice Chair), Blatnik, Craigo, Dittmar, Felton, Jones, Manchin, Sharpe, Tomblin, Wagner, Wooton and Yoder.

Confirmations
Blatnik (Chair), Grubb (Vice Chair), Claypole, Jones, Lucht, Tomblin, Wehrle, Wooton and Boley.

Education
Lucht (Chair), Dalton (Vice Chair), Bailey, Blatnik, Brackenrich, Felton, Grubb, Humphreys, Jones, Plymale, Wagner, Whitlow, Withers and Boley.

Energy, Industry and Mining
Sharpe (Chair), Macnaughtan (Vice Chair), Brackenrich, Chernenko, Dalton, Felton, Grubb, Helmick, Manchin, Ross, Walker, Whitlow, Withers and Boley.

Finance
Tomblin (Chair), Manchin (Vice Chair), Bailey, Blatnik, Brackenrich, Chafin, Chernenko, Craigo, Helmick, Jones, Lucht, Sharpe, Walker, Wehrle, Whitlow, Withers and Boley.

Government Organization
Felton (Chair), Wagner (Vice Chair), Brackenrich, Chernenko, Claypole, Craigo, Holliday, Jones, Lucht, Manchin, Tomblin, Wehrle, Wiedebusch and Yoder.

[xxv]
SENATE COMMITTEES

Health and Human Resources

Holliday (Chair), Walker (Vice Chair), Blatnik, Chafin, Chernenko, Craigo, Grubb, Macnaughtan, Manchin, Plymale, Sharpe, Wehrle, Wooton and Boley.

Interstate Cooperation

Wagner (Chair), Claypole (Vice Chair), Anderson, Chafin, Plymale, Ross and Whitlow.

Judiciary

Wooton (Chair), Wiedebusch (Vice Chair), Anderson, Claypole, Dalton, Dittmar, Felton, Grubb, Holliday, Humphreys, Macnaughtan, Minard, Plymale, Ross, Wagner and Yoder.

Labor

Chernenko (Chair), Claypole (Vice Chair), Bailey, Chafin, Grubb, Holliday, Humphreys, Macnaughtan, Wagner and Wiedebusch.

Military

Helmick (Chair), Bailey (Vice Chair), Chernenko, Dalton, Humphreys, Minard, Wiedebusch, Wooton and Boley.

Natural Resources

Brackenrich (Chair), Plymale (Vice Chair), Anderson, Craigo, Dittmar, Helmick, Humphreys, Macnaughtan, Minard, Ross, Whitlow, Wiedebusch, Withers and Yoder.

Pensions

Wehrle (Chair), Manchin (Vice Chair), Dittmar, Felton, Lucht, Walker and Withers.

Rules

Burdette (Chair), Anderson, Blatnik, Brackenrich, Craigo, Lucht, Manchin, Tomblin, Wooton and Boley.
Small Business

Anderson (Chair), Ross (Vice Chair), Blatnik, Craigo, Holliday, Jones, Macnaughtan, Minard, Plymale, Sharpe, Walker and Wehrle.

Transportation

Dittmar (Chair), Withers (Vice Chair), Chafin, Dalton, Sharpe, Tomblin, Wagner, Wiedebusch and Yoder.

JOINT

Commission on Special Investigations

Burdette (Cochair), Blatnik, Craigo, Wooton and Boley.

Enrolled Bills

Bailey (Cochair), Claypole, Dalton, Humphreys and Walker.

Government and Finance

Burdette (Cochair), Craigo, Lucht, Sharpe, Tomblin, Wooton and Boley.

Government Operations

Felton (Cochair), Brackenrich, Manchin, Wiedebusch and Yoder.

Legislative Commission on Juvenile Law

Lucht, (Cochair), Felton and Yoder.

Legislative Oversight Commission on Education Accountability

Lucht (Cochair), Blatnik, Felton, Tomblin, Wagner and Boley.

Legislative Oversight Committee on Regional Jail and Correctional Facility Authority

Holliday (Chair), Blatnik, Craigo, Minard, Wiedebusch and Yoder.
Legislative Rule-Making Review
Manchin (Cochair), Grubb (Vice Cochair), Anderson, Macnaughtan, Minard and Boley.

Rules
Burdette (Cochair), Craigo and Boley.
AN ACT to amend and reenact sections nineteen and twenty-three, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three, chapter sixty of said code; to amend and reenact section twenty-four, article three-a of said chapter; to amend and reenact sections twelve, twelve-a and thirteen, article seven of said chapter; and to amend and reenact section twenty-a, article eight of said chapter, all relating to prohibiting persons under the age of twenty-one from purchasing, consuming, possessing, selling and serving nonintoxicating beer, wine and alcoholic liquor; allowing employment by licensees of underage persons in certain instances; allowing exceptions for underage law enforcement and commission agents; providing criminal penalties; raising the amount to be retained in enforcement funds at fiscal year end; and prohibiting the sale or giving of nonintoxicating beer, wine or alcoholic liquors to certain persons.

Be it enacted by the Legislature of West Virginia:

That sections nineteen and twenty-three, 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-two, article three, chapter sixty of said code be amended and reenacted; that section twenty-four, article three-a of said chapter be amended and reenacted; that sections twelve, twelve-a and thirteen, article seven of said chapter be amended and reenacted; and that section twenty-a, article eight of said chapter be amended and reenacted, all to read as follows:

Chapter

11. Taxation

60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-19. Unlawful acts of persons; criminal penalties.
§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.

§11-16-19. Unlawful acts of persons; criminal penalties.

(a) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets,
family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: Provided, That such person shall not sell or deliver nonintoxicating beer.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase nonintoxicating beer, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one to whom they are not related by blood or marriage is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

(d) Any person who at any one time transports into the state for their personal use, and not for resale, more than six and seventy-five hundredths gallons of nonintoxicating beer, upon which the West Virginia barrel tax has not been imposed, shall be guilty of a misdemea-
nor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars and have all the untaxed nonintoxicating beer in their possession at the time of the arrest confiscated, or imprisoned for ten days in the county jail, or both fined and imprisoned.

If the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to national uniform drinking age of twenty-one as found in section six of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, it is the intent of the Legislature that the provisions contained in this section and section eighteen of this article which prohibit the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than twenty-one years of age shall be null and void and the provisions therein shall thereafter remain in effect and apply to the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than nineteen years of age.

§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of section eighteen of this article or of chapter sixty of this code; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may:

(1) Revoke the licensee's license;

(2) Suspend the licensee's license;

(3) Place the licensee on probationary status for a period not to exceed twelve months; and

(4) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed.
(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated the "Nonintoxicating Beer Enforcement Fund", which is hereby created. All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to nonintoxicating beer and shall not be treated by the state treasurer or state auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the nonintoxicating beer enforcement fund in excess of twenty thousand dollars shall be transferred to the general revenue fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic liquor shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution or the sale, possession or distribution of narcotics or controlled substances shall be mandatory grounds for revocation of the licensee's license for a period of at least one year.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article
3. Sales by Commissioner.
3A. Sales by Retail Liquor Licensees.
7. Licenses to Private Clubs.
8. Sales of Wines.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-22. Sales to certain persons prohibited.

(a) Alcoholic liquors and nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this code shall not be sold to a person who is:

1. Less than twenty-one years of age;
ALCOHOLIC LIQUOR

(2) An habitual drunkard;

(3) Intoxicated;

(4) Addicted to the use of any controlled substance as defined by any of the provisions of chapter sixty-a of this code; or

(5) Mentally incompetent.

(b) It shall be a defense to a violation of subdivision (1), subsection (a) of this section if the seller shows that the purchaser:

(1) Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or

(2) Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


(a) Any person under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any
member of a state, federal or local law-enforcement
agency or the West Virginia alcohol beverage adminis-
tration while the agency is conducting an investigation
or other activity relating to the enforcement of the
alcohol beverage control statutes and the rules and
regulations of the commissioner.

(b) Any person under the age of twenty-one years who,
for the purpose of purchasing liquor from a retail
licensee, misrepresents his or her age, or who for such
purpose presents or offers any written evidence of age
which is false, fraudulent or not actually his or her own,
or who illegally attempts to purchase liquor from a
retail licensee, is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined in an amount not to
exceed fifty dollars or imprisoned in the county jail for
a period not to exceed seventy-two hours, or both fined
and imprisoned, or, in lieu of such fine and imprison-
ment, may, for the first offense, be placed on probation
for a period not exceeding one year.

(c) Any person who knowingly buys for, gives to or
furnishes to anyone under the age of twenty-one to
whom he or she is not related by blood or marriage any
liquor from whatever source, is guilty of a misdemeanor
and shall, upon conviction thereof, be fined in an amount
not to exceed one hundred dollars or imprisoned in the
county jail for a period not to exceed ten days, or both
fined and imprisoned.

(d) No person while on the premises of a retail outlet
may consume liquor or break the seal on any package
or bottle of liquor. Any person who violates the
provisions of this subsection is guilty of a misdemeanor
and shall, upon conviction thereof, be fined in an amount
not to exceed one hundred dollars or imprisoned in the
county jail for a period not to exceed ten days, or both
fined and imprisoned.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.
§60-7-12a. Unlawful acts by persons.
§60-7-13. Revocation or suspension of license: monetary penalty: pearing;
assessment of costs; establishment of enforcement fund.
§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues
Ch. 1] ALCOHOLIC LIQUOR

37 paying member in good standing of said private club or
38 a guest of such member;

39 (9) (A) Employ any person who is less than eighteen
40 years of age in a position where the primary responsi-
41 bility for such employment is to sell, furnish or give
42 nonintoxicating beer, wine or alcoholic liquors to any
43 person;

44 (B) Employ any person who is between the ages of
45 eighteen and twenty-one who is not directly supervised
46 by a person aged twenty-one or over in a position where
47 the primary responsibility for such employment is to
48 sell, furnish or give nonintoxicating beer, wine or
49 alcoholic liquors to any person; or

50 (10) Violate any reasonable rule of the commissioner.

51 (b) It is unlawful for any licensee to advertise in any
52 news media or other means, outside of the licensee’s
53 premises, the fact that alcoholic liquors may be pur-
54 chased thereat.

55 (c) Any person who violates any of the foregoing
56 provisions is guilty of a misdemeanor, and, upon
57 conviction thereof, shall be fined not less than five
58 hundred dollars nor more than one thousand dollars, or
59 imprisoned in the county jail for a period not to exceed
60 one year, or both fined and imprisoned.

§60-7-12a. Unlawful acts by persons.

1 (a) A person under the age of twenty-one years may
2 not order, pay for, share the cost of or attempt to
3 purchase any nonintoxicating beer, wine or alcoholic
4 liquors from a licensee or consume any nonintoxicating
5 beer, wine or alcoholic liquors purchased from a licensee
6 or possess any nonintoxicating beer, wine or alcoholic
7 liquors purchased from a licensee. Any person under the
8 age of twenty-one years who violates any provisions of
9 this subsection is guilty of a misdemeanor, and, upon
10 conviction thereof, shall be fined in an amount not to
11 exceed five hundred dollars or imprisoned in the county
12 jail for a period not to exceed seventy-two hours, or both
13 fined and imprisoned, and, in addition to such fine and
14 imprisonment, may, for the first offense, be placed on
probation for a period not to exceed one year: Provided,
That nothing in this subsection shall prohibit a person
who is at least eighteen years of age from purchasing
or possessing nonintoxicating beer, wine or alcoholic
liquors when he or she is acting upon the request of or
under the direction and control of any member of a
state, federal or local law-enforcement agency or the
West Virginia alcohol beverage administration while
the agency is conducting an investigation or other
activity relating to the enforcement of the alcohol
beverage control statutes and the rules and regulations
of the commissioner.

(b) Any person under the age of twenty-one years who,
for the purpose of purchasing nonintoxicating beer,
wine, or alcoholic liquors from a licensee, misrepresents
his or her age, or who for such purpose presents or offers
any written evidence of age which is false, fraudulent
or not actually his or her own, or who illegally attempts
to purchase nonintoxicating beer, wine, or alcoholic
liquors from a licensee, is guilty of a misdemeanor, and,
upon conviction thereof, shall be fined in an amount not
to exceed five hundred dollars or shall be imprisoned in
the county jail for a period not to exceed seventy-two
hours, or both such fine and imprisonment, or, in lieu
of such fine and imprisonment, may, for the first
offense, be placed on probation for a period not
exceeding one year.

(c) Any person who knowingly buys for, gives to or
furnishes to anyone under the age of twenty-one, any
nonintoxicating beer, wine or alcoholic liquors pur-
chased from a licensee, is guilty of a misdemeanor and
shall, upon conviction thereof, be fined not more than
five hundred dollars, or imprisoned in the county jail not
more than ten days, or both fined and imprisoned.

§60-7-13. Revocation or suspension of license; monetary
penalty; hearing; assessment of costs; establish-
ment of enforcement fund.

(a) Upon a determination by the commissioner that a
licensee has: (i) Violated the provisions of article sixteen,
chapter eleven, or of this chapter; (ii) acted in such a
(1) Revoke the licensee's license;

(2) Suspend the licensee's license;

(3) Place the licensee on probationary status for a period not to exceed twelve months; and

(4) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated "The Alcohol Beverage Control Enforcement Fund", which is hereby created. All moneys collected, received and deposited in the "Alcohol Beverage Control Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, and shall not be treated by the state treasurer or state auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the alcohol beverage control enforcement fund in excess of twenty thousand dollars shall be transferred to the general revenue fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession or distribution of narcotics or controlled substances, shall be mandatory grounds for revocation of the licensee's license for a period of at least one year.
ARTICLE 8. SALE OF WINES.

§60-8-20a. Unlawful acts by persons.

(a) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves wine or other alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: Provided, That such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing wine or other alcoholic
liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase wine or other alcoholic liquors, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one to whom they are not related by blood or marriage, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

CHAPTER 2

(Com. Sub. for H. B. 2196—By Mr. Speaker, Mr. Chambers, and Delegate Burk, By Request of the Executive)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the division of corrections—correctional units, Acct. No. 3770, supplementing chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter twelve, acts of the Legislature, regular session,
one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section nine thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 9. Appropriation from surplus accrued.

3 DEPARTMENT OF MILITARY AFFAIR’S AND PUBLIC SAFETY

4 183b—Division of Corrections—
5 Correctional Units
6
7 (WV Code Chapters 25, 28, 29 and 62)

8 Acct. No. 3770

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>15</td>
<td>1992-93</td>
<td>1992-93</td>
</tr>
<tr>
<td>15</td>
<td>Personal Services</td>
<td>$742,663</td>
</tr>
<tr>
<td>16</td>
<td>Employee Benefits</td>
<td>155,405</td>
</tr>
<tr>
<td>17</td>
<td>Payment to Counties and/or Regional Jails</td>
<td>1,000,000</td>
</tr>
<tr>
<td>18</td>
<td>Unclassified</td>
<td>601,932</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td>$2,500,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1992-1993 by providing for a new item of appropriation to be established therein to appropriate surplus accrued in the general revenue fund for the fiscal year ending June 30, 1992, and to be available for expenditure in the fiscal year 1992-1993. Such amount shall be available for expenditure upon passage of the bill.
CHAPTER 3

(Com. Sub. for H. B. 2197—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the division of public safety, Acct. No. 5700, supplementing chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section nine thereof, as follows:

TITLE II—APPROPRIATIONS.

Sec. 9. Appropriations from surplus accrued.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

183a—Division of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 1992-93</td>
<td>Fiscal Year 1992-93</td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>14</td>
<td>1</td>
<td>Personal Services</td>
<td>$ 357,000</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>Employee Benefits</td>
<td>$ 43,000</td>
</tr>
<tr>
<td>16</td>
<td>3</td>
<td>Unclassified</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>17</td>
<td>4</td>
<td>Total</td>
<td>$ 500,000</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1992-1993 by providing for a new item of appropriation to be established therein to appropriate surplus accrued in the general revenue fund for the fiscal year ending June 30, 1992, and to be available for expenditure in the fiscal year 1992-1993. Such amount shall be available for expenditure upon passage of the bill.

CHAPTER 4
(Com. Sub. for S. B. 273—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed April 9, 1993; 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-three, to the West Virginia department of transportation, division of highways, Acct. No. 6700, chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document dated February 10, 1993, wherein are set forth the revenues and expenditures of the state road fund, including fiscal year 1992-1993; and

WHEREAS, It appears from such budget document that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1992-1993, 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 appropriation 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-three, as appropriated by chapter twelve, acts of the Legislature,
regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented, amended and thereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 Sec. 4. Appropriations of federal funds.

4 DEPARTMENT OF TRANSPORTATION

5 162—Division of Highways

6 (WV Code Chapters 17 and 17C)

7 Acct. No. 6700

8 TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1992-93</td>
<td>1992-93</td>
<td></td>
</tr>
<tr>
<td>1 Maintenance, Expresway,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Trunkline and Feeder ... $</td>
<td>$67,980,000</td>
<td>$</td>
</tr>
<tr>
<td>3 Maintenance, State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Local Services ........</td>
<td></td>
<td>$97,511,000</td>
</tr>
<tr>
<td>5 Maintenance, Contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Paving and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Secondary Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Maintenance ..........</td>
<td></td>
<td>$32,402,000</td>
</tr>
<tr>
<td>9 Bridge Repair and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Replacement ..........</td>
<td></td>
<td>$28,000,000</td>
</tr>
<tr>
<td>11 Industrial Access Roads</td>
<td></td>
<td>$2,750,000</td>
</tr>
<tr>
<td>12 Inventory Revolving</td>
<td></td>
<td>$1,250,000</td>
</tr>
<tr>
<td>13 Equipment Revolving</td>
<td></td>
<td>$6,575,000</td>
</tr>
<tr>
<td>14 General Operations</td>
<td></td>
<td>$29,750,000</td>
</tr>
<tr>
<td>15 Debt Service ..........</td>
<td></td>
<td>$56,498,000</td>
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<tr>
<td>16 Interstate Construction</td>
<td></td>
<td>$60,000,000</td>
</tr>
<tr>
<td>17 Other Federal Aid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 Programs .............</td>
<td></td>
<td>$205,000,000</td>
</tr>
<tr>
<td>19 Appalachian Programs</td>
<td></td>
<td>$120,000,000</td>
</tr>
<tr>
<td>20 Nonfederal Aid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 Construction ..........</td>
<td></td>
<td>$40,000,000</td>
</tr>
<tr>
<td>22 Highway Litter Control</td>
<td></td>
<td>$1,500,000</td>
</tr>
<tr>
<td>23 Total .................. $</td>
<td>$749,216,000</td>
<td></td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement and amend the existing items in the aforesaid account for expenditure in the fiscal year of 1992-1993 and to reflect the new total spending authority of the spending unit for such fiscal year. Such increased amounts shall be available for expenditure upon the effective date of the bill.

CHAPTER 5
(Com. Sub. for S. B. 267—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed April 6, 1993; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, expiring and transferring between items of the existing appropriation of the department of transportation, division of motor vehicles, Acct. No. 6710, as appropriated by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Acct. No. 6710, chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, be supplemented, amended, reduced, expired and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 Sec. 4. Appropriations of federal funds.

4 DEPARTMENT OF TRANSPORTATION

5 163—Division of Motor Vehicles

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

7 Acct. No. 6710

8 TO BE PAID FROM STATE ROAD FUND
### Federal Funds

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>1992-93</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$7,295,098</td>
<td>$6</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$41,904</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$1,094,876</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Optic Scan System</td>
<td>$8,632</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Electronic Photo Operator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>and License System</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Unclassified</td>
<td>100,000</td>
<td>10,254,901</td>
</tr>
<tr>
<td>7a</td>
<td>Total Quality</td>
<td></td>
<td>100,000</td>
</tr>
<tr>
<td>7b</td>
<td>Management Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$100,000</td>
<td>$14,425,411</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce, expire and transfer between line items certain moneys of the existing appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred ninety-three shall be made available for expenditure upon the effective date of the bill.

### CHAPTER 6

(H. B. 2812—By Delegates S. Cook and D. Cook)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury to the public service commission, Acct. No. 8280, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, supplementing and amending chapter twelve, acts of the Legislature, one thousand nine hundred ninety-two, known as the budget bill, by adding thereto a new line item of appropriation.
WHEREAS, It appears that there now remains unappropriated a balance in Acct. No. 8280 available for further appropriation during the fiscal year 1992-1993, 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 appropriation to Acct. No. 8280, Public Service Commission, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, as appropriated by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding thereto a new line item to thereafter read as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 MISCELLANEOUS BOARDS AND COMMISSIONS
4 172—Public Service Commission
5 (WV Code Chapter 24)
6 Acct. No. 8280
7 TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>—</td>
</tr>
<tr>
<td>4a</td>
<td>765 KV Transmission</td>
<td>—</td>
</tr>
<tr>
<td>18</td>
<td>Line Study</td>
<td>—</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td>$</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation is to supplement and amend this account in the budget bill for fiscal year 1992-1993, from the unappropriated balance, by adding a new line item of appropriation in the amount of fifty thousand dollars, to be available for expenditure upon passage of the bill.
AN ACT making a supplementary appropriation of public money out of the treasury to the department of transportation, division of motor vehicles—driver's license reinstatement fund, Acct. No. 8422, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, supplementing chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, It appears that there now remains unappropriated balance in Acct. No. 8422 available for further appropriation during the fiscal year 1992-1993, 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 appropriation to Acct. No. 8422, division of motor vehicles, driver's license reinstatement fund, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, as appropriated by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 3. Appropriations from other funds.
3 DEPARTMENT OF TRANSPORTATION
4 164—Division of Motor Vehicles—
5 Driver's License Reinstatement Fund
6 (WV Code Chapter 17B)
# Appropriations

## Acct. No. 8422

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>

<table>
<thead>
<tr>
<th>Line Item</th>
<th>1992-93</th>
<th>1992-93</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$</td>
<td>$171,068</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>$2,124</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>—</td>
<td>$62,941</td>
</tr>
<tr>
<td>Unclassified</td>
<td>—</td>
<td>$89,907</td>
</tr>
</tbody>
</table>

**Total** $326,040

The purpose of this supplementary appropriation is to supplement this account in the budget bill for fiscal year 1992-1993, from the unappropriated balances by adding twenty-two thousand, two hundred twenty-four dollars to the personal services line items and fourteen thousand, five hundred sixty-two dollars to the employee benefits line item, for a total increase in authorized spending authority of thirty-six thousand, seven hundred eighty-six dollars to be available for expenditure upon passage of the bill.

## CHAPTER 8

(S. B. 587—Originating in the Committee on Finance.)

[Passed April 23, 1993; 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-three, to the division of health—substance abuse prevention and treatment, Acct. No. 8501, supplementing and amending chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, 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 1992-1993, 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 chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section ten thereof, as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 10. Appropriations from federal block grants.
3 187a—Division of Health—
4 Substance Abuse Prevention and Treatment
5 Acct. No. 8501
6 TO BE PAID FROM FEDERAL FUNDS
7 1 Unclassified—Total ..................................... $5,686,000
8 The purpose of this supplementary appropriation bill
9 is to supplement the budget act for the fiscal year 1992-
10 1993 by providing for a new account to be established
11 therein to appropriate federal block grant moneys
12 received for expenditure in the fiscal year 1992-1993.
13 These moneys shall be available for expenditure upon
14 passage of the bill.

CHAPTER 9
(S. B. 586—Originating in the Committee on Finance.)

(Passed April 23, 1993; 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-three, to the division of health—community mental health
services, Acct. No. 8505, supplementing and amending chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, 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 1992-1993, 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 chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section ten thereof, as follows:

 TITLE II—APPROPRIATIONS.

Sec. 10. Appropriations from federal block grants.

190a—Division of Health—
Community Mental Health Services
Acct. No. 8505

TO BE PAID FROM FEDERAL FUNDS

Unclassified—Total ............................................. $2,582,975

The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1992-1993 by providing for a new account to be established therein to appropriate federal block grant moneys received for expenditure in the fiscal year 1992-1993. These moneys shall be available for expenditure upon passage of the bill.

CHAPTER 10
(S. B. 342—By Senator Minard)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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 four-a; to amend and reenact section nine of said article; and to amend and reenact section two, article three of said chapter, all relating to making orders of the commissioner of banking and West Virginia board of banking public records.

Be it enacted by the Legislature of West Virginia:

That article two, 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 four-a; that section nine of said article be amended and reenacted; and that section two, article three of said chapter be amended and reenacted, all to read as follows:

Article
1. Division of Banking.
2. Board of Banking and Financial Institutions.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4a. Orders of the commissioner of banking to be made public.
§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

§31A-2-4a. Orders of the commissioner of banking to be made public.

1 Any order entered by the commissioner of banking against any person:
2 (1) To cease violating any provision or provisions of this chapter or other applicable law or rule and regulation promulgated or order issued thereunder;
3 (2) To cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution;
4 (3) To revoke the certificate of authority, permit or license of any financial institution; and
5 (4) To take such other action as the commissioner of banking may deem necessary to enforce and administer the provisions of this chapter and all other laws which the commissioner is empowered to enforce is a matter of public record.
§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

Whenever it appears that any law, rule and regulation or order applicable to any financial institution is being violated, or that any irregularities exist or unsound practices or procedures are being engaged in, it shall be the duty of the commissioner of banking to promptly call the same to the attention of the officers and directors of the financial institution offending and to demand that the same be promptly corrected; and he or she may require a sworn statement from the said officers and directors covering the matter of all such violations and of all such irregularities, unsound practices or procedures to be furnished to him or her as often as he or she may deem necessary, until he or she is satisfied that such violations have ceased and that the irregularities, unsound practices or procedures complained of have been corrected. Such reports shall not be made public, except as necessary as part of any order or other enforcement action or proceeding.

If any such institution owns any asset, the value of which, in the judgment of the commissioner of banking, is questionable, or owns past-due obligations, the commissioner of banking may require the assets of doubtful value to be at once converted into money or charged off of the books of the financial institution at the expiration of three months from the date of such order; or require legal proceedings to be at once instituted for the collection of any past-due obligations to the financial institution or that they be charged off.

Upon the written notice of the commissioner of banking, the directors of any financial institution shall call a general meeting of the stockholders thereof to consider such matters as the commissioner may prescribe. Notice of such meeting shall be given in accordance with applicable statutes and the bylaws of the financial institution. The expense of such meeting and notice thereof shall be borne by the financial institution whose stockholders are so required to convene.
ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter, the board shall have the power to:

1. Regulate its own procedure and practice;

2. Promulgate reasonable rules to implement any provision of this article, such rules to be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

3. Advise the commissioner in all matters within his jurisdiction;

4. Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions, and to report and recommend to the governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as may be by it deemed proper; and

5. Grant permission and authority to a financial institution:

(A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein, and to comply with all lawful requirements and conditions imposed upon such participants;

(B) To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any contrary provision of this code; and

(C) To pay interest on demand deposits of the United States or any agency thereof, if the payment of such interest shall be permitted under any applicable federal
law, rule or regulation.

Any permission and authority granted by the board pursuant to this subdivision shall cease and terminate upon the adjournment of the next regular session of the Legislature, unless the Legislature shall at such session enact legislation authorizing the financial institution participation, activity, services and procedures or payment of interest with respect to which such permission and authority were granted, in which event such permission and authority shall continue in effect until the effective date of such legislation.

(b) The board shall further have the power, by entering appropriate orders, to:

(1) Restrict the withdrawal of deposits from any financial institution when, in the judgment of the board, extraordinary circumstances make such restrictions necessary for the protection of creditors of and depositors in the affected institution;

(2) Compel the holder of shares in any corporate financial institution to refrain from voting said shares on any matter when, in the judgment of the board, such order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard funds of depositors in the institution or to prevent willful violation of any applicable law or of any rule and regulation or order issued thereunder. In such a case the shares of such a holder shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action;

(3) Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of sections six and seven, article four of this chapter;

(4) Approve or disapprove applications to incorporate and organize state-chartered bankers' banks in accordance with the provisions of sections six and seven, article four of this chapter;
(5) Exempt a bankers’ bank from any provision of this chapter if the board finds that such provision is inconsistent with the purpose for which a bankers’ bank is incorporated and organized and that the welfare of the public or any banking institution or other financial institution would not be jeopardized thereby;

(6) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if such institution shall fail or refuse to comply with any order of the commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision (14), subsection (c), section four, article two of this chapter, or at the board's election to direct the commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order;

(7) Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold such position under any provision of law or rule and regulation or order, or who willfully disregards or fails to comply with any order of the board or commissioner made and entered in accordance with the provisions of this chapter or who is dishonest or grossly incompetent in the conduct of financial institution business;

(8) To receive from state banking institutions applications to establish branch banks by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution, or by the construction, lease or acquisition of branch bank facilities in an unbanked area; examine and investigate such applications, to hold hearings thereon, and to approve or disapprove such applications, all in accordance with section twelve, article eight of this chapter;

(9) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with the provisions of
section seven, article seven of this chapter;

(10) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of a national banking association, or merge or consolidate with a national banking association to form a resulting state bank in accordance with the provisions of section seven, article seven of this chapter; and

(11) In addition to any authority granted pursuant to section twelve, article eight of this chapter, incident to the approval of an application pursuant to subdivision (7) or (8) of this subsection, permit the bank the application of which is so approved to operate its banking business under its name from the premises of the bank the business and assets of which have been purchased and the liabilities of which have been assumed by such applicant bank or with which such applicant bank has merged or consolidated: Provided, That such permission may be granted only if the board has made the findings required by subsection (f), section three of this article and such applicant bank has no common directors or officers nor common ownership of stock exceeding ten percent of total outstanding voting stock with the bank whose business and assets are being purchased and liabilities assumed, or with whom such applicant bank is being merged.

(c) No provision of this section shall be construed to alter, reduce or modify the rights of shareholders, or obligations of a banking institution in regard to its shareholders, as set forth in section one hundred seventeen, article one, chapter thirty-one of this code and section seven, article seven of this chapter, and other applicable provisions of this code.

(d) Any order entered by the West Virginia board of banking and financial institutions pursuant to this section is a matter of public record.
AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of state banking institutions generally; the authorization to own real property; and determining how certain real estate is to be valued.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-13. Powers of state banking institutions generally.

(a) Any state-chartered banking institution shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell, exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description and provide customer services incidental to the business of banking, including, but not limited to, the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise.

Any state-chartered banking institution may accept, for payment at a future date, not to exceed one year, drafts drawn upon it by its customers. Any state-chartered
banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of, and otherwise manage wholly owned subsidiary corporations for purposes incident to the banking powers and services authorized by this chapter.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall in no case be carried on its books at a value greater than the actual cost: Provided, That such property shall be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That such investment hereafter made shall not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall be carried on its books at the lower of fair value or cost as defined in rules promulgated by the commissioner of banking, subject to the following limitations:

(1) Such as shall be mortgaged to it in good faith as security for debts in its favor;

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and

(3) Such as it shall purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions two and three of subsec-
tion (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

(f) No state-chartered banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

CHAPTER 12

(Com. Sub. for H. B. 2249—By Delegates Williams, Carper, Phillips, H. While, Rutledge and Harrison)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the borrowing by an officer or director of any banking institution or by the commissioner of banking or any employee of the department of banking.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, 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:

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to officers and employees of banks and banking department; exceptions; valuation of securities.
(a) (1) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(2) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term “loans and extensions of credit” shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the commissioner of banking, such terms shall also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(B) The term “person” shall include an individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

(4) The limitations contained in this subsection shall be subject to the following exceptions:
(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus;

(B) The purchase of bankers' acceptances of the kind described in section thirteen of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia shall not be subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the state of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not
be subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when such loans or extensions of credit are approved by the commissioner of banking, shall not be subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to twenty-five percent of such capital and surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection.

(ii) If the bank’s files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations;

(I) (i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection, to a maximum limitation equal to twenty-five percent of such capital and surplus.
(ii) Loans and extensions of credit which arise from
the discount by dealers in livestock of paper given in
payment for livestock, which paper carries a full
recourse endorsement or unconditional guarantee of the
seller and which are secured by the livestock being sold,
shall be subject under this section, notwithstanding the
collateral requirements set forth in subdivision (2) of
this subsection, to a limitation of twenty-five percent of
such capital and surplus;

(J) Loans or extensions of credit to the student loan
marketing association shall not be subject to any
limitation based on capital and surplus; and

(K) Loans or extensions of credit to a corporation
owning the property in which that state-chartered
banking institution is located, when that state-chartered
banking institution has an unimpaired capital and
surplus of not less than one million dollars or when
approved in writing by the commissioner of banking,
shall not be subject to any limitation based on capital
and surplus.

(5) (A) The commissioner of banking may prescribe
rules and regulations to administer and carry out the
purposes of this subsection including rules or regula-
tions to define or further define terms used in this
subsection and to establish limits or requirements other
than those specified in this subsection for particular
classes or categories of loans or extensions of credit;

(B) The commissioner of banking may also prescribe
rules and regulations to deal with loans or extensions of
credit, which were not in violation of this section prior
to the effective date of this act, but which will be in
violation of this section upon the effective date of this
act; and

(C) The commissioner of banking also shall have
authority to determine when a loan putatively made to
a person shall for purposes of this subsection be
attributed to another person.

(b) (1) Except as hereinafter provided or otherwise
permitted by law, nothing herein contained shall
authorize the purchase by a state-chartered banking
institutions for its own account of any shares of stock of
any corporation: Provided, That a state-chartered
banking institution may purchase and sell securities and
stock without recourse, solely upon the order and for the
account of customers.

(2) In no event shall the total amount of investment
securities of any one obligor or maker held by a state-
chartered banking institution for its own account,
exceed fifteen percent of the unimpaired capital and
unimpaired surplus of that state-chartered banking
institution.

(3) For purposes of this subsection:

(A) The term "investment securities" shall include
marketable obligations, evidencing indebtedness of any
person in the form of stocks, bonds, notes and/or
debentures; "investment securities" may be further
defined by regulation of the commissioner of banking;
and

(B) The term "person" shall include any individual,
partnership, society, association, firm, institution,
company, public or private corporation, state, govern-
mental agency, bureau, department, division or instru-
mentality, political subdivision, county commission,
municipality, trust, syndicate, estate or any other legal
entity whatsoever, formed, created or existing under the
laws of this state or any other jurisdiction.

(4) The limitations contained in this subsection (b)
shall be subject to the following exceptions:

(A) Obligations of the United States;

(B) General obligations of any state or of any political
subdivision thereof;

(C) Obligations issued under authority of the Federal
Farm Loan Act, as amended, or issued by the thirteen
banks for cooperatives or any of them or the Federal
Home Loan Banks;

(D) Obligations which are insured by the secretary of
housing and urban development under Title XI of the
National Housing Act (12 USC § 1749aaa et seq.);

(E) Obligations which are insured by the secretary of housing and urban development hereafter in this sentence referred to as the "secretary" pursuant to section 207 of the National Housing Act (12 USC § 1713), if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States;

(F) Obligations, participations or other instruments of or issued by the federal national mortgage association or the government national mortgage association, or mortgages, obligations or other securities which are or ever have been sold by the federal home loan mortgage corporation pursuant to Section 305 or Section 306 of the Federal Home Loan Mortgage Corporation Act (12 USC § 1454 or § 1455);

(G) Obligations of the federal financing bank;

(H) Obligations or other instruments or securities of the student loan marketing association;

(I) Obligations of the environmental financing authority;

(J) Such obligations of any local public agency (as defined in Section 110(h) of the Housing Act of 1949 (42 USC § 1460 (h)) as are secured by an agreement between the local public agency and the secretary of housing and urban development in which the local public agency agrees to borrow from said secretary and said secretary agrees to lend to said local public agency, moneys in an aggregate amount which (together with any other moneys irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which moneys under the terms of said agreement are required to be used for such payments;

(K) Obligations of a public housing agency as that term is defined in the United States Housing Act of 1937, as amended, (42 USC Sec. 1401 et seq.) as are secured:
BANKS AND BANKING

(i) By an agreement between the public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such obligations, will suffice to pay the principal of such obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity;

(ii) By a pledge of annual contributions under an annual contributions contract between such public housing agency and the secretary if such contract shall contain the covenant by the secretary which is authorized by subsection (b) of Section 22 (Section 6 (g) (42 USC Sec. 1421a (b)) of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection (b), section twenty-two, shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations; or

(iii) By a pledge of both annual contributions under an annual contributions contract containing the covenant by the secretary which is authorized by Section 6 (g) of the United States Housing Act of 1937 (42 USC Sec. 1437d (g)) and a loan under an agreement between the local public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which, together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required
to be used for the purpose of paying the principal and
interest on such obligations at their maturity; and

(L) Obligations of a corporation owning the property
in which that state-chartered banking institution is
located when that state-chartered banking institution
has an unimpaired capital and surplus of not less than
one million dollars or when approved in writing by the
commissioner of banking.

(5) Notwithstanding any other provision in this
subsection, a state-chartered banking institution may
purchase for its own account shares of stock issued by
a corporation authorized to be created pursuant to Title
IX of the Housing and Urban Development Act of 1968
(42 USC Sec. 3931 et seq.) and may make investments
in a partnership, limited partnership, or joint venture
formed pursuant to section 907 (a) or 907 (c) of that act
(42 USC Sec. 3937 (a) or (c)), and may purchase shares
of stock issued by any West Virginia housing corpora-
tion and may make investments in loans and commit-
ments for loans to any such corporation: Provided, That
in no event shall the total amount of such stock held for
its own account and such investments in loans and
commitments made by the state-chartered banking
institution exceed at any time five percent of the
unimpaired capital and unimpaired surplus of that
state-chartered banking institution.

(6) Notwithstanding any other provision in this
subsection, a state-chartered banking institution may
purchase, for its own account, shares of stock of small
business investment companies chartered under the
laws of this state, which are licensed under the act of
Congress known as the “Small Business Investment Act
of 1958,” as amended, and of business development
corporations created and organized under the act of the
Legislature known as the “West Virginia Business
Development Corporation Act,” as amended: Provided,
That in no event shall any such state-chartered banking
institution hold shares of stock in small business
investment companies and/or business development
corporations in any amount aggregating more than
fifteen percent of the unimpaired capital and unim-
(7) Notwithstanding any other provision of this subsection, a state-chartered banking institution may purchase for its own account shares of stock of a bankers' bank or a bank holding company which owns or controls such bankers' bank, but in no event shall the total amount of such stock held by such state-chartered banking institution exceed at any time fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution and in no event shall the purchase of such stock result in that state-chartered banking institution acquiring more than twenty percent of any class of voting securities of such bankers' bank or of the bank holding company which owns or controls such bankers' bank.

(8) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations. Such investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations. The commissioner of banking may, from time to time, provide notice to state-chartered banking institutions of authorized investments under this paragraph.

(9) The commissioner of banking may prescribe rules and regulations to administer and carry out the purposes of this subsection, including rules and regulations to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) Loans to directors or executive officers are subject to the following limitations:

(1) A director or executive officer of any banking institution may not borrow, directly or indirectly, from a banking institution with which he is connected, any sum of money without the prior approval of a majority of the board of directors or discount committee of the
banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee. Such approval shall be by resolution adopted by a majority vote of such board or committee, exclusive of the director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or controls a majority of the stock of any corporation, or is a partner in any partnership, a loan to such corporation or partnership shall constitute a loan to such director or officer.

(3) For purposes of this subsection, an "executive officer" means:

(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policymaking functions of the bank or company, and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policymaking functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policymaking functions.

(d) The commissioner of banking and any employee of the department of banking may not borrow, directly or indirectly, any sum of money from a state chartered banking institution which is subject to examination by the commissioner or the department.
(e) Securities purchased by a banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of a security purchased at a premium, and charging to profit and loss a sum sufficient to bring it to par at maturity.

CHAPTER 13

(Com. Sub. for H. B. 2250—By Delegates Williams, Carper, Phillips, H. White, Rutledge and Harrison)

[Passed April 7, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to joint deposit accounts; payment, pledge or garnishment of joint accounts; notice requirements; limitation on liability of banking institutions; and rules to be promulgated by the commissioner.

Be it enacted by the Legislature of West Virginia:

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

§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts; notice requirements; pledges or garnishment of joint accounts; commissioner to promulgate rules.

(a) If any deposit in any banking institution be made by any person describing himself in making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid
trust than such description shall be given in writing to
the banking institution, in the event of the death of the
person so described as trustee, such deposit, or any part
thereof, together with the interest thereon, may be paid
to the person for whom the deposit was thus stated to
have been made.

(b) When a deposit is made by any person in the name
of such depositor and another or others and in form to
be paid to any one of such depositors, or the survivor
or survivors of them, such deposit, and any additions
thereto, made by any of such persons, upon the making
thereof, shall become the property of such persons as
joint tenants. All such deposits, together with all interest
thereon, shall be held for the exclusive use of the persons
so named, and may be paid to any one of them during
the lifetime of them, or to the survivor or survivors after
the death of any of them.

(c) Payment to any joint depositor and the receipt or
the acquittance of the one to whom such payment is
made shall be a valid and sufficient release and
discharge for all payments made on account of such
deposit, prior to the receipt by the banking institution
of notice in writing, signed by any one of such joint
tenants not to pay such deposit in accordance with the
terms thereof. Prior to the receipt of such notice no
banking institution shall be liable for the payment of
such sums.

(d) All owners of joint deposit accounts created
pursuant to this section shall be given written notice on
a form to be approved by the banking commissioner that
the entire balance of any such account may be paid to
a creditor or other claimant of any one of the joint
tenants pursuant to legal process, including, but not
limited to, garnishment, suggestion, or execution,
regardless of the receipt of any notice from any of the
joint tenants. Such notice shall also advise the owners
of a joint deposit account that the entire balance of any
such account may be paid to any of the named joint
tenants at any time; pledged as security to a banking
institution by any of the named joint tenants; or
otherwise encumbered at the request of any of the
named joint tenants unless written notice is given to the banking institution, signed by any one of the joint tenants, not to permit such payment, pledge or encumbrance.

(e) If a pledge or encumbrance of any joint account created pursuant to this section is made to a banking institution and the banking institution has not received, prior to the date of the pledge, any written notice signed by any one of the joint tenants prohibiting such a pledge or encumbrance, the banking institution shall not be liable to any one of the joint tenants for its recourse against the deposit in accordance with the terms of the pledge.

(f) A banking institution may pay the entire amount of a deposit account created pursuant to this section to a creditor or other claimant of any one of the joint tenants in response to legal process employed by the creditor including, but not limited to, garnishment, suggestion, or execution, regardless of any notice received from any of the joint tenants. Upon such payment, the banking institution shall be released and discharged from all payments on account of such deposit: Provided, That payment by a banking institution to any such creditor shall be without prejudice to any right or claim of any joint tenant against the creditor or any other person to recover his interest in the deposit.

(g) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the approval of forms and procedures required by this section.

CHAPTER 14

(Com. Sub. for H. B. 2002—By Delegate Kiss)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal section seventeen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact section eight, article six, chapter five of said code; and to amend and reenact sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code, all relating to bonding; authorizing state building commission to issue stated amount of financing and refinancing bonds for specified purposes; addressing powers and duties of school building authority; requiring attorney general be used for litigation matters; authorizing use of other professionals; authorizing emergency funds in accordance with authority guidelines; providing for individual higher education savings plans, tax treatment thereof and issuance of revenue bonds therefor; providing for disbursement of bond proceeds in accordance with resolution or trust agreement; deleting requirement that such proceeds and payments to sinking fund be deposited in state treasury; authorizing transfer of interest on debt service reserve funds to state treasury for authority's operational costs; authorizing deposit of county's net enrollment moneys to county's credit for three years rather than redistribution; acknowledging districts' comprehensive facilities plans; and providing that priority list of region-wide plan is one criteria rather than the basis for determining expenditure of funds.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article six, chapter five of said code be amended and reenacted; and that sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works' Miscellaneous Agencies, Commissions, Officers, 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 6. STATE BUILDING COMMISSION.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

(a) The commission is hereby empowered to raise the cost of a project, as defined in this article, by the issuance of state building revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Subject to the proceedings pursuant to which any bonds outstanding were authorized and issued pursuant to this article, the commission shall pledge the moneys in such special fund, except such part of the proceeds of sale of any bonds to be used to pay the cost of a project, for the payment of the principal of and interest on bonds issued pursuant to this article, such pledge to apply equally and ratably to separate series of bonds or upon such priorities as the commission shall determine. Such bonds shall be authorized by resolution of the commission which shall recite an estimate by the commission of such cost, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce such cost, less the amount of any funds, grant or grants, gift or gifts, contribution or contributions received, or in the opinion of the commission expected to be received, from the United States of America or from any other source. The acceptance by the commission of any and all such funds, grants, gifts and contributions, whether in money or in land, labor or materials, is hereby expressly authorized. All such bonds shall have and are hereby declared to have all the qualities of negotiable instru-
ments. Such bonds shall bear interest at not more than
twelve percent per annum, payable semiannually, and
shall mature in not more than forty years from their
date or dates, and may be made redeemable at the
option of the state, to be exercised by the commission,
at such price and under such terms and conditions, all
as the commission may fix prior to the issuance of such
bonds. The commission shall determine the form of such
bonds, including coupons, if any, to be attached thereto
to evidence the right of interest payments, which bonds
shall be signed by the chairman and secretary of the
commission, under the great seal of the state, attested
by the secretary of state, and the coupons, if any,
attached thereto shall bear the facsimile signature of the
chairman of the commission. In case any of the officers
whose signatures appear on the bonds or coupons issued
as hereinbefore authorized shall cease to be such officers
before the delivery of such bonds, such signatures shall
nevertheless be valid and sufficient for all purposes the
same as if they had remained in office until such
delivery. The commission shall fix the denominations of
such bonds, the principal and interest of which shall be
payable at the office of the treasurer of the state of West
Virginia, at the capitol of the state, or, at the option of
the holder, at some bank or trust company within or
without the state of West Virginia to be named in the
bonds, in such medium as may be determined by the
commission. The bonds and interest thereon shall be
exempt from taxation by the state of West Virginia, or
any county or municipality therein. The commission
may provide for the registration of such bonds in the
name of the owners as to principal alone, and as to both
principal and interest under such terms and conditions
as the commission may determine, and shall sell such
bonds in such manner as it may determine to be for the
best interest of the state, taking into consideration the
financial responsibility of the purchaser, and the terms
and conditions of the purchase, and especially the
availability of the proceeds of the bonds when required
for payment of the cost of the project, such sale to be
made at a price not lower than a price which, computed
upon standard tables of bond values, will show a net
return of not more than thirteen percent per annum to
the purchaser upon the amount paid therefor. The
proceeds of such bonds shall be used solely for the
payment of the cost of the project for which bonds were
issued, and shall be deposited and checked out as
provided by section five of this article, and under such
further restrictions, if any, as the commission may
provide. If the proceeds of bonds issued for a project or
a specific group of projects shall exceed the cost thereof,
the surplus shall be paid into the fund hereinafter
provided for payment of the principal and interest of
such bonds. Such fund may be used for the purchase of
any of the outstanding bonds payable from such fund at
the market price, but at not exceeding the price, if any,
at which such bonds shall in the same year be redeem-
able, and all bonds redeemed or purchased shall
forthwith be canceled, and shall not again be issued.
Prior to the preparation of definitive bonds, the
commission may, under like restrictions, issue tempor-
ary bonds with or without coupons, exchangeable for
definitive bonds upon the issuance of the latter.
Notwithstanding the provisions of sections nine and ten,
article six, chapter twelve of this code, revenue bonds
issued under the authority herein granted shall be
eligible as investments for the workers' compensation
fund, teachers retirement fund, division of public safety
death, disability and retirement fund, West Virginia
public employees retirement system and as security for
the deposit of all public funds. Such revenue bonds may
be issued without any other proceedings or the happen-
ing of any other conditions or things than those
proceedings, conditions and things which are specified
and required by this article, or by the constitution of the
state.

For all projects authorized under the provisions of
this article other than projects to be leased by the
commission to the regional jail and correctional facilities
authority, the aggregate amount of all issues of bonds
outstanding at one time shall not exceed sixty-two
million five hundred thousand dollars including the
renegotiation, reissuance or refinancing of any such
bonds, and no such project in connection with which
bonds are to be issued shall be initiated by the commission unless and until the Legislature, through enactment of general law, approves the purpose, the amount of bonds to be issued, and the total cost for such project, construction or acquisition.

For projects which are to be leased by the commission to the regional jail and correctional facilities authority, legislative approval pursuant to the provisions of this section shall not be required if such projects have otherwise been approved by the Legislature in accordance with the provisions of subsection (m), section five, article twenty, chapter thirty-one of this code, and the limitations on the amount of revenue bonds which may be issued by the commission and the project costs shall be governed by the terms of any concurrent resolution adopted pursuant to said subsection.

(b) Notwithstanding anything in this article to the contrary, the commission is authorized to issue bonds or otherwise finance or refinance the following projects, including the costs of issuance and sale of the bonds or financing, all necessary financial and legal expenses and creation of debt service reserve funds, in an amount not to exceed twenty-one million dollars:

(1) Any or all of the state office buildings and adjoining real property being lease-purchased in Beckley, Clarksburg, Fairmont, Huntington and Parkersburg: Provided, That no such building and adjoining real property shall be financed or refinanced unless such financing or refinancing is at an interest rate at one and one-half percent below the interest rate being paid by the current owner under the lease-purchase agreement;

(2) A facility to be obtained or constructed by the commission and leased to the division of motor vehicles; and

(3) Property and buildings needed for state spending units in an amount not to exceed three million dollars.

CHAPTER 18. EDUCATION

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

The school building authority has the power:

1. To sue and be sued, plead and be impleaded;
2. To have a seal and alter the same at pleasure;
3. To contract to acquire and to acquire, in the name of the authority by purchase, lease-purchase, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish such purposes;
4. To acquire, hold and dispose of real and personal property for its corporate purposes;
5. To make bylaws for the management and rule of its affairs;
6. To use the facilities, office, assistants and employees of the attorney general in all legal matters relating to litigation involving the authority;
7. Except as limited in subdivision (6), to appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation;
8. To make contracts and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by this article;
9. To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the
authority that its interests will be best served;

(10) To acquire by purchase, eminent domain or otherwise all real property or interests therein necessary or convenient to accomplish the purposes of this article;

(11) To require proper maintenance and insurance of any project authorized hereunder;

(12) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the revenues of the authority;

(13) To acquire land, buildings and capital improvements to existing school buildings and property, by lease from a private or public lessor for a term not to exceed twenty-five years, with or without an option to purchase pursuant to an investment contract with said lessor, for use as public school facilities on such terms and conditions as may be determined to be in the best interests of the authority and consistent with the purposes of this article;

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

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

(16) To contract for architectural, engineering or other professional services considered necessary or economical by the authority to provide consultative or other services to the authority or to any regional educational service agency or county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed therein, to inspect existing facilities or any project that has received or may receive funding from the authority, or to perform any other service considered by the
authority to be necessary or economical. Assistance to
the region or district may include the development of
preapproved systems, plans, designs, models or docu-
ments; advice or oversight on any plan or project; or any
other service that may be efficiently provided to
regional educational service agencies or county boards
by the authority;

(17) To provide funds on an emergency basis to repair
or replace property damaged by fire, flood, wind, storm,
earthquake or other natural occurrence, such funds to
be made available in accordance with guidelines of the
school building authority; and

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

§18-9D-5. School building authority authorized to offer
individual higher education savings plans.

(a) Legislative findings.—The Legislature hereby
finds and declares that:

(1) It is an essential function of state government to
encourage postsecondary education in order to increase
the education level of the residents of the state of West
Virginia.

(2) Tuition, fees and other costs at institutions of
higher education are difficult for many to afford and are
difficult to predict in order to enable individuals and
families to plan for the payment of such costs.

(3) Students in elementary and secondary schools
tend to achieve a higher standard of performance when
the payment of tuition, fees and other costs for their
higher education is secured.

(4) It is in the best interest of the people of the state
of West Virginia and is necessary for the public health,
safety and welfare to encourage state residents desiring
a higher education to enroll in institutions of higher
education in order to provide well-educated and in-
formed citizens.

(b) Purpose.—In light of the findings described in
subsection (a) of this section and in light of the purposes
of this article, the Legislature declares that the purpose of this section is to encourage higher education and the means of paying costs relating thereto by (1) authorizing establishment of higher education savings plan programs; and (2) providing funding for such programs through the sale and purchase of school building authority revenue bonds to be used to make capital improvements for primary and secondary educational facilities in this state, or through the sale and purchase of refunding revenue bonds, as provided in this article.

(c) Authorization.—The school building authority is authorized to offer to the general public one or more higher education savings plan programs. In order to establish, operate and maintain an efficient and effective program or programs, the school building authority shall have such additional powers as are necessary or reasonably desirable to implement such a program or programs. These additional powers shall include, but are not limited to, the power to:

(1) Issue revenue bonds in accordance with the provisions of this section and as authorized by this article;

(2) Permit employees of the state of West Virginia and its subdivisions to purchase through payroll deductions by their employer bonds of not less than one thousand dollar maturity increments when issued pursuant to this section;

(3) As deemed appropriate and practical, offer bond issues which take into consideration the various needs of different individuals participating in a higher education savings plan program;

(4) Offer a rate or rates of interest on bonds purchased pursuant to such a program which encourages maximum participation;

(5) Execute a separate trust agreement or agreements under section twelve of this article for bonds sold pursuant to an individual higher education savings plan program established under this section;

(6) Transfer available moneys of the school building
authority, including revenues, investment earnings on funds or accounts established in connection with the issuance of bonds and moneys available from any other source, to funds or accounts as may be necessary or desirable in establishing a higher education savings plan program, including, but not limited to, escrow funds, investment agreements or similar instruments:

(7) Establish program guidelines for the administration of a higher education savings plan program.

(d) Construction.—Other sections of this article which apply generally to bonds issued under this article shall apply to the revenue bonds or refunding revenue bonds issued under this section. If any language in this section conflicts with language in another section of this article, the language of this section shall control unless such a construction would be unlawful, or would not be in the public interest, or would be contrary to the statements of finding and purpose of this section.

(e) Tax treatment.—

(1) The amount which an individual expends during a taxable year in the purchase of revenue bonds or refunding revenue bonds issued pursuant to this section shall be allowed as a deduction from federal adjusted gross income for such year, or, if not fully deducted during such year, for the remaining four years, until fully deducted, for purposes of the tax imposed by article twenty-one, chapter eleven of this code, except as provided in subdivision (3) of this subsection.

(2) The interest which an individual earns on revenue bonds or refunding revenue bonds issued under this section shall not be subject to the tax imposed by article twenty-one, chapter eleven of this code, except as provided in subdivision (3) of this subsection.

(3) If the owner of a revenue bond or refunding revenue bonds purchased under this section sells it or receives the proceeds of such bond at maturity or otherwise during a taxable year and does not, within four years of the date of such sale or other disposition, expend an amount equal to such proceeds for tuition,
fees, books, reasonable room and board, and child care costs necessary to enable a person to attend an institution of higher education, such proceeds of sale or other disposition not so spent shall be taxed under article twenty-one, chapter eleven of this code, by application of the applicable rate to the taxpayer to the amount not so spent. The amount of tax imposed shall be due and payable on the fifteenth day of April of the taxable year immediately succeeding the fourth taxable year in which the bond was sold or otherwise disposed of.

(f) Confidentiality—The identity of any individual purchasing revenue bonds under this section, the amount of the bonds so purchased by any individual and the amount allowed as an income tax deduction shall be and remain confidential information: Provided, That nothing herein shall prohibit the disclosure of the number of individuals purchasing the bonds, the aggregate amount of bond purchased, or other general information which does not breach any individual's confidentiality.

(g) Reports.—The school building authority and the indenture trustee of an individual higher education savings plan program shall make such reports regarding such bonds to the tax commissioner and to the individuals of record who own the bonds with respect to bond principal and interest (and the years to which they relate) and such other matters as the tax commissioner may reasonably require. The reports required by this section shall be filed with the tax commissioner at least annually, at such time and in such manner as the tax commissioner may by regulation require.

§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

The issuance of revenue bonds under the provisions of this article shall be authorized from time to time by resolution or resolutions of the school building authority, which shall set forth the proposed projects and provide for the issuance of bonds in amounts sufficient, when sold as hereinafter provided, to provide moneys considered sufficient by the authority to pay such costs, less
the amounts of any other funds available for said costs
or from any appropriation, grant or gift therefor:
Provided, That bond issues from which bond revenues
are to be distributed in accordance with section fifteen
of this article shall not be required to set forth the
proposed projects in the resolution. Such resolution shall
prescribe the rights and duties of the bondholders and
the school building authority, and for such purpose may
prescribe the form of the trust agreement hereinafter
referred to. The bonds may be issued from time to time,
in such amounts, shall be of such series, bear such date
or dates, mature at such time or times not exceeding
forty years from their respective dates, bear interest at
such rate or rates; be in such denominations; be in such
form, either coupon or registered, carrying such
registration, exchangeability and interchangeability
privileges; be payable in such medium of payment and
at such place or places within or without the state; be
subject to such terms of redemption at such prices not
exceeding one hundred five percent of the principal
amount thereof; and be entitled to such priorities on the
revenues paid into the school building authority capital
improvements fund as may be provided in the resolution
authorizing the issuance of the bonds or in any trust
agreement made in connection therewith. The bonds
shall be signed by the governor, and by the president
or vice president of the authority, under the great seal
of the state, attested by the secretary of state, and the
coupons attached thereto shall bear the facsimile
signature of the president or vice president of the
authority. In case any of the officers whose signatures
appear on the bonds or coupons cease to be such officers
before the delivery of such bonds, such signatures shall
nevertheless be valid and sufficient for all purposes the
same as if such officers had remained in office until such
delivery. Such revenue bonds shall be sold in such
manner as the authority may determine to be for the
best interests of the state.

Any pledge of revenues for such revenue bonds made
by the school building authority shall be valid and
binding between the parties from the time the pledge
is made; and the revenues so pledged shall immediately
be subject to the lien of such pledge without any further physical delivery thereof or further act. The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge, and such pledge shall be a prior and superior charge over any other use of such revenues so pledged.

The proceeds of such bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in such manner and with such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter referred to securing the same. If the proceeds of such bonds, by error in calculations or otherwise, shall be less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, such additional bonds shall be considered to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued for such projects. If the proceeds of bonds issued for such projects exceed the cost thereof, the surplus may be used for such other projects as the school building authority may determine or in such other manner as the resolution authorizing such bonds may provide. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of such definitive bonds.

After the issuance of any of such revenue bonds, the revenues pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds and the revenue refunding bonds,
and bonds issued for combined purposes shall, together
with the interest thereon, be exempt from all taxation
by the state of West Virginia, or by any county, school
district, municipality or political subdivision thereof.

To meet the operational costs of the school building
authority, the school building authority may transfer to
a special revenue account in the state treasury interest
on any debt service reserve funds created within any
resolution authorizing the issue of bonds or any trust
agreement made in connection therewith, for expendi-
ture in accordance with legislative appropriation or
allocation of appropriation.

§18-9D-9. Issuance of revenue refunding bonds; use of
moneys; power to enter into escrow agree-
ments; call for redemption.

The issuance of revenue refunding bonds under the
provisions of this article shall be authorized by resolu-
tion of the school building authority and shall otherwise
be subject to the limitations, conditions and provisions
of other revenue bonds under this article. Such revenue
refunding bonds may be issued in an amount at the
option of the authority sufficient to pay either in part
or in full, together with interest earned on the invest-
ment of the proceeds thereof, whether or not at the time
of the issuance of the revenue refunding bonds the
hereafter mentioned bonds are payable or callable for
optional redemption: (1) The principal of such outstand-
ing bonds; (2) the redemption premium, if any, on such
outstanding bonds if they are to be redeemed prior to
maturity; (3) the interest due and payable on such
outstanding bonds to and including the maturity date
thereof or the first date upon which said outstanding
bonds are to be redeemed, including any interest
theretofore accrued and unpaid; and (4) all expenses of
the issuance and sale of said revenue refunding bonds,
including all necessary financial and legal expenses, and
also including the creation of initial debt service reserve
funds. Any existing moneys pledged with respect to the
outstanding bonds may be used for any or all of the
purposes stated in (1), (2), (3) and (4) above or may be
deposited in a sinking fund or reserve fund or other
funds for the issue of bonds which have been issued wholly or in part for the purpose of such refunding.

Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal, interest and redemption premium, if any, on such outstanding bonds which will not be immediately due and payable shall be deposited in trust, for the sole purpose of making such payments, in a banking institution chosen by the authority and in accordance with any provisions which may be included in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same. Any of the moneys so deposited in trust may, prior to the date on which such moneys will be needed for the payment of principal of, interest and redemption premium, if any, on such outstanding bonds, be invested and reinvested as determined by the authority, in whole or in part: (a) in direct obligations issued by the United States of America or one of its agencies or in direct obligations of the state of West Virginia; (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest; or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America, or direct obligations of the state of West Virginia, having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of and accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested money, will be sufficient to pay when due or called for redemption the bonds refunded, together with interest accrued and to accrue thereon and redemption premiums, if any, and such refunding bonds' proceeds or obligations so purchased therewith shall be deposited in escrow and held in trust for the payment and redemption of the bonds refunded:
Provided, That if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed in such manner as the authority shall by resolution determine, subject to the provisions of section five of this article. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds.

The authority to issue revenue refunding bonds shall be in addition to any other authority to refund bonds conferred by law.

The school building authority shall have power to enter into such escrow agreements with such bank or banks and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of the principal of and interest and redemption premiums on the revenue bonds refunded.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the authority shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call such revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the state treasurer or the bank acting as escrow agent of the refunding bond proceeds.
and the escrow agent appropriately instructed and authorized to give the required notices at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended purpose.


From the school building capital improvement fund the school building authority shall make periodic payments in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, as may be specified in the resolution of the authority authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed as specified in such resolution of trust agreement in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the school building authority, authorizing the issue and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

§18-9D-15. Legislative intent; distribution of money.

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds for the construction and maintenance of school facilities so as to meet the educational needs of the
people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facilities plan in relation to the needs of the individual student, the general school population, the communities served by the facilities, and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) The increase in local share paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which such increase in local share is pledged as security; and (3) any other moneys received by the authority may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board.

Fifty percent of the remaining available funds shall be allocated and distributed to each county board on the basis of its net enrollment as defined in section two, article nine-a of this chapter: Provided, That such moneys shall not be distributed to any county board whose region does not have an approved region-wide facilities plan or to any county board that is not prepared to commence expenditures of such funds during the fiscal year in which the moneys are distributed: Provided, however, That any moneys allocated to a county board and not distributed to that county board shall be deposited in an account to the credit of that county board, such principal amount to remain to the credit of and available to the county board for a period of three years. Any moneys which are unexpended after a three-year period shall be redistributed on the basis of net enrollment to those county boards then eligible for the receipt of net enrollment distributions in that fiscal year.

The remaining fifty percent of moneys available for distribution shall be allocated and expended on the basis of need and efficient use of resources, such basis to be
determined by the authority in accordance with the provisions of section sixteen of this article.

No local matching funds shall be required under the provisions of this subsection, and any county board may use the state moneys provided herein in conjunction with local funds derived from bonding or other source. Any county board may dedicate any allocations of state moneys pursuant to this subsection to the payment of local bonds used for purposes encompassed in an approved facilities plan or for the payment of bonds that are issued by the authority for the benefit of that county that are in addition to the bond moneys distributed in accordance with this subsection.

Moneys made available pursuant to this subsection that shall be expended on projects that benefit more than one district shall be apportioned among the districts in accordance with the formula encompassed in that portion of the facilities plan that addresses the project designed to benefit more than one district.

(c) To encourage regional educational service agencies and county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in subsection (b) of this section, any county board failing to expend money within three years of the allocation thereto shall forfeit such allocation and thereafter shall be ineligible for further net enrollment or other allocations pursuant to subsection (b) until the county board is ready to expend funds in accordance with an approved facilities plan. Any amount so forfeited shall be added to the total funds available for allocation and distribution in the next ensuing fiscal year.

(d) Distribution to the county boards may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to such guidelines as it shall adopt.

§18-9D-16. Facilities plans generally; need-based eligibility.

(a) To facilitate the goals as stated in section fifteen of this article and to assure the prudent and resourceful
expenditure of state funds, each regional educational
service agency created pursuant to section twenty-six,
article two of this chapter shall submit a region-wide
facilities plan that addresses the facilities needs of each
district within the region pursuant to such guidelines as
shall be adopted by the authority in accordance with this
section and in accordance with each district's compre-
hensive school facilities plan approved by the state
board of education. Any project receiving funding shall
be in furtherance of such approved region-wide facilities
plan.

(b) To assure efficiency and productivity in the
project approval process, the region-wide facilities plan
shall be submitted only after a preliminary plan, a plan
outline or a proposal for a plan has been submitted to
the authority. Selected members of the authority, which
selection shall include citizen members, shall then meet
promptly with those persons designated by the regional
educational service agency, including one person from
each county within the region, to attend the facilities
plan consultation. The purpose of the consultation is to
assure understanding of the general goals of the school
building authority and the specific goals encompassed
in the following criteria and to discuss ways the plan
may be structured to meet those goals.

(c) The guidelines for the development of a facilities
plan shall state the manner, timeline and process for
submission of any plan to the authority; such project
specifications as may be deemed appropriate by the
authority; and those matters which are deemed by the
authority to be important reflections of how the project
will further the overall goals of the authority.

The guidelines regarding submission of the plans
shall include requirements for public hearings, com-
ments or other means of providing broad-based input
within a reasonable time period as the authority may
deeem appropriate. The submission of each facilities plan
shall be accompanied by a synopsis of all comments
received and a formal comment by each county board
included in the region. The guidelines regarding project
specifications may include such matters as energy
efficiency, preferred siting, construction materials, maintenance plans or any other matter related to how the capital improvement project is to proceed. The guidelines pertaining to quality education shall require that a facilities plan address how the current facilities do not meet and the proposed plan and any project thereunder does meet the following goals:

(1) Student health and safety;

(2) Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility utilization and pupil-teacher ratios;

(3) Reasonable travel time and practical means of addressing other demographic considerations;

(4) Multi-county and regional planning to achieve the most effective and efficient instructional delivery system;

(5) Curriculum improvement and diversification, including computerization and technology and advanced senior courses in science, mathematics, language arts and social studies;

(6) Innovations in education such as year-round schools and community-based programs; and

(7) Adequate space for projected student enrollments.

If the project is to benefit more than one county in the region, the facilities plan shall state the manner in which the cost and funding of the project shall be apportioned among the counties.

(d) Each plan shall prioritize all the projects both within a county and among the counties, which priority list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, each regional educational service agency shall make determinations in accordance with the objective criteria formulated by the school building authority.

(e) Each plan shall include the objective means to be
utilized in evaluating implementation of the overall plan
and each project included therein. Such evaluation shall
measure each project's furtherance of each goal stated
in this section and any guidelines adopted hereunder, as
well as the overall success of any project as it relates
to the facilities plan of its region and the overall goals
of the authority.

(f) The authority may adopt guidelines for requiring
that a regional educational service agency modify,
update, supplement or otherwise submit changes or
additions to an approved plan and shall provide
reasonable notification and sufficient time for such
change or addition.

CHAPTER 15

(Com. Sub. for S. B. 487—By Senators Minard, Wagner, Wiedebusch, Chernenko,
Bailey, Dittmar and Macnaughtan)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and seven, article eighteen, 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 eighteen-a, all relating to increasing the per diem for board members and tenants' rights to cable television; procedure for notifying landlord of request to cable operator to provide cable services; compensation for any physical damage to premises of landlord; availability of proceeding before cable board in the event of disagreement between landlord and cable operator; and protection of existing cable television services.

Be it enacted by the Legislature of West Virginia:

That sections four and seven, article eighteen, 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 eighteen-a, all to read as follows:
ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.

§5-18-4. Cable franchise required; franchising authority.
§5-18-7. Compensation and expenses of board members.

§5-18-4. Cable franchise required; franchising authority.

(a) No person may construct, operate or acquire a cable system, or extend an existing cable system outside its designated service area, without first obtaining a cable franchise from a franchising authority as provided in this article.

(b) Any person operating a cable system on the effective date of this article without a franchise shall, within sixty days of the effective date of this article, notify the board in writing setting forth: (1) The name, business address and telephone number of the cable operator; (2) the principals and ultimate beneficial owners of the cable system or systems; (3) the geographic location and service area of any cable system operated by such person; and (4) the number of subscribers within the cable system or systems. If the board shall not have been appointed and organized within sixty days of the effective date of this article, then such filing shall be made with the public service commission where such documents shall be retained for delivery to the board following the appointment and organization of its members.

(c) The board shall, upon receipt of such information, determine the appropriate franchising authority or authorities for the purposes of the consideration of the issuance of a franchise to such cable operator or operators and shall notify the appropriate franchising authority or authorities and any such cable system operator of the franchise application procedures to be followed by the respective parties. Any such cable operator shall, within sixty days of receipt of such notice from the board, make formal application to the appropriate franchising authority or authorities for a franchise
in accordance with the provisions of this article.

(d) The franchising authority shall be the municipality in which a cable system is to be constructed, operated, acquired or extended, or if there be no such municipality or if the municipality so elects not to act as a franchising authority, then the franchising authority shall be the county commission of the county in which such cable system is to be constructed, operated, acquired or extended: Provided, That nothing herein shall prohibit any county commission of a county in which a municipality acting as a franchising authority is located from also acting as a franchising authority for any cable system to be constructed, operated, acquired or extended within the jurisdiction of such county commission, nor prohibit any county commission of a county acquiring the franchise authority from a municipality from electing to transfer such authority to the board.

(e) If a county commission elects not to act as the franchise authority, the board shall become the franchise authority. 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 not to be the franchise authority, 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.

§5-18-7. Compensation and expenses of board members.

Each member of the board not otherwise employed by the state shall receive a per diem in the amount of fifty dollars while actually engaged in the performance of the duties of the board, which shall be paid out of the cable advisory board fund created under the provisions of this article. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of his or her duties. Each member shall receive meals, lodging and mileage
expense reimbursements at the rates established by rule of the secretary of the department of administration for in-state travel of public employees. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the chairman of the board.

ARTICLE 18A. TENANTS' RIGHTS TO CABLE SERVICES.


This article shall be known and may be cited as the “Tenants' Rights to Cable Services Act”.

§5-18A-2. Legislative findings.

The Legislature finds and declares as follows:

(a) Cable television has become an important medium of public communication and entertainment.

(b) It is in the public interest to assure apartment residents and other tenants of leased residential dwellings access to cable television service of a quality and cost comparable to service available to residents living in personally owned dwellings.

(c) It is in the public interest to afford apartment residents and other tenants of leased residential dwellings the opportunity to obtain cable television service of their choice and to prevent landlords from treating such residents and tenants as a captive market for the sale of television reception services selected or provided by the landlord.


As used in this article:
(a) "Board" means the West Virginia cable television advisory board created under the provisions of article eighteen of this chapter.

(b) "Cable operator" means any person or group of persons: (1) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

(c) "Cable service" or "cable television service" means: (1) The one-way transmission to subscribers of video programming or other programming service; and (2) subscriber interaction, if any, which is required for the selection of video programming or other programming service.

(d) "Cable system" means any facility within this state consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include: (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) 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 (3) a facility of a public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code, except to the extent that those facilities provide video programming directly to subscribers.

(e) "Cable television facilities" includes all antennas, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a cable operator in providing service to its subscribers.

(f) "Landlord" means a person owning, controlling, leasing, operating or managing the multiple dwelling premises.
(g) "Multiple dwelling premises" means any area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be occupied or leased for occupation, or actually occupied, as individual homes or residences for three or more households. The term includes mobile home parks.

(h) "Person" means an individual, partnership, associate, joint stock company, trust, corporation or governmental agency.

(i) "Tenant" means a person occupying single or multiple dwelling premises owned or controlled by a landlord but does not include an inmate or any person incarcerated or housed within any state institution.

§5-18A-4. Landlord-tenant relationship.

(a) A landlord may not:

1. Interfere with the installation, maintenance, operation or removal of cable television facilities upon his property or multiple dwelling premises, except that a landlord may require:

   (A) That the installation of cable television facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the multiple dwelling premises and the convenience and well-being of other tenants;

   (B) That the cable operator or the tenant or a combination thereof bear the entire cost of the installation or removal of such facilities; and

   (C) That the cable operator agrees to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities;

2. Demand or accept any payment from any tenant, in any form, in exchange for permitting cable television service on or within his property or multiple dwelling premises, or from any cable operator in exchange therefor except as may be determined to be just compensation in accordance with this article;
(3) Discriminate in rental charges, or otherwise, between tenants who receive cable television service and those who do not.

(b) Provisions relating to cable television service or satellite master antenna systems contained in rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.

(c) A cable operator may not enter into any agreement with the owners, lessees or persons controlling or managing the multiple dwelling premises served by a cable television, or do or permit any act, that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment.

(d) The cable operator shall retain ownership of all wiring and equipment used in any installation or upgrade of a cable system within any multiple dwelling premises.


Except as provided in this article, no landlord may demand or accept any payment from any cable operator in exchange for permitting cable television service or facilities on or within the landlord's property or multiple dwelling premises.


Every landlord is entitled to a single payment of just compensation for property taken by a cable operator for the installation of cable television service or facilities. The amount of just compensation, if not agreed between the landlord and cable operator, shall be determined by the board in accordance with this article upon application by the landlord pursuant to section nine of this article. A landlord is not entitled to just compensation in the event of a rebuild, upgrade or rewiring of cable television service or facilities by a cable operator.

A cable operator, upon receiving a request for service by a tenant or landlord, has the right to enter property of the landlord for the purpose of making surveys or other investigations preparatory to the installation. Before such entry, the cable operator shall serve notice upon the landlord and tenant, which notice shall contain the date of the entry and all other information described in subsection (b), section eight of this article. The cable operator is liable to the landlord for any damages caused by such entry but such damages shall not duplicate damages paid by the cable operator pursuant to section nine of this article.


(a) Every cable operator proposing to install cable television service or facilities upon the property of a landlord shall serve upon said landlord and tenant, or an authorized agent, written notice of intent thereof at least fifteen days prior to the commencement of such installation. Verbal notice to the tenant shall be legally sufficient if the date and time of entry is communicated to the tenant by either the landlord or cable operator at least twenty-four hours prior to entry.

(b) The board shall prescribe the procedure for service of such notice, and the form and content of such notice, which shall include, but need not be limited to:

(1) The name and address of the cable operator;
(2) The name and address of the landlord;
(3) The approximate date of the installation; and
(4) A citation to this act.

(c) Where the installation of cable television service or facilities is not effected pursuant to a notice served in accordance with this section, for whatever reason including denial of entry by the landlord, the cable operator may file with the board a petition, verified by an authorized person from the cable operator, setting forth:

(1) Proof of service of a notice of intent to install cable television service upon the landlord;
(2) The specific location of the real property;

(3) The resident address of the landlord, if known;

(4) A description of the facilities and equipment to be installed upon the property, including the type and method of installation and the anticipated costs thereof;

(5) The name of the individual or officer responsible for the actual installation;

(6) A statement that the cable operator shall indemnify the landlord for any damage caused in connection with the installation, including proof of insurance or other evidence of ability to indemnify the landlord;

(7) A statement that the installation shall be conducted without prejudice to the rights of the landlord to just compensation in accordance with section nine of this article;

(8) A summary of efforts by the cable operator to effect entry of the property for the installation; and

(9) A statement that the landlord is afforded the opportunity to answer the petition within twenty days from the receipt thereof, which answer must be responsive to the petition and may set forth any additional matter not contained in the petition.

If no appearance by the landlord is made in the proceeding or no answer filed within the time permitted, the board shall grant to the petitioning cable operator an order of entry, which order constitutes a ruling that the petitioning cable operator has complied with the requirements of this article. If the landlord files a written answer to the petition, the cable operator shall have ten days within which to reply to the answer. The board may grant or deny the petition, schedule an administrative hearing on any factual issues presented thereby or direct such other procedures as may be consistent with the installation of cable television service or facilities in accordance with this article. The only basis upon which the board may deny a petition by the cable operator is that the cable operator has not complied with the requirements of this article.
Within thirty days of the date of grant or denial of the petition, or issuance of any other order by the board following a hearing or other procedure, the cable operator or landlord may appeal such grant or denial or order of the board to the circuit court of Kanawha county. Any order issued by the board pursuant to this section may be enforced by an action seeking injunctive or mandamus relief in circuit court where the property is located.


(a) If the landlord and cable operator have not reached agreement on the amount of just compensation, a landlord may file with the board an application for just compensation within four months following the service by the cable operator of the notice described in section eight of this article, or within four months following the completion of the installation of the cable television facilities, whichever is later.

(b) An application for just compensation shall set forth specific facts relevant to the determination of just compensation. Such facts should include, but need not be limited to, a showing of:

(1) The location and amount of space occupied by the installation;

(2) The previous use of such space;

(3) The value of the applicant’s property before the installation of cable television facilities and the value of the applicant’s property subsequent to the installation of cable television facilities; and

(4) The method or methods used to determine such values. The board may, upon good cause shown, permit the filing of supplemental information at any time prior to final determination by the board.

(c) A copy of the application filed by the landlord for just compensation shall be served upon the cable operator making the installation and upon either the mayor or county commission of the municipality or county, respectively, in which the real property is located.
29 located when the municipality or county is the franchise authority.

31 (d) Responses to the application, if any, shall be served on all parties and on the board within twenty days from the service of the application.

34 (e) (1) The board shall within sixty days of the receipt of the application, make a preliminary finding of the amount of just compensation for the installation of cable television facilities.

(2) Either party may, within twenty days from the release date of the preliminary finding by the board setting the amount of just compensation, file a written request for a hearing. Upon timely receipt of such request, the board shall conduct a hearing on the issue of compensation.

(3) In determining just compensation, the board may consider evidence introduced including, but not limited to, the following:

(A) Evidence that a landlord has a specific alternative use for the space occupied or to be occupied by cable television facilities, the loss of which will result in a monetary loss to the owner;

(B) Evidence that installation of cable facilities upon such multiple dwelling premises will otherwise substantially interfere with the use and occupancy of such premises to the extent which causes a decrease in the resale or rental value; or

(C) Evidence of increase in the value of the property occurring by reason of the installation of the cable television facilities.

(4) For purposes of this article, the board shall presume that a landlord has received just compensation from a cable operator for the installation within a multiple dwelling premises if the landlord receives compensation in the amount of one dollar for each dwelling unit within the multiple dwelling premises or one hundred dollars for the entire multiple dwelling premises, whichever amount is more.
(5) If, after the filing of an application, the cable operator and the applicant agree upon the amount of just compensation, a hearing shall not be held on the issue.

(6) Within thirty days of the date of the notice of the decision of the board, either party may appeal the decision of the board in the circuit court of Kanawha county regarding the amount awarded as compensation.

§5-18A-10. Existing cable services protected.

Cable services being provided to tenants on the effective date of this article may not be prohibited or otherwise prevented so long as the tenant continues to request such services.


Notwithstanding any provision in this article to the contrary, a landlord and cable operator may by mutual agreement establish the terms and conditions upon which cable television facilities are to be installed within a multiple dwelling premises without having to comply with the provisions of this article.

CHAPTER 16

(Com. Sub. for S. B. 407—By Senators Burdette, Mr. President, Blatnik, Felton, Sharpe, Wagner and Boley)

[Passed April 8, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to the sale of preneed cemetery company property, goods and services; definitions; requirements for engaging in business as a cemetery company; fees; compliance agent; state treasury special account; exemptions; deposit in trust fund of percentage of proceeds from sale of property, goods and services required; contents of preneed cemetery company contracts; composition of trust account; payment of
certain expenses from trust account; exceptions; disbursement of trust funds; construction of mausoleums; records to be kept; financial report to tax commissioner; audit; appointment of trustee; fidelity bond of trustee; breach of contract; purpose of trust; liability of trustee; transfer of trust funds; advertisement of name of trustee; maintenance of cemetery property; prohibition of waiver; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. PRENEED CEMETERY COMPANY PROPERTY, GOODS AND SERVICES; RELATED CONTRACTS.

§35-5B-1. Definitions.
§35-5B-2. Information filing; fees, compliance agent.
§35-5B-3. Exemptions.
§35-5B-4. Deposit in preneed trust required; who may serve as trustee.
§35-5B-5. Requirements for preneed cemetery company contracts.
§35-5B-6. Identification of funds.
§35-5B-7. Corpus of trust account and income to remain in preneed trust account; exception.
§35-5B-8. Disbursement of trust funds upon performance of contract; mausoleum construction required.
§35-5B-9. Seller required to keep records.
§35-5B-10. Financial report and written assurance required.
§35-5B-11. Inclusion of property, goods and services to be delivered within one hundred twenty days.
§35-5B-12. Breach of contract by seller; trust to be single purpose trust.
§35-5B-13. Trustee may rely on certifications and affidavits.
§35-5B-14. Transfer of trust funds to another trustee.
§35-5B-15. Use of trustee's name in advertisements.
§35-5B-16. Cemetery property maintained by cemetery company.
§35-5B-17. Waiver of article void.
§35-5B-18. Violation a misdemeanor.

§35-5B-1. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

4 (1) "Burial vault" means a protective container for a
(2) "Cemetery" means and includes all land and appurtenances including roadways, office buildings, outbuildings and other structures used or intended to be used for or in connection with the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property does not constitute the creation of a cemetery.

(3) "Cemetery company" or "seller" means any person, partnership, firm or corporation engaged in the business of operating a cemetery or selling property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or goods or performance of the service may be delayed later than one hundred twenty days after receipt of the initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

(4) "Commissioner" or "tax commissioner" means the secretary of the West Virginia department of tax and revenue.

(5) "Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this article.

(6) "Cost requirement" means the total cost to the seller of the property, goods or services subject to the deposit requirements of section four of this article required by that seller's total contracts.

(7) "Delivery" means that the seller has transferred physical possession of the identified goods, has attached or installed such goods at the designated interment
space or has actually furnished preneed cemetery company contract services. In the case of preneed goods which are identified with the name of the buyer or other contract beneficiary, "delivery" may also occur when:

(A) The seller pays for and stores the goods at the cemetery where they are intended to be used; or (B) the seller has paid the supplier of such goods and the supplier has caused such merchandise to be manufactured and stored, has caused title to such merchandise to be transferred to the buyer or other contract beneficiary and has agreed to ship such merchandise upon his or her request.

(8) "Grave" means a below-ground right of interment.

(9) "Interment" means the disposition of human remains by earth burial, entombment or inurnment.

(10) "Lawn crypt" means a burial receptacle, usually constructed of reinforced concrete, installed underground in quantity on gravel or tile underlay. Each crypt becomes an integral part of the given garden area and is considered real property.

(11) "Marker base" means the visible part of the base or foundation upon which the memorial, marker or monument rests and is considered personal property.

(12) "Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

(13) "Memorials, markers or monuments" means the object used to identify the deceased including the base and is considered personal property.

(14) "Opening and closing or interment service" means any service associated with the excavation and filling in of a grave in a manner which will not disturb or invade adjacent grave sites.

(15) "Preneed" means at any time other than either at the time of death or while death is imminent.

(16) "Preneed cemetery company contract" means a contract for the sale of real and personal property, goods
or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than one hundred twenty days after the receipt of initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

(17) “Seller’s trust account” means the total specific funds deposited from all of a specific seller’s contracts, plus income on such funds allotted to that seller.

(18) “Specific trust funds” means funds identified with a certain preneed cemetery company contract for personal property, goods or services.

(19) “Trustee” means any natural person, partnership or corporation, including any bank, trust company, broker-dealer, foreign state charter trust, savings and loan association or credit union which receives money in trust pursuant to any agreement or contract made pursuant to the provisions of this article.

§35-5B-2. Information filing; fees, compliance agent.

On or after the first day of July, one thousand nine hundred ninety-three, no person, partnership, firm or corporation may engage in the business of operating a cemetery company in this state without having first paid an annual registration fee established by the tax commissioner in an amount not to exceed four hundred dollars, and filing with the tax commissioner certain information which shall include the name and addresses of all officers, owners and directors of the cemetery company and the name of the designated compliance agent. The cemetery company shall notify the tax commissioner of any changes in the information required to be filed within ninety days of the date on which the change occurs. A new filing shall also be
required if there is a change in the ownership of the
cemetery company or if there is a change in the name
of the compliance agent designated by the cemetery
company. The cemetery company shall pay an additional
fee as established by the commissioner in connection
with the reporting of such changes, not to exceed one
hundred dollars. There is hereby created in the state
treasury a special account to be known as the "cemetery
company account" into which all fees collected under
this article shall be deposited: Provided, That amounts
collected which are found from time to time to exceed
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. Funds in this account shall be expended
upon appropriation of the Legislature by the secretary
of tax and revenue in connection with the administration
of this article.

§35-5B-3. Exemptions.

The provisions of this article do not apply to:

(1) Sales of property, goods and services subject to the
provisions of article fourteen, chapter forty-seven of this
code;

(2) Sales of services by perpetual care cemeteries
subject to the provisions of article five-a of this chapter;

(3) Sales of property, goods and services by cemeteries
owned and operated by a county, municipal corporation,
by a church or by a nonstock corporation not operated
for profit if the cemetery: (A) Does not compensate any
officer or director except for reimbursement of reason-
able expenses incurred in the performance of official
duties; (B) does not sell or construct or directly or
indirectly contract for the sale or construction of vaults
or lawn or mausoleum crypts; and (C) uses proceeds
from the sale of all graves and entombment rights for
the sole purpose of defraying the direct expenses of
maintaining the cemetery;

(4) Sales of property, goods and services by commun-

ity cemeteries not operated for profit if the cemetery:
(A) Does not compensate any officer, owner or director except for reimbursement of reasonable expenses incurred in the performance of official duties; and (B) uses the proceeds from the sale of the graves for the sole purpose of defraying the direct expenses of maintaining its facilities; and

(5) Sales of property, goods and services by family cemeteries wherein lots or spaces are not offered for public sale.

§35-5B-4. Deposit in preneed trust required; who may serve as trustee.

(a) Each cemetery company shall deposit into an interest bearing trust fund forty percent of the receipts from the sale of property, goods or services purchased pursuant to a preneed cemetery company contract including sales of opening and closing or interment services, when the delivery thereof will be delayed more than one hundred twenty days from the initial payment on said contract. However, should the proceeds from the sale be financed through a lending institution, it shall be considered a cash sale. Deposits are required to be made by the cemetery company within thirty days after the close of the month in which said receipts are paid to it.

(b) If payment is made on an installment or deferred payment basis, the seller shall have the option of depositing into the trust fund forty percent of the amount of the principal initially, or alternatively, depositing forty percent of the principal of each payment within thirty days after the close of the month in which said receipts are paid to it.

(c) (1) The trustee of the trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, the trustee shall be approved by the tax commissioner. A trustee that is not a bank, savings and loan or other federally insured investment banking institution shall apply to the tax commissioner for approval, and the tax commissioner shall approve the
trustee when satisfied that:

(A) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others; and

(B) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.

(2) If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, in a sum equal to but not less than one hundred percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the tax commissioner.

(3) If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, and if it appears that an officer, director or employee of the trustee is dishonest, incompetent or reckless in the management of a trust fund required by the provisions of this article, the tax commissioner may bring an action in the circuit courts of this state to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

§35-5B-5. Requirements for preneed cemetery company contracts.

A preneed cemetery company contract shall:

(1) Be written in clear understandable language and printed in easy-to-read type, size and style;

(2) Identify the seller, the contract buyer and the person for whom the contract is bought if other than the contract buyer;

(3) Contain a complete description of the property, goods or services bought;

(4) Clearly disclose whether the price of the property,
§35-5B-6. Identification of funds.

Any funds deposited in the trust account as required by section four of this article shall be identified in the records of the seller by the contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed trust account for the purposes of the management thereof and the investment of funds therein.

§35-5B-7. Corpus of trust account and income to remain in preneed trust account; exception.

The corpus of the trust account shall remain intact until the property or goods are delivered or services performed as specified in the contract: Provided, That the net income from the preneed trust account may be used to pay any appropriate trustee and auditor fees, commissions and costs. The net income from the preneed trust account, after payment of any appropriate trustee and auditor fees, commissions and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon the written assurance to the trustee by a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the corpus of the trust account is in excess of the current cost requirements for all undelivered property, goods or services bought is guaranteed;

(5) Provide that if the particular property, goods and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property, goods and services similar in size and style and at least equal in quality of material and workmanship and that the representative of the deceased has the right to reasonably choose the property, goods or services to be substituted; and

(6) Be executed in duplicate and a signed copy given to the buyer.
services included in the seller's preneed cemetery company contracts including all outstanding preneed cemetery company contracts entered into prior to the first day of July, one thousand nine hundred ninety-three. The seller's cost requirements shall be based upon wholesale cost and certified in its records by a sworn affidavit by the compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal year.

§35-5B-8. Disbursement of trust funds upon performance of contract; mausoleum construction required.

(a) Upon performance of the preneed cemetery company contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified with the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property, goods or services and the consideration paid or to be paid therefor, to which the deposit requirements of this article apply. In such case the seller may, upon certification to the trustee of performance or delivery of such property, goods or services and of the amount of specific trust funds identified in its records with such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

(b) If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed cemetery company contract. In such case, upon performance of that portion of the contract identified with a particular individual, the seller may request, by certification in the manner described above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

(c) Any cemetery company that sells space in an unconstructed mausoleum must commence construction within seven years from the date of the first sale or when eighty percent of the spaces in the original
mausoleum plan are sold, whichever occurs first.

§35-5B-9. Seller required to keep records.

Each seller of a preneed cemetery company contract shall record and keep detailed accounts of all contracts and transactions regarding preneed cemetery company contracts and the records shall be subject to examination by the tax commissioner.

§35-5B-10. Financial report and written assurance required.

(a) The cemetery company shall report the following information to the tax commissioner within four months following the close of the cemetery company's fiscal year:

(1) The total amount of principal in the preneed trust account;

(2) The securities in which the preneed trust account is invested;

(3) The income received from the trust and the source of that income during the preceding fiscal year;

(4) An affidavit executed by the compliance agent that all provisions of this article applicable to the seller relating to preneed trust accounts have been complied with;

(5) The total receipts required to be deposited in the preneed trust account;

(6) All expenditures from the preneed trust account; and

(7) If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, proof, in a manner determined by the tax commissioner, that the fidelity bond required by the provisions of section four of this article has been secured and that it is in effect.

(b) The cemetery company shall employ an independent certified public accountant who is to audit the account and provide assurance, which assurance shall be
forwarded with the report required by subsection (a) of this section, that forty percent of the cash receipts from the sale of preneed property, goods or services which will not be delivered or performed within one hundred twenty days after receipt of the initial payment on account has been deposited in the account within thirty days after the close of the month in which the payment was received.

§35-5B-11. Inclusion of property, goods and services to be delivered within one hundred twenty days.

Nothing in this article prohibits the sale within the contract of preneed property, goods or services to be delivered within one hundred twenty days after the receipt of the initial payment on account of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property, goods or services not to be delivered or provided within one hundred twenty days after receipt of initial payment. If a contract does not so specify, the seller shall deposit forty percent of the total consideration for the entire contract.

§35-5B-12. Breach of contract by seller; trust to be single purpose trust.

(a) If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to or receive notice of any proceeding brought pursuant to this section relating to the performance of any other contract.

(b) The trust shall be a single purpose trust, and the trust funds are not available to any creditors as assets of the seller, nor may the seller encumber the trust funds.

§35-5B-13. Trustee may rely on certifications and affidavits.

The trustee may rely upon all certifications and
affidavits which have been made pursuant to the provisions of this article and is not liable to any person for such reasonable reliance.

§35-5B-14. Transfer of trust funds to another trustee.

The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another trustee qualified under the provisions of this article. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another trustee qualified under the provisions of this article.

§35-5B-15. Use of trustee's name in advertisements.

No person subject to the provisions of this article may use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

§35-5B-16. Cemetery property maintained by cemetery company.

With respect to cemetery property maintained by a cemetery company, the cemetery company is responsible for the performance of:

(1) The care and maintenance of the cemetery property it owns; and

(2) The opening and closing of all graves, crypts or niches for human remains in any cemetery property it owns.

§35-5B-17. Waiver of article void.

Any provision of any contract which purports to waive any provision of this article is void.

§35-5B-18. Violation a misdemeanor.

Any person who violates any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars for each occurrence, or
incarcerated in the county or regional jail for a term not to exceed one year, or both fined and incarcerated. Any person who violates any of the provisions of this article shall for a second offense be guilty of a felony and, upon conviction thereof, shall be fined not less than five hundred nor more than three thousand dollars, or incarcerated in the penitentiary not less than one nor more than three years, or, in the discretion of the court, be incarcerated in the county jail for a term not to exceed one year.

CHAPTER 17
(H. B. 2512—By Delegate Pethtel)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to homes and asylums of fraternal orders; membership of board of directors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. HOMES AND ASYLUMS OF FRATERNAL ORDERS.

§35-3-2. Regulations and boards for government.

Any such grand lodge desiring to establish a home or asylum shall adopt and prescribe such rules and regulations for the government and control thereof as may be deemed wise by such grand body; and it shall appoint a board of directors, trustees, regents or commissioners, composed of a specified number of persons from its own membership, not fewer than seven nor more than eleven, to serve for definite periods; and any such grand lodge may select for each of such boards two members from the associate branches of the orders, known as Pythian Sisters, Rebekahs, Eastern Star, or
other like organizations, as the case may be. Such board
shall have the management and control of the home or
asylum for which it is appointed, under the prescribed
rules and regulations adopted by said body for the
government thereof. Such board of directors, trustees,
regents or commissioners shall organize by the election
of a president, secretary and treasurer, and, if necessary
or expedient, an executive committee, all from its own
membership.

CHAPTER 18
(S. B. 464—By Senators Jones, Plymale and Holliday)
[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six,
chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the
purpose of the children's fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. GOVERNOR’S CABINET ON CHILDREN AND
FAMILIES.

§5-26-6. Children's fund created; purpose.

(a) The cabinet shall establish a children’s fund for the
sole purpose of awarding grants, loans and loan
guaranties for child abuse and neglect prevention
activities. Gifts, bequests or donations for this purpose,
in addition to appropriations to the fund, shall be
deposited in the state treasury in a special revenue
account that is independent from any executive or other
department of government, other than the office of the
governor. Any moneys deposited in the children's trust
fund created pursuant to article six-c, chapter forty-nine
of this code on the effective date of this section, and any
interest accruing to such fund, shall be deposited in the
children's fund created pursuant to this section, and the children's trust fund shall thereafter be discontinued.

(b) Each state taxpayer may voluntarily contribute a portion of the taxpayer's state income tax refund to the children's fund by so designating the contribution on the state personal income tax return form. The cabinet shall approve the wording of the designation on the income tax return form, which designation shall appear on tax forms as of the first day of January, one thousand nine hundred ninety-one. The tax commissioner shall determine by the first day of July of each year the total amount designated pursuant to this subsection and shall report that amount to the state treasurer, who shall credit that amount to the children's fund.

(c) All interest accruing from investment of moneys in the children's fund shall be credited to the fund, and the legislative auditor shall conduct an annual audit of the fund.

(d) Grants, loans and loan guaranties may be awarded from the children's fund by the cabinet for child abuse and neglect prevention activities.

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**CHAPTER 19**

(H. B. 2691—By Delegates Brown and Douglas)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]  

AN ACT to amend and reenact section six-a, article five-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article five-b of said chapter, all relating to maintaining a unified state system of predispositional detention for juveniles; including the juvenile justice committee, the state board of education, detention center personnel, juvenile probation officers in those groups giving input for the plan; requiring the development of policy and program goals for secure licensed facilities; requiring identifica-
tion of operational problems of secure detention centers, establishment of policies regarding overcrowding, security, violence, health needs, educational needs, transportation problems, staff problems and time limitations; requiring inclusion of statement of policies and goals regarding licensing, placement criteria, alternative placement, allocation of fiscal resources, information and referral services and educational regulations; requiring oversight by the legislative commission on juvenile law or their subcommittee and periodic review and updating of the plan; requiring the department of health and human resources to make a descriptive catalogue of its juvenile programs and services available to local communities; and requiring periodic updating of the catalogue.

Be it enacted by the Legislature of West Virginia:

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

Article
5A. Juvenile Referee System.
5B. West Virginia Juvenile Offender Rehabilitation Act.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6a. State plan for predisposition detention of juveniles.

1 (a) The secretary of the department of health and human resources and the legislative commission on juvenile law shall develop a comprehensive plan to maintain and improve a unified state system of predispositional detention for juveniles. The secretary and the commission plan shall consider recommendations from the division of corrections, the governor's committee on crime, delinquency and correction, the juvenile justice committee, the state board of education, detention center personnel, juvenile probation officers of the department of health and human resources and judicial and law-
enforcement officials from throughout the state.

The principal purpose of the plan shall be, through statements of policy and program goals, to provide for the effective and efficient use of juvenile detention facilities licensed or operated by local units of government and the state, including those operated regionally by the department of health and human resources.

(b) The plan shall identify operational problems of secure detention centers, including, but not limited to, overcrowding, security and violence within centers, difficulties in moving juveniles through the centers within required time periods, health needs, educational needs, transportation problems, staff turnover and morale and other perceived problem areas. The plan shall further provide recommendations directed to alleviate the problems.

(c) The plan shall include, but not be limited to, statements of policies and goals in the following areas:

(1) Licensing of secure detention centers;
(2) Criteria for placing juveniles in detention;
(3) Alternatives to secure detention;
(4) Allocation of fiscal resources to the costs of secure detention facilities;
(5) Information and referral services; and
(6) Educational regulations developed and approved by the West Virginia board of education.

(d) The legislative commission on juvenile law, or a designated subcommittee or task force thereof, shall act in a continuing capacity as an oversight committee, and shall assist the secretary of the department of health and human resources in the periodic review and update of the state plan for the predisposition detention of juveniles.

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.
§49-5B-7. Reporting requirements; cataloguing of services.

(a) The department of health and human resources shall from time to time, but not less often than annually, review its programs and services and submit a report to the governor, the Legislature and the supreme court of appeals, analyzing and evaluating the effectiveness of the programs and services being carried out by the department. Such report shall include, but not be limited to, an analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report, and shall further describe programs and services which should be implemented to further the purposes of this article. Such report shall also include, but not be limited to, relevant information concerning the number of children comprising the population of any rehabilitative facility during the period covered by the report, the length of residence, the nature of the problems of each child, the child’s response to programs and services and such other information as will enable a user of the report to ascertain the effectiveness of the facility as a rehabilitative facility.

(b) The department of health and human resources shall prepare a descriptive catalogue of its juvenile programs and services available in local communities throughout this state and shall distribute copies of the same to every juvenile court in the state and, at the direction of the juvenile court, such catalogue shall be distributed to attorneys practicing before such court. Such catalogue shall also be made available to members of the general public upon request. The catalogue shall contain sufficient information as to particular programs and services so as to enable a user of the catalogue to make inquiries and referrals. The catalogue shall be constructed so as to meaningfully identify and describe programs and services. The requirements of this section are not satisfied by a simple listing of specific agencies or the individuals in charge of programs at a given time. The catalogue shall be updated and republished or supplemented from time to time as may be required to maintain its usefulness as a resource manual.
CHAPTER 20

(S. B. 573—Originating in the Committee on Finance)

[Passed April 8, 1993; in effect July 1, 1993. 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 consolidated medical services fund; division of general services; division of health; division of human services; information services and communications; division of personnel; division of purchasing; West Virginia hospital finance authority; alcohol beverage control administration; attorney general; board of directors of the state college system; board of education; board of trustees of the university of West Virginia; department of education; division of public safety; tax division; division of banking; division of corrections; division of culture and history; division of forestry; division of highways; division of motor vehicles; governor's office; public service commission; railroad maintenance authority; state fire commission; state treasurer; supreme court of appeals; West Virginia development office; West Virginia state Senate; West Virginia state board of examiners for licensed practical nurses; and workers' compensation fund, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the
Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each 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 Consolidated Medical Services Fund:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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</thead>
<tbody>
<tr>
<td>(1) Doak, Cuppett &amp; Poling ..........</td>
<td>$15,167.99</td>
</tr>
<tr>
<td>(2) Tri Cities Health Service Corporation d/b/a H.C.A. River Park Hospital</td>
<td>$53,158.41</td>
</tr>
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</table>

(b) **Claim against the Division of General Services:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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</thead>
<tbody>
<tr>
<td>(1) Paul D. Marshall &amp; Assoc., Inc.</td>
<td>$210.00</td>
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</table>

(c) **Claims against the Division of Health:**

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<tr>
<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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</thead>
<tbody>
<tr>
<td>(1) Board of Trustees of the University of WV on behalf of WVU</td>
<td>$18,750.00</td>
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<table>
<thead>
<tr>
<th>(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8500-18)</th>
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<tbody>
<tr>
<td>(2) Appalachian Welding Supply Co., Inc.</td>
<td>$370.80</td>
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<tr>
<td>(3) A. A. Goodarzi, M.D.</td>
<td>$1,530.00</td>
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<tr>
<td>(4) William R. Hutton</td>
<td>$500.00</td>
</tr>
<tr>
<td>(5) IVAC Corporation</td>
<td>$1,447.71</td>
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<tr>
<td>(6) Welding, Incorporated</td>
<td>$4,000.00</td>
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<th>(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8509-14)</th>
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<tr>
<td>(7) Friden Alcatel Leasing</td>
<td>$319.20</td>
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(d) **Claims against the Division of Human Services:**

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<tr>
<th>(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 9150-01)</th>
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<tr>
<td>(1) Janet Y. Richmond</td>
<td>$290.95</td>
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(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 9155-10)

(2) Pressley Ridge School........................ $ 156,297.00

(e) Claim against Information Services and Communications:

(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8151)

(1) Computer Associates
    International, Inc. ......................... $ 24,254.09

(f) Claim against the Division of Personnel:

(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8402-14)

(1) Cornell University ......................... $ 475.00

(g) Claims against the Division of Purchasing:

(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8140)

(1) General Truck Sales Corporation $ 185.28
(2) Manpower Temporary Services...... $ 900.85
(3) Security America, Inc.................... $ 82.68

(h) Claim against the West Virginia Hospital Finance Authority:

(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8330)

(1) Bowles Rice McDavid
    Graff & Love ............................. $ 597.91

(i) Claims against the Alcohol Beverage Control Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Zane L. Metz, Sr. ......................... $ 29.45
(2) Robin D. Newhouse ......................... $ 152.24

(j) Claim against the Attorney General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Xerox Corporation ......................... $ 1,409.92

(k) Claims against the Board of Directors of the State College System:

(TO BE PAID FROM SPECIAL REVENUE FUND)
Claim against the Board of Education:

(1) The Board of Education of the County of McDowell, et al. $461,163.32

Provided, 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: Provided, however, That $461,163.32 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety-four, and ending no later than the last day of June, one thousand nine hundred ninety-five.

Claims against the Board of Trustees of the University of West Virginia:

(1) C & L Construction Company $33,654.02
(2) Capitol Business Interiors Division of Capitol Business Equipment, Inc. $4,300.00
(3) Scott Catherwood $305.00
(4) Cathy A. Ciesielski $157.50
(5) Ruth M. Smith $75.00
(6) Buhong Zheng $799.50

Claim against the Department of Education:

(1) Ralph Hugh Johnson, Jr. $203.00

Claims against the Division of Public Safety:

(1) Melinda B. Assi $5,000.00
(2) Keystone Helicopter Corporation $95,000.00

Claims against the Tax Division:
<table>
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<th>Claims</th>
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<td>108</td>
<td>(1)</td>
<td>Memorex Telex Corporation $ 864.24</td>
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<td>109</td>
<td>(2)</td>
<td>Motorola Inc., Computer Group Field Service Division $ 504.00</td>
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<td>Claim against the Division of Banking:</td>
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<td>(1)</td>
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<td>Claims against the Division of Corrections:</td>
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<td>117</td>
<td>(1)</td>
<td>AT &amp; T Communications $ 442.67</td>
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<td>(2)</td>
<td>AT &amp; T Corporation $ 293.63</td>
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<td>(3)</td>
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<td>Cabell County Commission $ 160,000.00</td>
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<td>Clay County Commission $ 8,396.57</td>
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<td>Doddridge County Commission $ 40,043.53</td>
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<td>(27)</td>
<td>Clarksburg Cardiology Consultants, Inc. $ 1,134.00</td>
</tr>
<tr>
<td>Page</td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
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</tr>
<tr>
<td>145</td>
<td>(28) Clint R. Lawson, Sr.</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>146</td>
<td>(29) Jacob C. Miller</td>
<td>$30,512.79</td>
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<td>147</td>
<td>(30) WV Regional Jail and Correctional Facility Authority</td>
<td>$419,456.00</td>
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<tr>
<td>149</td>
<td>(s) Claims against the Division of Culture and History</td>
<td></td>
</tr>
<tr>
<td>152</td>
<td>(1) City of Wheeling</td>
<td>$509.94</td>
</tr>
<tr>
<td>153</td>
<td>(2) Xerox Corporation</td>
<td>$360.00</td>
</tr>
<tr>
<td>154</td>
<td>(t) Claim against the Division of Forestry:</td>
<td></td>
</tr>
<tr>
<td>156</td>
<td>(1) Mark A. Metz</td>
<td>$1,245.68</td>
</tr>
<tr>
<td>159</td>
<td>(1) Danny L. and Sandra K. Ashworth</td>
<td>$1,542.28</td>
</tr>
<tr>
<td>160</td>
<td>(2) Edward Michael Boyle</td>
<td>$1,131.06</td>
</tr>
<tr>
<td>161</td>
<td>(3) John Carper</td>
<td>$51.94</td>
</tr>
<tr>
<td>162</td>
<td>(4) City of Grafton</td>
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</tr>
<tr>
<td>163</td>
<td>(5) Danny Ray Cook</td>
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</tr>
<tr>
<td>164</td>
<td>(6) Kerry P. Dillard and Susan R. Dillard</td>
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<tr>
<td>165</td>
<td>(7) Roy L. Drake, Jr.</td>
<td>$534.83</td>
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<tr>
<td>166</td>
<td>(8) Katherine Jean Dunn</td>
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<tr>
<td>167</td>
<td>(9) John Edwards</td>
<td>$3,140.67</td>
</tr>
<tr>
<td>169</td>
<td>(10) Wade and Gladys Marie Ferrebee</td>
<td>$500.00</td>
</tr>
<tr>
<td>170</td>
<td>(11) Herbert L. Flinn</td>
<td>$750.00</td>
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<tr>
<td>172</td>
<td>(12) Connie Given</td>
<td>$106.00</td>
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<tr>
<td>173</td>
<td>(13) Leonard Golden</td>
<td>$192.00</td>
</tr>
<tr>
<td>174</td>
<td>(14) Isabel N. Gordon</td>
<td>$250.88</td>
</tr>
<tr>
<td>175</td>
<td>(15) H. Steven Grass</td>
<td>$124.80</td>
</tr>
<tr>
<td>176</td>
<td>(16) Elmo Greer &amp; Sons, Inc.</td>
<td>$1,214,088.68</td>
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<tr>
<td>177</td>
<td>(17) William L. Harding</td>
<td>$1,063.86</td>
</tr>
<tr>
<td>178</td>
<td>(18) Bernard D. Henline</td>
<td>$576.00</td>
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<tr>
<td>179</td>
<td>(19) Ernest A. Johnson</td>
<td>$4,003.10</td>
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<tr>
<td>180</td>
<td>(20) Angela D. Kirk</td>
<td>$82.77</td>
</tr>
<tr>
<td>181</td>
<td>(21) Cynthia J. Mahafkey</td>
<td>$1,251.76</td>
</tr>
<tr>
<td>182</td>
<td>(22) Lloyd J. Moore</td>
<td>$500.00</td>
</tr>
<tr>
<td>Claim Number</td>
<td>Name and Address</td>
<td>Total Amount</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>183</td>
<td>Joseph F. Myers</td>
<td>$95.35</td>
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<tr>
<td>184</td>
<td>Letha E. Reynolds</td>
<td>$300.00</td>
</tr>
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<td>185</td>
<td>Deborah J. Robinson</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>186</td>
<td>David Scott</td>
<td>$500.00</td>
</tr>
<tr>
<td>187</td>
<td>Larry D. and Evelyn L. Shriver</td>
<td>$100.00</td>
</tr>
<tr>
<td>188</td>
<td>Phyllis Shupe</td>
<td>$500.00</td>
</tr>
<tr>
<td>189</td>
<td>John W. Singleton, Jr.</td>
<td>$100.00</td>
</tr>
<tr>
<td>190</td>
<td>James E. Symns</td>
<td>$402.00</td>
</tr>
<tr>
<td>191</td>
<td>Vecellio &amp; Grogan, Inc.</td>
<td>$172,130.32</td>
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<tr>
<td>192</td>
<td>David J. Wilburn, M.D.</td>
<td>$544.30</td>
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<tr>
<td>193</td>
<td>Larry A. Wilson and Mildred P. Wilson</td>
<td>$20,100.00</td>
</tr>
</tbody>
</table>

(v) Claims against the Division of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Name and Address</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>197</td>
<td>Potomac Highlands Guild</td>
<td>$7,650.00</td>
</tr>
<tr>
<td>198</td>
<td>Prestera Mental Health Center</td>
<td>$10,050.00</td>
</tr>
</tbody>
</table>

(w) Claim against the Governor's Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Name and Address</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>Nicholas County Commission</td>
<td>$11,855.77</td>
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</table>

(x) Claims against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Name and Address</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>204</td>
<td>GAI Consultants, Inc.</td>
<td>$12,359.33</td>
</tr>
<tr>
<td>205</td>
<td>Charles R. Roberts, Jr.</td>
<td>$520.80</td>
</tr>
<tr>
<td>206</td>
<td>West Publishing Company</td>
<td>$326.55</td>
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</tbody>
</table>

(y) Claim against the Railroad Maintenance Authority:

(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8344-06)

<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Name and Address</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>210</td>
<td>The Potomac Edison Company</td>
<td>$1,349.27</td>
</tr>
</tbody>
</table>

(z) Claim against the State Fire Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Name and Address</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>213</td>
<td>Lumberport Volunteer Fire Department</td>
<td>$6,630.44</td>
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</table>

(aa) Claim against the State Treasurer:

(TO BE PAID FROM GENERAL REVENUE FUND)
Ch. 20]

Claims

(1) Moore Business Forms .............. $ 971.71

(bb) Claims against the Supreme Court of Appeals:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Logan-Mingo Area Mental Health, Inc. ................................ $ 485.00
(2) Logan County Commission ................ $ 61,328.61

(cc) Claims against the West Virginia Development Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT & T Corporation ....................... $ 578.90
(2) Lowe's Home Centers, Inc. .............. $ 377.62

(dd) Claims against the West Virginia State Senate:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Sally L. Chestnut ......................... $ 300.00
(2) Jarrett Printing Company............... $ 7,920.00

(ee) Claims against the West Virginia State Board of Examiners for Licensed Practical Nurses:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Elsie S. Patterson ......................... $ 612.00
(2) Jacquelyn L. Titcher ..................... $ 396.00

(ff) Claims against the Workers' Compensation Fund:

(TO BE PAID FROM WORKERS' COMPENSATION FUND)

(1) Contract Business Interiors Co., Inc. ......................... $ 232.00
(2) McGhee & Company, Inc. ................. $ 355.20
(3) Unijax ........................................ $ 34.92
(4) Morris Square Associates, LTD ...... $ 3,344.47

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
CHAPTER 21

(H. B. 2686—By Delegates D. Cook, Johnson, Pettit, Warner, P. White, Leggett and M. Miller)

[Passed April 7, 1993; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment 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) Abraham, Louis W. and Pearl M., as guardians of Maria Annette Darby... $ 7,500.00
<table>
<thead>
<tr>
<th>No.</th>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Barker, Richard A.</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>17</td>
<td>Beaver, Anna G.</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>18</td>
<td>Beverage, Everett D.</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>19</td>
<td>Bittner, Matthew W.</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>20</td>
<td>Blankenship, LaDonna, as guardian of Ryan M. Wilson</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>21</td>
<td>Brady, Gerald L.</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>22</td>
<td>Brewster, Tracy L.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>23</td>
<td>Canby, Reba B.</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>24</td>
<td>Danehart, Thomas L.</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>25</td>
<td>Davis, Lee Ann</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>26</td>
<td>Davis, Leonard and Sharon, as guardians of Christopher Lee Dawson</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>27</td>
<td>Davis, Leonard and Sharon, as guardians of Herbert Samuel Dawson</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>28</td>
<td>Ditmore, Jeanne S.</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>29</td>
<td>Edge, Monica J.</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>30</td>
<td>Fields, Edward A., Jr., as guardian of James E. Fields</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>31</td>
<td>Fields, Edward A., Jr., as guardian of Corinna M. Fields</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>32</td>
<td>Hairston, James G.</td>
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</tr>
<tr>
<td>33</td>
<td>Harlow, Billie Jo.</td>
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</tr>
<tr>
<td>34</td>
<td>Harlow, Kimberlie</td>
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</tr>
<tr>
<td>35</td>
<td>Harlow, William T., Jr.</td>
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</tr>
<tr>
<td>36</td>
<td>Hawkins, Henry L.</td>
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<td>37</td>
<td>Hicks, Ronald J.</td>
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<tr>
<td>38</td>
<td>Hunt, Toni</td>
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<tr>
<td>39</td>
<td>Hustead, Gregory S.</td>
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<tr>
<td>40</td>
<td>Justus, Patricia</td>
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<tr>
<td>41</td>
<td>Justus, Patricia, as guardian of Joyce Ann Justus</td>
<td>$2,500.00</td>
</tr>
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<td>42</td>
<td>Justus, Patricia, as guardian of Tina Marie Justus</td>
<td>$2,500.00</td>
</tr>
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<td>43</td>
<td>Lawson, Charles Oliver</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>44</td>
<td>Lewis, Christopher L.</td>
<td>$2,500.00</td>
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<tr>
<td>45</td>
<td>Lewis, Phillip N.</td>
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<td>46</td>
<td>Lewis, Virginia C.</td>
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<td>47</td>
<td>Long, Edward T.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>48</td>
<td>Lowe, Woody L.</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>49</td>
<td>Lowe, Woody L., as guardian of Kevin W. Lowe</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>
CLAIMS [Ch. 22

(36) Lowe, Woody L., as guardian of Jeremy B. Lowe .. $ 5,000.00
(37) Mansfield, Clarence A. .......... $ 2,500.00
(38) Matney, Nancy, as guardian of Sandra Kaye Matney $ 2,500.00
(39) McCartney, Judy A. .......... $ 5,000.00
(40) McFarland, Michelle S. .... $ 1,000.00
(41) Miller, Robert L. .......... $ 5,000.00
(42) Parsons, Verlena J. ....... $ 5,000.00
(43) Pascual, Filomena .......... $ 5,000.00
(44) Proctor, Lamont L. .......... $ 1,000.00
(45) Raeon, Ernest L. .......... $ 15,000.00
(46) Randall, Ann, as guardian of Shemeika Lee Johnson $ 5,000.00
(47) Salisbury, Hobert G. :::::::: $ 1,000.00
(48) Scott, William J., as guardian of Leslie C. Scott $ 5,000.00
(49) Sigmon, Marcella C. .......... $ 10,000.00
(50) Thomas, Amanda B. ........ $ 1,000.00
(51) Thomas, Arthur R. .......... $ 17,000.00
(52) Thomas, Ozalia G. .......... $ 4,500.00
(53) Vickers, Carey A., father and next friend of Craig A. Vickers $ 15,000.00
(54) Wallace, Stephanie A., attorney-in-fact for Tuwyone Moore $ 15,000.00

TOTAL: ................................... $285,000.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants herein.

CHAPTER 22

(H. B. 2687—By Delegates Browning, Petersen, Rutledge, H. White, S. Cook, Leach and Hendricks)

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.
Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of education; division of human services; division of corrections; and division of culture and history, to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Department of Education:

   (TO BE PAID FROM GENERAL REVENUE FUND)

   (1) Irene Sellas .............................................. $ 265.00

(b) Claims against the Division of Human Services:

   (TO BE PAID FROM GENERAL REVENUE FUND)
<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Name of Business</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>32</td>
<td>Allen Funeral Home</td>
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<tr>
<td>33</td>
<td>Altmeyer Funeral Homes, Inc.</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>34</td>
<td>Barlow-Bonsall Funeral Home</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>35</td>
<td>Boyle Funeral Home</td>
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<tr>
<td>36</td>
<td>Brown Funeral Home</td>
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<tr>
<td>37</td>
<td>Carpenter &amp; Ford, Inc.</td>
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<td>38</td>
<td>Casdoroph &amp; Curry Funeral Home, Inc.</td>
<td>$ 325.00</td>
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<td>39</td>
<td>Chambers Funeral Home, Inc.</td>
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<tr>
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<td>Chambers-James Funeral Home</td>
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<tr>
<td>41</td>
<td>Chapman's Mortuary, Inc.</td>
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</tr>
<tr>
<td>42</td>
<td>Dodd-Payne-Hess Funeral Home</td>
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</tr>
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<td>43</td>
<td>Evans Funeral Home</td>
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<td>Evans Funeral Home, Inc.</td>
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<td>Fanning Funeral Home, Inc.</td>
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<td>46</td>
<td>Foglesong Funeral Home</td>
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<td>Frey Home for Funerals</td>
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<tr>
<td>48</td>
<td>Greco-Hertnick Funeral Home</td>
<td>$ 400.00</td>
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<tr>
<td>49</td>
<td>Greene-Robertson Funeral Home</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>50</td>
<td>Grisell Funeral Home, Inc.</td>
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<tr>
<td>51</td>
<td>Handley Funeral Home, Inc.</td>
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</tr>
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<td>52</td>
<td>Hastings Funeral Home, Inc.</td>
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<tr>
<td>53</td>
<td>Heck Funeral Home, Inc.</td>
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</tr>
<tr>
<td>54</td>
<td>Jones Funeral Home</td>
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</tr>
<tr>
<td>55</td>
<td>Keller Funeral Home, Inc.</td>
<td>$ 800.00</td>
</tr>
<tr>
<td>56</td>
<td>Kepner Funeral Homes, Inc.</td>
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</tr>
<tr>
<td>57</td>
<td>Kimes Funeral Home, Inc.</td>
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</tr>
<tr>
<td>58</td>
<td>Lambert-Tatman Funeral Home</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>59</td>
<td>Longanacre Funeral Home</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>60</td>
<td>Masters Funeral Home, Inc.</td>
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</tr>
<tr>
<td>61</td>
<td>McClumphry Mortuary</td>
<td>$ 325.00</td>
</tr>
<tr>
<td>62</td>
<td>Melton Mortuary, Inc.</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>63</td>
<td>Memorial Funeral Directory, Inc.</td>
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</tr>
<tr>
<td>64</td>
<td>Myers Funeral Home</td>
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</tr>
<tr>
<td>65</td>
<td>Nixon Funeral Home, Inc.</td>
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<td>66</td>
<td>Pennington Funeral Home</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>67</td>
<td>Pivont Funeral Service, Inc.</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>68</td>
<td>Poling-St. Clair Funeral Home, Inc.</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>69</td>
<td>Pryor Funeral Home</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>70</td>
<td>Raiguel Funeral Home, Inc.</td>
<td>$ 400.00</td>
</tr>
<tr>
<td>71</td>
<td>Schaeffer Funeral Home, Inc.</td>
<td>$ 725.00</td>
</tr>
<tr>
<td>72</td>
<td>Shanklin Funeral Home, Inc.</td>
<td>$ 325.00</td>
</tr>
<tr>
<td>73</td>
<td>Stockert-Gibson Funeral Home</td>
<td>$ 400.00</td>
</tr>
</tbody>
</table>
(c) **Claims against the Division of Corrections:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

81  
82  
83  (1) Paul Bachwitt, MD .......................... $ 522.00  
84  (2) Braxton County Memorial Hospital .... $ 4,786.62  
85  (3) Hubert H. Byron, Jr., DMD ....... $ 3,451.00  
86  (4) Healthcare Financial Services...... $ 441.80  
87  (5) Highlawn Pharmacy, Inc.......... $ 981.92  
88  (6) Richard C. Newhart, DDS ......... $ 75.00  
89  (7) Princeton Community Hospital ... $ 9,397.68  
90  (8) Radiology, Inc. ...................... $ 1,444.00  

(d) **Claim against the Division of Culture and History:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

92  
93  (1) Xerox Corporation ....................... $ 336.19

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**CHAPTER 23**

(Com. Sub. for H. B. 2219—By Delegates Hendricks, H. White, Harrison, Carper and Williams)

[Passed April 9, 1993, in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing merchants to charge and collect a late payment penalty fee for merchandise which is financed.

_Be it enacted by the Legislature of West Virginia:_

That section one hundred thirteen, 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:
§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

1 (1) In addition to the continuation of the sales finance charge or loan finance charge on a delinquent installment with respect to a nonprecomputed consumer credit sale or consumer loan, refinancing or consolidation, repayable in installments, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not less than one dollar or five percent of the unpaid installment not to exceed five dollars if five percent of the unpaid installment is greater than one dollar.

2 (2) A delinquency charge under subsection (1) may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

3 (3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

CHAPTER 24

(H. B. 2761—By Delegates Pethtel, Brum, Brown, L. White, Manuel, Pino and Tribett)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred ten, relating to the solicitation of or early presentment of postdated checks and providing civil penalties for violation of this section.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-110. Solicitation or cashing of postdated checks; penalties.

(a) No person may:

(1) Solicit or accept a postdated check with the intent of presenting it for payment prior to the date listed on the check; or

(2) Represent in any manner that postdating a check will prevent its payment from the account of the maker of the check prior to the date listed on the check; and either (A) present the check or cause the check to be presented for payment before the date on the check either intentionally, or (B) in the case of a payee that is an organization, present the check or cause the check to be presented without reasonable procedures to prevent such presentment.

(b) When a check is presented for payment from the account of the maker before the date of the check, no payee who knowingly accepted a postdated check may refuse, upon request of the maker of the postdated check, to immediately return the funds to the maker of the postdated check, to pay the fees and other costs incurred by the maker as a result of the early presentment of the check.

(c) If a person has violated the provisions of subsection (a) or (b) of this section, the maker has a cause of action to recover from that person the amount of the check, any fees or costs incurred and, in addition, a civil penalty, in an amount determined by the court, of not less than one hundred nor more than one thousand dollars.
CHAPTER 25
(Com. Sub. for S. B. 84—By Senators Minard and Sharpe)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred two, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the consumer credit and protection act; and providing a defense to persons who rely upon formal opinions of the attorney general and examination reports and declaratory rulings issued by the commissioner of banking.

Be it enacted by the Legislature of West Virginia:

That section one hundred two, article seven, 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 7. ADMINISTRATION.

§46A-7-102. Power of attorney general; reliance on rules of attorney general or commissioner of banking; duty to report.

(1) In addition to other powers granted by this chapter, the attorney general within the limitations provided by law may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter or commence proceedings on his own initiative;

(b) Counsel persons and groups on their rights and duties under this chapter;

(c) Establish programs for the education of consumers with respect to credit practices and problems;

(d) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public;

(e) Adopt, amend and repeal such reasonable rules
and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof; and

(f) Delegate his powers and duties under this chapter to qualified personnel in his office, who shall act under the direction and supervision of the attorney general and for whose acts he shall be responsible.

(2) Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the attorney general or commissioner, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason. Any form or procedure which has been submitted to the commissioner and the attorney general in writing and approved in writing by them shall not be deemed a violation of the penalty provisions of this chapter notwithstanding that such approval may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(3) Except for refund of an excess charge, in any action brought pursuant to the provisions of this chapter, it shall be a defense that the act or omission complained of was in conformity with a published opinion of the attorney general issued in compliance with section one, article three, chapter five of this code or in conformity with an examination report issued by the commissioner to the person against whom the action is brought pursuant to section six, article two, chapter thirty-one-a of this code, or a declaratory ruling issued to the person against whom the action is brought pursuant to subdivision (9), subsection (c), section four of said article.

(4) On or before the first day of December of each year, the attorney general and commissioner shall jointly or separately submit a report or reports to the governor and to the Legislature on the operation of their offices, on the use of consumer credit and on consumer protection problems in the state, and on the problems
of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making such report or reports, the attorney general and commissioner are authorized to conduct research and make appropriate studies. The report or reports shall include a description of the examination and investigation procedures and policies of their offices, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit and consumer protection problems of both creditors and consumers which have come to their attention through their examinations and investigations and the disposition of them under existing law, and a general statement of the activities of their offices and of others to promote the purposes of this chapter.

CHAPTER 26

(H. B. 2516—By Delegates Staton, Riggs, L. White and Reed)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the effect of recording certain contracts as to creditors and purchasers and eliminating the requirement that recordable memoranda of leases include the rentals or royalties to be charged and terms of payment thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS AND PURCHASERS.
§40-1-8. Effect of recording certain contracts as to creditors and purchasers; memorandum of lease may be recorded.

Any contract in writing made in respect to real estate or goods and chattels in consideration of marriage; or any contract in writing made for the conveyance or sale of real estate, or an interest or term therein of more than five years, or any other interest or term therein, of any duration, under which the whole or any part of the corpus of the estate may be taken, destroyed, or consumed, except for domestic use, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract were a deed conveying the estate or interest embraced in the contract. In lieu of the recording of a lease pursuant to this section, there may be recorded with like effect a memorandum of such lease, executed by all persons who are parties to the lease and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of lease thus entitled to be recorded shall contain at least the following information with respect to the lease: The name of the lessor and the name of the lessee and the addresses of such parties as set forth in the lease; a reference to the lease, with its date of execution; a description of the leased premises in the form contained in the lease; the term of the lease, with the date of commencement and the date of termination of such term, and if there is a right of extension or renewal, the maximum period for which, or date to which, the lease may be extended, or the number of times or date to which it may be renewed and the date or dates on which such rights of extension or renewal are exercisable. Such memorandum shall constitute notice of only the information contained therein.

CHAPTER 27

(Com. Sub. for S. B. 122—By Senators Plymale, Jones, Helmick, Brackenrich, Yoder, Walker, Wagner and Boley)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections nine and ten, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purpose, powers and duties of the jail and correctional facility standards commission and to the collection of revenues by the regional jail and correctional facilities development fund; requiring the commission to prescribe standards for the maintenance and operation of correctional facilities, county and regional jails; providing that the standards serve as guidelines only for certain jail facilities; requiring the commission to promulgate implementing rules; requiring the commission to develop a review process for facility standards; requiring periodic reports; requiring the commission to maintain county jails after a regional jail becomes available; setting guidelines for the charge and collection of revenues by the regional jail and correctional facilities development fund; directing the commission to permit and implement double bunking of inmates; and limiting charges assessed a county to one day per each twenty-four-hour period of inmate incarceration.

Be it enacted by the Legislature of West Virginia:

That sections nine and ten, article twenty, 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 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-9. Purpose, powers and duties.

§31-20-10. Regional jail and correctional facility development fund.

§31-20-9. Purpose, powers and duties.

(a) The purpose of the commission is to assure that proper minimum standards and procedures are developed for jail, work farm and correctional facility operation, maintenance and management of inmates for correctional facilities, regional jails and local jail facilities used as temporary holding facilities. In order to accomplish this purpose, the commission shall:
(1) Prescribe standards for the maintenance and operation of correctional facilities and county and regional jails. The standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; classification; inmate rules and discipline; inmate money and property; religious services; inmate work programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation: Provided, That the standards as developed for the construction, operation and maintenance of jails shall only apply to facilities completed after the fifth day of April, one thousand nine hundred eighty-eight, and that the standards shall serve only as guidelines for any jail facility in operation prior to that date: Provided, however, That the commission shall establish standards and procedures permitting and implementing in such facilities the double bunking of inmates in all appropriate cases to the extent that such a practice does not violate federal law.

(2) Promulgate the rules pursuant to the provisions of chapter twenty-nine-a of this code as are necessary to implement the provisions of this article, including, without limitation, minimum jail, work farm and correctional facility standards which shall be promulgated on or before the first day of July, one thousand nine hundred eighty-six.

(3) Develop a process for reviewing and updating the jail, work farm and correctional facility standards pursuant to the provisions of chapter twenty-nine-a of this code as may be necessary to assure that they conform to current law.

(4) Report periodically to the authority to advise and recommend actions to be taken by the authority to
implement proper minimum jail, work farm and correctional facility standards.

(b) Notwithstanding any other provision of this code to the contrary, any county commission providing and maintaining a jail on the effective date of this article shall not be required to provide and maintain a jail after a regional jail becomes available pursuant to the provisions of article twenty, chapter thirty-one of this code, unless the county commission determines that such a facility is necessary: Provided, That the county commission may provide and maintain a holding facility which complies with the standards set forth for such holding facilities in legislative rules promulgated by the jail and correctional facility standards commission or its predecessor, the jail and prison standards commission.

§31-20-10. Regional jail and correctional facility development fund.

(a) The regional jail and correctional facility development fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a revolving fund whereby all appropriations and payments thereto may be applied and reapplied by the authority for the purposes of this article. Separate accounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Revenues deposited into the fund may be used to make payments of interest and may be pledged as security for bonds, security interests or notes issued by the authority pursuant to this article.

(c) Whenever the authority determines that the balance in the fund is in excess of the immediate requirements of this article, it may request that such excess be invested until needed. In such case such excess shall be invested in a manner consistent with the investment of the temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

(d) If the authority determines that funds held in the
fund are in excess of the amount needed to carry out the purposes of this article, it shall take such action as is necessary to release such excess and transfer it to the general fund of the state treasury.

(e) The fund shall consist of the following:

(1) Amounts raised by the authority by the sale of bonds or other borrowing authorized by this article;

(2) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion into the fund;

(3) Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;

(4) All sums paid by the counties pursuant to subsection (h) of this section; and

(5) All interest earned on investments made by the state from moneys deposited in this fund.

(f) The amounts deposited in the fund shall be accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other borrowing authorized by this article shall be deposited in a separate account within the fund and expended for the purpose of construction and renovation of correctional facilities and regional jails for which need has been determined by the authority;

(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness or other obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been satisfied, the authority shall requisition from the fund such amounts as are necessary to provide for payment of the administrative expenses of this article;

(4) The authority shall requisition from the fund after any requirements of debt service have been satisfied such amounts as are necessary for the maintenance and operation of the correctional facilities or regional jails.
or both that are constructed pursuant to the plan required by this article and shall expend such amounts for such purpose. The fund shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in the fund and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted, the amounts expended in the respective regions from such sources shall be in proportion to the percentage the amount contributed to the fund by the counties in each region bears to the total amount received by the fund from such sources;

(5) Notwithstanding any other provisions of this article, sums paid into the fund by each county pursuant to subsection (h) of this section for each inmate shall be placed in a separate account and shall be requisitioned from the fund to pay for the costs specified in that subsection incurred at the regional jail facility at which each such inmate was incarcerated; and

(6) Any amounts deposited in the fund from other sources permitted by this article shall be expended in the respective regions based on particular needs to be determined by the authority.

(g) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.

(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility development fund a cost per day for each inmate so incarcerated to be determined by the regional jail and
correctional facility authority according to criteria and by procedures established by regulations pursuant to article three, chapter twenty-nine-a of this code to cover the costs of operating the regional jail facilities of this state to maintain each such inmate which costs shall not include the cost of construction, acquisition or renovation of said regional jail facilities: Provided, That each regional jail facility operating in this state shall keep a record of the date and time of the incarceration of an inmate, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than twenty-four hours. Thereafter, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of twenty-four hours pass from the original time of incarceration.

CHAPTER 28
(Com. Sub. for H. B. 2075—By Delegate Love)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article ten, chapter sixty-two of said code, all relating to correctional officers generally; defining the qualifications and duties of correctional officers; reducing the retraining requirements of correctional officers; and authorizing correctional officers to execute warrants when the person named in the warrant surrenders to the correctional officer.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article ten, chapter sixty-two of said code be amended and reenacted, all to read as follows:
Chapter
  7.  County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-16. Training and retraining programs for all correctional officers required.

  (a) The civil service commission of any such county shall establish or prescribe a training program which every correctional officer first appointed a correctional officer of such county on or after the effective date of this article must satisfactorily complete during his probationary period.

  (b) The civil service commission of any such county shall also establish or prescribe retraining programs of at least sixteen hours which every correctional officer, whether such correctional officer was first appointed before or after the effective date of this article, must satisfactorily complete annually after the effective date of this article, in order to continue as a correctional officer of such county.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 10. PREVENTION OF CRIME.


Sheriffs and each of their deputies are hereby authorized and empowered within their respective counties to make arrests for any crime for which a warrant has been issued in violation of any laws of the United States or of this state, and to make arrests without warrant for all violations of any of the criminal laws of the United States, or of this state, when committed in their presence. A county correctional officer may execute a warrant, issued for the arrest of a person, only when the person named in the warrant voluntarily surrenders to the correctional officer at the county jail at which the correctional officer is employed.
AN ACT to amend and reenact sections two and six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to open governmental proceedings; defining governing bodies of the Legislature; clarifying the powers of circuit courts to enforce the provisions of the article or to annul decisions of a governing body; expanding the time in which a civil action may be commenced, respecting actions taken or decisions made by governing bodies; authorizing awards for attorney fees and expenses; and providing limited civil liability for compensatory and punitive damages.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.


1 As used in this article:

2 (1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present;

7 (2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public;
(3) "Governing body" means the members of any public body having the authority to make decisions for or recommendations to a public body on policy or administration, the membership of which governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature shall be any standing, select or special committee as determined by the rules of the respective houses thereof;

(4) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter, but such term does not include (a) any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding; (b) any on-site inspection of any project or program, or (c) any political party caucus;

(5) "Political subdivision" means any county, county board of education or municipality in or any other political subdivision of this state;

(6) "Public body" means any executive, legislative or administrative body or agency of this state or any political subdivision, or any commission, board, council, bureau, committee or subcommittee or any other agency of any of the foregoing, and such term shall not be construed to include the judicial branch of government, state or local; and

(7) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the constituent membership of a governing body.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

The circuit court in the county where the public body regularly meets shall have jurisdiction to enforce this article upon civil action commenced by any citizen of this state within one hundred twenty days after the action complained of was taken or the decision complained of was made. Where such action seeks injunctive relief, no bond shall be required unless the petition appears to be without merit or made with the sole intent
of harassing or delaying or avoiding return by the
governing body.

The court is empowered to compel compliance or
enjoin noncompliance with the provisions of this article
and to annul a decision made in violation thereof. An
injunction may also order that subsequent actions be
taken or decisions be made in conformity with the
provisions of this article: Provided, That no bond issue
that has been passed or approved by any governing body
in this state may be annulled under this section if notice
of the meeting at which such bond issue was finally
considered was given at least ten days prior to such
meeting by a Class I legal advertisement published in
accordance with the provisions of article three, chapter
fifty-nine of this code in a qualified newspaper having
a general circulation in the geographic area represented
by that governing body.

Any order which compels compliance or enjoins non-
compliance with the provisions of this article, or which
annuls a decision made in violation of this article shall
include findings of fact and conclusions of law and shall
be recorded in the minutes of the governing body.

Upon entry of any such order, the court may, where
the court finds that the governing body intentionally
violated the provisions of this article, order such
governing body to pay the complaining person's neces-
sary attorney fees and expenses. Where the court, upon
denying the relief sought by the complaining person in
the action, finds that the action was frivolous or
commenced with the primary intent of harrassing the
governing body or any member thereof or, in the
absence of good faith, of delaying any meetings or
decisions of the governing body, the court may require
the complaining person to pay the governing body's
necessary attorney fees and expenses.

Any person who intentionally violates the provisions
of this article shall be liable in such action for compen-
satory and punitive damages not to exceed a total of five
hundred dollars.
AN ACT to amend and reenact section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating the misdemeanor offense of stalking and establishing the penalty therefor; defining the misdemeanor offense of stalking in violation of certain types of restraining orders and establishing the penalty therefor; creating the misdemeanor offense for the second subsequent offenses and establishing the penalty therefor; creating the felony offense for certain subsequent offenses and establishing the penalty therefor; providing for the conviction of subsequent offenses and establishing the penalty therefor; definitions; restraining orders; durations; exceptions; alternative sentencing; and counseling requirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; penalties; definitions.

1 (a) Any person who knowingly, willfully and repeatedly follows and harasses another person and who makes a credible threat with the intent to place that person in reasonable fear of death or serious bodily injury shall be guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not more than six months or fined not more than one thousand dollars, or both.

9 (b) Notwithstanding the provisions of section ten,
article two-a, chapter forty-eight of this code, any person
who violates the provisions of subsection (a) of this
section in violation of an order entered by a circuit
court, magistrate court or family law master, in effect
and entered pursuant to sections thirteen or fifteen,
article two, chapter forty-eight of this code or sections
five or six, article two-a, chapter forty-eight shall be
guilty of a misdemeanor and, upon conviction thereof,
shall be incarcerated in the county jail for not less than
ninety days nor more than one year or fined not less than
two thousand dollars nor more than five thousand
dollars, or both.

(c) A second conviction for a violation of this section
occurring within five years of a prior conviction is
punishable by incarceration in the county jail for not
less than ninety days nor more than one year or fined
not less than two thousand dollars nor more than five
thousand dollars, or both.

(d) A third or subsequent conviction for a violation of
this section occurring within five years of a prior
conviction is a felony punishable by incarceration in the
penitentiary for not less than one year nor more than
five years or fined not less than three thousand dollars
nor more than ten thousand dollars, or both.

(e) Notwithstanding any provision of this code, any
person against whom a permanent restraining order
issued pursuant to subsection (i) of this section who is
convicted of a second or subsequent violation of the
provisions of this section shall be incarcerated in the
county jail for not less than six months nor more than
one year, or fined not less than two thousand dollars nor
more than five thousand dollars, or both.

(f) For the purposes of this section:

(1) "Harasses" means knowing and willful conduct
directed at a specific person which is done with the
intent to cause mental injury or emotional distress.

(2) "Credible threat" means a threat made with the
apparent ability to carry out the threat so as to cause
the person who is the subject of the threat to be placed in reasonable apprehension of serious bodily injury. The credible threat must be against the life of or a threat to cause serious bodily injury to the subject of the threat.

(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the redress of grievances, including, but not limited to, any labor dispute, demonstration at the seat of federal, state, county or municipal government, activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

(h) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(i) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in such cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(j) It shall be a condition of bond for any person accused of the offense described in this section that the person shall have no contact, direct or indirect, verbal or physical, with the alleged victim.

(k) Nothing in this section shall be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.
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 ten-b, relating to creating the crimes of malicious assault, unlawful assault and assault and battery against police officers; and providing criminal penalties therefor.

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 ten-b, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, county or state correctional officers; penalties.

(a) Malicious assault. — If any person maliciously
shoots, stabs, cuts or wounds or by any means causes
bodily injury with intent to maim, disfigure, disable or
kill a police officer, county correctional officer or state
correctional officer acting in his or her official capacity
and the person committing the malicious assault knows
or has reason to know that the victim is a police officer,
conservation officer, county correctional officer or state
correctional officer acting in his or her official capacity,
then the offender shall be guilty of a felony, and, upon
conviction, shall be punished by confinement in the
penitentiary not less than three nor more than fifteen
years.

(b) Unlawful assault. — If any person unlawfully but
not maliciously shoots, stabs, cuts or wounds or by any
means causes a police officer, conservation officer,
CRIMES AND THEIR PUNISHMENT

17 county correctional officer acting in his or her official
capacity or state correctional officer bodily injury with
19 intent to maim, disfigure, disable or kill said officer and
20 the person committing the unlawful assault knows or
21 has reason to know that the victim is a police officer,
22 conservation officer, county correctional officer or state
23 correctional officer acting in his or her official capacity,
24 then the offender is guilty of a felony, and, upon
25 conviction, shall be confined to the penitentiary for a
26 period of not less than two years nor more than five
27 years.

(c) Battery. — If any person unlawfully and intention-
ally makes physical contact of an insulting or provoking
nature with a police officer, conservation officer, county
 correctional officer or state correctional officer acting in
his or her official capacity, or unlawfully and intention-
ally causes physical harm to a police officer, conserva-
tion officer, county correctional officer or state correc-
tional officer acting in such capacity, said person is
guilty of a misdemeanor, and, upon conviction thereof,
shall be confined to the county or regional jail for a
period of not less than forty-eight hours nor more than
twelve months or fined the sum of five hundred dollars
or both. If any person commits a second such offense,
then such person is guilty of a misdemeanor, and, upon
conviction, shall be confined in the county or regional
jail for a period of not less than ten days nor more than
twelve months. Any person who commits a third
violation of this section is guilty of a felony, and, upon
conviction, shall be confined in the penitentiary for a
period of not less than one year nor more than five years
or fined not more than one thousand dollars or both.

(d) Assault. — If any person unlawfully attempts to
commit a violent injury to the person of a police officer,
conservation officer, county correctional officer or state
 correctional officer, or unlawfully commits an act which
places a police officer, conservation officer, county
 correctional officer or state correctional officer acting in
his or her official capacity in reasonable apprehension
of immediately receiving a violent injury, he shall be
guilty of a misdemeanor, and, upon conviction, shall be
confined in the county or regional jail for not less than twenty-four hours nor more than six months, or fined not more than two hundred dollars, or both such fine and imprisonment.

(e) Police officer defined. — As used in this section, a police officer means any officer employed by the division of public safety, any county law-enforcement agency or any police officer employed by any city or municipality who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this state.

CHAPTER 32

(Com. Sub. for H. B. 2268—By Delegates Dempsey and Preece)

[Passed April 8, 1983; 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 fifteen-a, relating to assault or battery against an athletic official; and providing criminal penalties therefor.

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 fifteen-a, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-15a. Assault, battery on athletic officials; penalties.

1 (a) If any person commits an assault as defined in subsection (b), section nine of this article, to the person of an athletic official during the time the official is acting as an athletic official, the offender is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars, and imprisoned in the county jail not less than twenty-four hours nor more than thirty days.
(b) If any person commits a battery, as defined in subsection (c), section nine of this article, against an athletic official during the time the official is acting as an athletic official, the offender is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned in the county jail not less than twenty-four hours nor more than thirty days.

(c) For the purpose of this section, "athletic official" means a person at a sports event who enforces the rules of that event, such as an umpire or referee, or a person who supervises the participants, such as a coach.

CHAPTER 33
(H. B. 2652—By Delegates Pethtel and Staton)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the elements of the crime of burglary and daytime entering without breaking; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§61-3-11. Burglary; entry of dwelling or outhouse; penalties.

(a) Burglary shall be a felony and any person convicted thereof shall be confined in the penitentiary not less than one nor more than fifteen years. If any person shall, in the nighttime, break and enter, or enter without breaking, or shall, in the daytime, break and enter, the dwelling house, or an outhouse adjoining thereto or occupied therewith, of another, with intent to
commit a crime therein, he shall be deemed guilty of burglary.

(b) If any person shall, in the daytime, enter without breaking a dwelling house, or an outhouse adjoining thereto or occupied therewith, of another, with intent to commit a crime therein, he shall be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years.

(c) The term "dwelling house," as used in subsections (a) and (b) of this section, shall include, but not be limited to, a mobile home, house trailer, modular home, factory-built home or self-propelled motor home, used as a dwelling regularly or only from time to time, or any other nonmotive vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time.

CHAPTER 34

(H. B. 2102—By Delegates Carper, Phillips, Harrison and Williams)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four-a, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credit card crimes; defining terms; expanding the crime of forgery of a credit card and providing criminal penalties therefor; prohibiting traffic in counterfeit credit cards and providing criminal penalties therefor; prohibiting the use of revoked credit cards and providing criminal penalties therefor; prohibiting the possession or transfer of credit card making equipment and providing criminal penalties therefor; and prohibiting acquisition or possession of counterfeit credit cards and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section twenty-four-a, 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.

§61-3-24a. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.

1 (a) As used in this section:

2 (1) "Counterfeit credit card" means the following:

3 (A) Any credit card or a representation, depiction, facsimile, aspect or component thereof that is counterfeited, fictitious, altered, forged, lost, stolen, incomplete or obtained in violation of this section, or as part of a scheme to defraud; or

4 (B) Any invoice, voucher, sales draft or other reflection or manifestation of such a card.

5 (2) "Credit card making equipment" means any equipment, machine, plate mechanism, impression or any other contrivance which can be used to produce a credit card, a counterfeit credit card, or any aspect or component of either.

6 (3) "Traffic" means:

7 (A) To sell, transfer, distribute, dispense or otherwise dispose of any property; or

8 (B) To buy, receive, possess, obtain control of or use property with the intent to sell, transfer, distribute, dispense or otherwise dispose of such property.

9 (4) "Notice" means either information given in person or information given in writing to the person to whom the number, card or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, is prima facie evidence that such notice was duly received. A cardholder's
knowledge of the revocation of his or her credit card may be reasonably inferred by evidence that notice of such revocation was mailed to him or her, at least four days prior to his or her use or attempted use of the credit card, by first class mail at his or her last known address.

(b) (1) It is unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another beyond or without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of such revocation has been given to the person to whom issued.

(2) It is unlawful for any person knowingly to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor.

(3) Any person who violates any provision of this subsection, if the credit, goods, property, service or transmission is of the value of two hundred dollars or more, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in a penitentiary not less than one nor more than ten years; and if of less value, is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county or regional jail not exceeding one year or fined not more than five hundred dollars, or both imprisoned and fined. Any person convicted of an attempt to commit an offense under the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county or regional jail not exceeding six months or fined not less
than fifty nor more than three hundred dollars, or both
imprisoned and fined.

(c) A person is guilty of forgery of a credit card when
he or she makes, manufactures, presents, embosses,
alters or utters a credit card with intent to defraud any
person, issuer of credit or organization providing money,
goods, services, or anything else of value in exchange for
payment by credit card and he or she is guilty of a
felony, and, upon conviction thereof, shall be imprisoned
in the penitentiary not less than one nor more than ten
years, or be imprisoned in the county or regional jail not
more than one year and fined not less than fifty nor
more than five hundred dollars.

(d) Any person who traffics in or attempts to traffic
in ten or more counterfeit credit cards or credit card
account numbers of another in any six-month period is
guilty of a felony, and, upon conviction thereof, shall be
imprisoned in the penitentiary not less than one nor
more than ten years, or be imprisoned in the county or
regional jail not more than one year and fined not less
than fifty nor more than five hundred dollars.

(e) A person who receives, possesses, transfers, buys,
sells, controls or has custody of any credit card making
equipment with intent that the equipment be used in the
production of counterfeit credit cards is guilty of a
felony, and, upon conviction thereof, shall be imprisoned
in the penitentiary not less than one nor more than five
years, or be imprisoned in the county or regional jail not
more than one year and fined not less than five hundred
nor more than five thousand dollars.

(f) A person who receives, possesses, acquires, controls
or has custody of a counterfeit credit card is guilty of
a misdemeanor, and, upon conviction thereof, shall be
imprisoned in the county or regional jail not exceeding
six months or fined not less than fifty nor more than
three hundred dollars, or both fined and imprisoned.
AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-f, relating to crime and punishment; sex offender registry act; definitions; registration with division of public safety; period of registration; sharing information with other law-enforcement agencies; confidentiality; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-1. Short title.

This article may be cited as the “Sex Offender Registration Act”.

§61-8F-2. Registration.

Any person who has been convicted of a violation of the provisions described in article eight-b of this chapter or similar provisions in another jurisdiction shall, within thirty days of his or her moving into any county in which he or she resides or is temporarily domiciled for more than thirty days, register with the division of public safety.
§61-8F-3. Change of address.

1 When any person required to register under this article changes his or her residence or address, he or she shall inform the division of public safety of his or her new address, in writing, within ten days.

§61-8F-4. Duration.

1 Any person required to register under this article shall be required to do so for a period of ten years after conviction for the second offense defined herein if not imprisoned, and if imprisoned, for a period of ten years after release from prison by discharge or parole. A person is no longer required to register at the expiration of ten years from the date of initial registration, when that convicted person is not otherwise required, during such period, to register.

§61-8F-5. Confidentiality.

1 The information and documentation required in connection with the registration shall not be open to inspection by the public, or by any person other than a regularly employed peace or other law-enforcement officer acting in his or her capacity as a law-enforcement officer.

§61-8F-6. Duties of institution officials.

1 Any person required to register under this article, before parole or release, shall be informed of their duty to register by the official in charge of the place of confinement.

§61-8F-7. Information may be shared with other law-enforcement agencies.

1 The division of public safety may share information gathered pursuant to this article with federal, state and local law-enforcement agencies in this state and other states in the course of their official duties.

§61-8F-8. Failure to register; penalty.

1 Any person required to register under this article who knowingly and willfully violates any of the provisions thereof is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than fifty
dollars nor more than five hundred dollars, or impri-
soned in the county jail not more than one year, or both
fined and imprisoned.

CHAPTER 36
(S. B. 366—By Senators Wiedebusch, Plymale, Yoder, Ross and Dittmar)
[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article
twelve, chapter sixty-two of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to conditions of release on parole; and board of
parole’s authority to limit parolee’s place of residence.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.
§62-12-17. Conditions of release on parole.

1 Release on parole shall be upon the following
2 conditions:
3 (1) That the parolee shall not, during the period of his
4 parole, violate any criminal law of this or any other state
5 or of the United States.
6 (2) That he shall not, during the period of his parole,
7 leave the state without the consent of the board.
8 (3) That he shall comply with the rules and regula-
9 tions prescribed by the board for his supervision by the
10 probation and parole officer.
11 (4) That in every case wherein the parolee for a
12 conviction is seeking parole from an offense against a
13 child, defined in section twelve, article eight, chapter
14 sixty-one of this code; or articles eight-b and eight-d of
15 said chapter, or similar convictions from other jurisdic-
16 tions where the parolee is returning or attempting to
17 return to this state pursuant to the provisions of article
18 six, chapter twenty-eight of this code, the parolee shall
19 not live in the same residence as any minor child, nor
20 exercise visitation with any minor child and shall have
21 no contact with the victim of the offense.

22 In addition, the board may impose, subject to modi-
23 fication at any time, any other conditions which the
24 board may deem advisable.

CHAPTER 37
(S. B. 577—By Senators Ross, Dittmar and Yoder)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirteen,
chapter sixty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to allowing the commissioner of corrections to charge
parolees under the supervision of the division of
corrections a fee to help defray the increasing costs of
parole supervision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. CORRECTIONS MANAGEMENT.

*§62-13-2. Supervision of probationers and parolees; final
determinations remaining with board of
probation and parole.

1 The commissioner of corrections shall supervise all
2 persons released on parole under any law of this state
3 with the exception of those persons paroled pursuant to
4 section thirteen, article two, chapter forty-nine of this
5 code. The commissioner shall have authority to revoke

* Clerk’s Note: This section was also amended by S. B. 358 (Chapter 56),
which passed subsequent to this act.
the parole with appropriate due process. He shall also supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state parolee supervision. The commissioner shall prescribe rules and regulations for the supervision of probationers and parolees under his supervision and control and shall succeed to all administrative and supervisory powers of the board of probation and parole and the authority of said board of probation and parole in such matters only. The commissioner of corrections may charge persons under his or her supervision who are on parole a monthly fee to be determined by the commissioner, based upon the parolee's ability to pay, not to exceed twenty dollars per month to defray costs of supervision. All fees collected shall be placed into a special revenue account in the state treasury to be used to defray the expenses incurred. The commissioner shall consider the following factors in determining whether the parolee is financially able to pay the fee:

1. Current income prospects, taking into account seasonal variations in income;
2. Liquid assets, assets which may provide collateral to obtain funds and other assets which may be liquidated to provide funds to pay the fee;
3. Fixed debts and obligations, including federal, state and local taxes and medical expenses;
4. Child care, transportation and expenses necessary for employment;
5. Age or physical infirmity of resident family members; and
6. The consequences for the individual if a waiver or reduced fee is denied.

The commissioner of corrections shall administer all other laws affecting the custody, control, treatment and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the department.
The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from such institutions pursuant to the provisions of article twelve, chapter sixty-two of this code shall remain within the exclusive jurisdiction of the board of probation and parole.

CHAPTER 38
(Com. Sub. for H. B. 2671—By Mr. Speaker, Mr. Chambers, and Delegate Burk, By Request of the Executive)

[Passed April 10, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact sections one, five and eight-a, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to setting salary of the commissioner of culture and history; transferring responsibility for capitol visitor touring to the division of culture and history; adding definitions; providing for ad hoc committee to develop permit conditions and providing for director of historic preservation to chair committee; adding permit conditions to be addressed; requiring provision of information deemed necessary.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

§29-1-5. Archives and history commission.

§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.
(a) The division of culture and history and the office of commissioner of culture and history heretofore created are hereby continued. The governor shall nominate, and by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer of the division and shall be paid an annual salary of forty-five thousand dollars per year, notwithstanding the provisions of section two-a, article seven, chapter six of this code. The commissioner so appointed shall have: (1) A bachelor's degree in one of the fine arts, social sciences, library science or a related field; or (2) four years' experience in the administration of museum management, public administration, arts, history or a related field.

(b) The division shall consist of five sections as follows:

(1) The arts and humanities section;
(2) The archives and history section;
(3) The museums section;
(4) The historic preservation section; and
(5) The administrative section.

(c) The division shall also consist of two citizens commissions as follows:

(1) A commission on the arts; and
(2) A commission on archives and history.

(d) The commissioner shall exercise control and supervision of the division and shall be responsible for the projects, programs and actions of each of its sections. The purpose and duty of the division is to advance, foster and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark and care for historical, prehistorical, archaeological and significant architectural sites, structures and objects in the state; to encourage the promotion, preservation and development of significant sites, structures and objects through the use of economic development activities such as loans, subsidies,
grants and other incentives; to coordinate all cultural, historical and artistic activities in state government and at state-owned facilities; to acquire, preserve and classify books, documents, records and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the culture of the state.

(e) The division shall have jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia science and culture center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; "Camp Washington Carver" in Fayette County, as provided for in section fourteen of this article; and any other sites as may be transferred to or acquired by the division. Notwithstanding any provision of this code to the contrary, including the provisions of article one of chapter five-b of this code, beginning on and after the first day of July, one thousand nine hundred ninety-three, the division shall have responsibility for, and control of, all visitor touring and visitor tour guide activities within the state capitol building at Charleston.

(f) For the purposes of this article, "commissioner" means the commissioner of culture and history, and "division" means the division of culture and history.

§29-1-5. Archives and history commission.

The archives and history commission which is hereby created shall be composed of thirteen appointed members, two ex officio voting members and six ex officio nonvoting members as provided in this section.

The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

No more than seven of the appointed members may be of the same political party. Members of the commis-
sion should be appointed so as to fairly represent both
sexes, the ethnic and cultural diversity of the state and
the geographic regions of the state. The archives and
history commission shall contain the required profes-
sional representation necessary to carry out the provi-
sions of the National Historic Preservation Act of 1966,
as amended, and shall serve as the “state review board”
and shall follow all rules and regulations as specified
therein. This representation shall include the following
professions: Historian, architectural historian, historical
architect, archaeologist specializing in historic and
prehistoric archaeology, archivist, librarian and mu-
seum specialist.

The commission shall elect one of its members chair.
It shall meet at such time as shall be specified by the
chair. Notice of each meeting shall be given to each
member by the chair in compliance with the open
meetings law. A majority of the voting members shall
constitute a quorum for the transaction of business.

In addition to the thirteen appointed members, the
president of the state historical society and the president
of the state historical association shall serve as ex officio
voting members of the archives and history commission.
The director of the state geological and economic survey,
the president of the West Virginia preservation alliance,
inc., and the state historic preservation officer shall
serve as ex officio nonvoting members of the archives
and history commission.

The directors of the archives and history section, the
historic preservation section and the museums section
shall be ex officio nonvoting members of the commis-
sion. The director of the archives and history section
shall serve as secretary of the commission. The secre-
tary, or a majority of the members, may also call a
meeting upon such notice as provided in this section.

Each member or ex officio member of the commission
shall serve without compensation, but shall be reim-
bursed for all reasonable and necessary expenses
actually incurred in the performance of the duties of the
commission; except that in the event the expenses are
paid, or are to be paid, by a third party, the member
or ex officio member, as the case may be, shall not be
reimbursed by the state.

The commission shall have the following powers:

(a) To advise the commissioner and the directors of
the archives and history section, the historic preserva-
tion section and the museums section concerning the
accomplishment of the purposes of those sections and to
establish a state plan with respect thereto;

(b) To approve and distribute grants-in-aid and
awards from federal and state funds relating to the
purposes of the archives and history section, the historic
preservation section and the museums section;

(c) To request, accept or expend federal funds to
accomplish the purposes of the archives and history
section, the historic preservation section and the
museums section when federal law or regulations would
prohibit the same by the commissioner or section
director, but would permit the same to be done by the
archives and history commission;

(d) To otherwise encourage and promote the purposes
of the archives and history section, the historic preser-
vation section and the museums section;

(e) To approve rules and regulations concerning the
professional policies and functions of the archives and
history section, the historic preservation section and the
museums section as promulgated by the directors of
those sections;

(f) To advise and consent to the appointment of the
section directors by the commissioner; and

(g) To review and approve nominations to the state
and national registers of historic places.

§29-1-8a. Protection of human skeletal remains, grave
artifacts and grave markers; permits for
excavation and removal; penalties.

1 (a) Legislative findings and purpose.

2 The Legislature finds that there is a real and growing
threat to the safety and sanctity of unmarked human
grounds in West Virginia and the existing laws of the
state do not provide equal or adequate protection for all
such graves. As evident by the numerous incidents in
West Virginia which have resulted in the desecration of
human remains and vandalism to grave markers, there
is an immediate need to protect the graves of earlier
West Virginians from such desecration. Therefore, the
purpose of this article is to assure that all human burials
be accorded equal treatment and respect for human
dignity without reference to ethnic origins, cultural
backgrounds, or religious affiliations.

The Legislature also finds that those persons engaged
in the scientific study or recovery of artifacts which
have been acquired in accordance with the law are
engaged in legitimate and worthy scientific and educa­
tional activities. Therefore, this legislation is intended to
permit the appropriate pursuit of those lawful activities.

Finally, this legislation is not intended to interfere
with the normal activities of private property owners,
farmers, or those engaged in the development, mining
or improvement of real property.

(b) Definitions.

For the purposes of this section:

(1) “Human skeletal remains” means the bones, teeth,
hair or tissue of a deceased human body;

(2) “Unmarked grave” means any grave or location
where a human body or bodies have been buried or
deposited for at least fifty years and the grave or
location is not in a publicly or privately maintained
cemetery or in the care of a cemetery association, or is
located within such cemetery or in such care and is not
commonly marked;

(3) “Grave artifact” means any items of human
manufacture or use that are associated with the human
skeletal remains in a grave;

(4) “Grave marker” means any tomb, monument,
stone, ornament, mound, or other item of human
manufacture that is associated with a grave;

(5) "Person" includes the federal and state governments and any political subdivision of this state;

(6) "Disturb" means the excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way of human skeletal remains, unmarked graves, grave artifacts or grave markers;

(7) "Native American tribe" means any Indian tribe, band, nation, or organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(8) "Cultural affiliation" means the relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day group and an identifiable earlier group;

(9) "Lineal descendants" means any individuals tracing his or her ancestry directly or by proven kinship; and

(10) "Proven kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.

(c) Acts prohibited; penalties.

(1) No person may excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless such person has a valid permit issued to him or her by the director of the historic preservation section: Provided, That the supervising archaeologist of an archaeological investigation being undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder shall not be required to obtain such permit, but shall notify the director of the historic preservation section that such investigation is being undertaken and file reports as are required of persons issued a permit.
under this section: Provided, however, That projects being undertaken in compliance with section 106 of the National Historic Preservation Act of 1966, as amended, or subsection (a), section five of this article shall not be required to obtain such permit for excavation, removal, destruction or disturbance of historic or prehistoric ruins or archaeological sites.

A person who, either by himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any historic or prehistoric ruins, burial grounds or archaeological site, or unmarked grave, grave artifact or grave marker of historical significance without first having been issued a valid permit by the director of the historic preservation section, or who fails to comply with the terms and conditions of such permit, is guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the county jail for not less than ten days nor more than six months or both fined and imprisoned.

A person who, either by himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs human skeletal remains of historical significance without first having been issued a valid permit by the director of the historic preservation section, or who fails to comply with the terms and conditions relating to disinterment or displacement of human skeletal remains of such permit, is guilty of the felony of disinterment or displacement of a dead human body or parts thereof under section fourteen, article eight, chapter sixty-one of this code and, upon conviction, shall be confined in the state penitentiary not less than two nor more than five years.

A person who intentionally withholds information about the excavation, removal, destruction, or other disturbance of any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance is guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars, and may be imprisoned in the county
jail not more than ten days.

(2) No person may offer for sale or exchange any human skeletal remains, grave artifact or grave marker obtained in violation of this section.

A person who, either by himself or through an agent, offers for sale or exchange any human skeletal remains, grave artifact or grave marker obtained in violation of this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than one thousand dollars nor more than five thousand dollars, and may be imprisoned in the county jail not less than six months nor more than one year.

(3) Each instance of excavation, removal, destruction, disturbance or offering for sale or exchange under (1) and (2) of this subsection shall constitute a separate offense.

(d) Notification of discovery of human skeletal remains in unmarked locations.

Within forty-eight hours of the discovery of human skeletal remains, grave artifact or grave marker in an unmarked grave on any publicly or privately owned property, the person making such discovery shall notify the county sheriff of the discovery and its location. If the human remains, grave artifact or grave marker appear to be from an unmarked grave, the sheriff shall promptly, and prior to any further disturbance or removal of the remains, notify the director of the historic preservation section. The director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site: Provided, That when the discovery is made by an archaeological investigation permitted under state or federal law, the supervising archaeologist shall notify the director of the historic preservation section directly.

If the director of the historic preservation section determines that the site has no archaeological significance, the removal, transfer and disposition of the remains shall be subject to the provisions of article thirteen, chapter thirty-seven of this code, and the
If the director of historic preservation determines that the site has a potential for archaeological significance, the director shall take such action as is reasonable, necessary and prudent, including consultation with appropriate private or public organizations, to preserve and advance the culture of the state in accordance with the powers and duties granted to the director, including the issuance of a permit for the archaeological excavation or removal of the remains. If the director determines that the issuance of a permit for the archaeological excavation or removal of the remains is not reasonable, necessary or prudent, the director shall provide written reasons to the applicant for not issuing the permit.

(e) Issuance of permits.

Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director of historic preservation shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and six or eight members representing known or presumed lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. In the case of Native American sites, the membership of the committee shall be comprised of the chair and six or eight members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known or presumed lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia.

In the case of a site of less than five acres, which is owned by an individual or partnership, the ad hoc committee must be formed within thirty days of application for same by the property owner, must meet within sixty days of such application, and must render
a decision within ninety days of such application.

All such permits shall at a minimum address the following conditions: (1) The methods by which lineal descendants of the deceased are notified prior to the disturbance; (2) the respectful manner in which the remains, artifacts or markers are to be removed and handled; (3) scientific analysis of the remains, artifacts or markers and the duration of those studies; (4) the way in which the remains may be reburied in consultation with any lineal descendants, when available; (5) methods for the respectful curation of recovered items; and (6) such other conditions as the director may deem necessary. Expenses accrued in meeting the permit conditions shall be borne by the permit applicant, except in cases where the deceased descendants or sponsors are willing to share or assume the costs. A permit to disturb human skeletal remains, grave artifacts or grave markers will be issued only after alternatives to disturbance and other mitigative measures have been considered.

In addition, a person applying for a permit to excavate or remove human skeletal remains, grave artifacts, grave markers, or any historic or prehistoric features of archaeological significance may provide to the ad hoc committee information he or she deems appropriate and shall:

(1) Provide a detailed statement to the director of the historic preservation section giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work;

(2) Provide data and results of any excavation, study or collection in annual reports to the director of the historic preservation section and submit a final report to the director upon completion of the excavation;

(3) Obtain the prior written permission of the owner if the site of such proposed excavation is on privately owned land; and

(4) Provide any additional information the ad hoc committee deems necessary in developing the permit
Such permits shall be issued for a period of two years and may be renewed at expiration. The permits are not transferable but other persons who have not been issued a permit may work under the direct supervision of the person holding the permit. The person or persons to whom a permit was issued must carry the permit while exercising the privileges granted and must be present at the site whenever work is being done.

Notwithstanding any other penalties to which a person may be subject under this section for failing to comply with the terms and conditions of a permit, the permit of a person who violates any of the provisions of this subsection shall be revoked.

As permits are issued, the director of the historic preservation section shall maintain a catalogue of unmarked grave locations throughout the state.

(f) Property tax exemption for unmarked grave sites.

To serve as an incentive for the protection of unmarked graves, the owner, having evidence of the presence of unmarked graves on his or her property, may apply to the director of the historic preservation section for a determination as to whether such is the case. Upon making such a determination in the affirmative, the director of the historic preservation section shall provide written certification to the landowner that the site containing the graves is a cemetery and as such is exempt from property taxation upon presentation of the certification to the county assessor. The area of the site to receive property tax exempt status shall be determined by the director of the historic preservation section. Additionally, a property owner may establish protective easements for the location of unmarked graves.

(g) Additional provisions for enforcement; civil penalties; rewards for information.

(1) The prosecuting attorney of the county in which a violation of any provision of this section is alleged to have occurred may be requested by the director of the
historic preservation section to initiate criminal prose-
cutions or to seek civil damages, injunctive relief and
any other appropriate relief. The director of the historic
preservation section shall cooperate with the prosecut-
ing attorney in resolving such allegations.

(2) Persons convicted of any prohibited act involving
the excavation, removal, destruction, disturbance or
offering for sale or exchange of historic or prehistoric
ruins, burial grounds, archaeological site, human
skeletal remains, unmarked grave, grave artifact or
grave marker under the provisions of subdivisions (1)
and (2), subsection (c) of this section shall also be liable
for civil damages to be assessed by the prosecuting
attorney in consultation with the director of the historic
preservation section.

Civil damages may include:

(i) Forfeiture of any and all equipment used in
disturbing the protected unmarked graves or grave
markers;

(ii) Any and all costs incurred in cleaning, restoring,
analyzing, accessioning and curating the recovered
material;

(iii) Any and all costs associated with recovery of data,
and analyzing, publishing, accessioning and curating
materials when the prohibited activity is so extensive as
to preclude the restoration of the unmarked burials or
grave markers;

(iv) Any and all costs associated with restoring the
land to its original contour or the grave marker to its
original condition;

(v) Any and all costs associated with reinterment of
the human skeletal remains; and

(vi) Any and all costs associated with the determina-
tion and collection of the civil damages.

When civil damages are recovered, the proceeds, less
the costs of the prosecuting attorney associated with the
determination and collection of such damages, shall be
deposited into the endangered historic properties fund
and may be expended by the commissioner of culture and history for archaeological programs at the state level, including the payment of rewards for information leading to the arrest and conviction of persons violating the provisions of subdivisions (1) and (2), subsection (c) of this section.

(3) The commissioner of culture and history is authorized to offer and pay rewards of up to one thousand dollars from funds on deposit in the endangered historic properties fund for information leading to the arrest and conviction of persons who violate the provisions of subdivisions (1) and (2), subsection (c) of this section.

(h) Disposition of remains and artifacts not subject to reburial.

All human skeletal remains and grave artifacts found in unmarked graves on public or private land, and not subject to reburial, under the provisions of subsection (e) of this section, are held in trust for the people of West Virginia by the state and are under the jurisdiction of the director of historic preservation. All materials collected and not reburied through this section shall be maintained with dignity and respect for the people of the state under the care of the West Virginia state museum.

CHAPTER 39

(Com. Sub. for H. B. 2185—By Delegates Rutledge, Brown and Douglas)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]
forty-eight-a of said code; and to amend and reenact section nineteen, article two of said chapter, all relating to the enforcement of support obligations generally; authorizing the insurance commissioner to enforce the provisions of the code relating to medical support; redefining the term "insurer” as applied to medical support enforcement; providing for immediate withholding from income of a support obligor under certain circumstances; allowing support to be continued beyond the date a child reaches the age of eighteen, is married or emancipated; allowing educational expenses for some children; limitations; redefining certain terms related to the enforcement of support obligations so as to expand the category of persons entitled to support enforcement services; and authorizing the promulgation of procedural rules governing the child advocate office in providing information to consumer reporting agencies.

Be it enacted by the Legislature of West Virginia:

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

Chapter

33. Insurance Commissioner.
48. Domestic Relations.
48A. Enforcement of Family Obligations.

CHAPTER 33. INSURANCE COMMISSIONER.

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 section fifteen-a, article two of chapter forty-eight 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.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.
§48-2-15b. Withholding from income.
§48-2-15d. Child support beyond age eighteen; educational expenses.

§48-2-15a. Medical support enforcement.

(a) For the purposes of this section:

(1) "Custodian for the children" means a parent, legal guardian, committee or other third party appointed by court order as custodian of child or children for whom child support is ordered.

(2) "Obligated parent" means a natural or adoptive parent who is required by agreement or order to pay for insurance coverage and medical care, or some portion thereof, for his or her child.

(3) "Insurance coverage" means coverage for medical, dental, including orthodontic, optical, psychological, psychiatric or other health care service.

(4) "Child" means a child to whom a duty of child support is owed.

(5) "Medical care" means medical, dental, optical,
psychological, psychiatric or other health care service for children in need of child support.

(6) “Insurer” means any company, health maintenance organization, self-funded group, multiple employer welfare arrangement, hospital or medical services corporation, trust or other entity which provides insurance coverage.

(b) In every action to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide medical care for the children of the parties. In any temporary or final order establishing an award of child support or any temporary or final order modifying a prior order establishing an award of child support, the court shall order one or more of the following:

(1) The court shall order either parent or both parents to provide insurance coverage for a child, if such insurance coverage is available to that parent on a group basis through an employer or through an employee’s union. If similar insurance coverage is available to both parents, the court shall order the child to be insured under the insurance coverage which provides more comprehensive benefits. If such insurance coverage is not available at the time of the entry of the order, the order shall require that if such coverage thereafter becomes available to either party, that party shall promptly notify the other party of the availability of insurance coverage for the child.

(2) If the court finds that insurance coverage is not available to either parent on a group basis through an employer, multi-employer trust or employees’ union, or that the group insurer is not accessible to the parties, the court may order either parent or both parents to obtain insurance coverage which is otherwise available at a reasonable cost.

(3) Based upon the respective ability of the parents to pay, the court may order either parent or both parents to be liable for reasonable and necessary medical care for a child. The court shall specify the proportion of the medical care for which each party shall be responsible.
If insurance coverage is available, the court shall also determine the amount of the annual deductible on insurance coverage which is attributable to the children and designate the proportion of the deductible which each party shall pay.

(5) The order shall require the obligor to continue to provide the child advocate office with information as to his or her employer's name and address and information as to the availability of employer-related insurance programs providing medical care coverage so long as the child continues to be eligible to receive support.

c) The cost of insurance coverage shall be considered by the court in applying the child support guidelines provided for in section eight, article two, chapter forty-eight-a of this code.

d) Within thirty days after the entry of an order requiring the obligated parent to provide insurance coverage for the children, that parent shall submit to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made. Such proof of insurance coverage shall consist of, at a minimum:

1) The name of the insurer;
2) The policy number;
3) An insurance card;
4) The address to which all claims should be mailed;
5) A description of any restrictions on usage, such as prior approval for hospital admission, and the manner in which to obtain such approval;
6) A description of all deductibles; and
7) Five copies of claim forms.

e) The custodian for the child shall send the insurer or the obligated parent's employer the children's address and notice that the custodian will be submitting claims on behalf of the children. Upon receipt of such notice, or an order for insurance coverage under this section, the obligated parent's employer, multi-employer trust or
union shall, upon the request of the custodian for the child, release information on the coverage for the children, including the name of the insurer.

(f) A copy of the court order for insurance coverage shall not be provided to the obligated parent's employer or union or the insurer unless ordered by the court, or unless:

(1) The obligated parent, within thirty days of receiving effective notice of the court order, fails to provide to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made;

(2) The custodian for the child serves written notice by mail at the obligated parent’s last known address of intention to enforce the order requiring insurance coverage for the child; and

(3) The obligated parent fails within fifteen days after the mailing of the notice to provide written proof to the custodian for the child that the child has insurance coverage.

(g) (1) Upon service of the order requiring insurance coverage for the children, the employer, multi-employer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent’s income or wages.

(2) If more than one plan is offered by the employer, multi-employer trust or union, the child shall be enrolled in the most comprehensive plan otherwise available to the obligated parent at a reasonable cost.

(3) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in subsection (i) of this section.

(h) (1) The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

(2) No insurer, employer or multi-employer trust in
this state may refuse to honor a claim for a covered
service when the custodian for the child or the obligated
parent submits proof of payment for medical bills for
the child.

(3) The insurer shall reimburse the custodian for the
child or the obligated parent who submits copies of
medical bills for the child with proof of payment.

(4) All insurers in this state shall provide insurance
coverage for the child of a covered employee notwith-
standing the amount of support otherwise ordered by
the court and regardless of the fact that the child may
not be living in the home of the covered employee.

(i) When an order for insurance coverage for a child
pursuant to this section is in effect and the obligated
parent's employment is terminated, or the insurance
coverage for the child is denied, modified or terminated,
the insurer shall, within ten days after the notice of
change in coverage is sent to the covered employee,
notify the custodian for the child and provide an
explanation of any conversion privileges available from
the insurer.

(j) A child of an obligated parent shall remain eligible
for insurance coverage until the child is emancipated or
until the insurer under the terms of the applicable
insurance policy terminates said child from coverage,
whichever is later in time, or until further order of the
court.

(k) If the obligated parent fails to comply with the
order to provide insurance coverage for the child, the
court shall:

(1) Hold the obligated parent in contempt for failing
or refusing to provide the insurance coverage, or for
failing or refusing to provide the information required
in subsection (d) of this section;

(2) Enter an order for a sum certain against the
obligated parent for the cost of medical care for the
child, and any insurance premiums paid or provided for
the child during any period in which the obligated
parent failed to provide the required coverage; and
(3) In the alternative, other enforcement remedies available under sections two and three, article five, chapter forty-eight-a of this code, or otherwise available under law, may be used to recover from the obligated parent the cost of medical care or insurance coverage for the child.

(l) Proof of failure to maintain court ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need pursuant to section fifteen of this article, and provides a basis for modification of the child support order.

§48-2-15b. Withholding from income.

(a) Every order entered or modified under the provisions of this article, not described in subsection (d) of this section, which requires the payment of child support or spousal support shall include a provision for automatic withholding from income of the obligor, in order to facilitate income withholding as a means of collecting support.

(b) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding to commence without further court action, as follows:

(1) The order shall provide that income withholding will begin immediately, without regard to whether there is an arrearage: (A) When a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services or a similar agency of a sister state for aid to families with dependent children benefits, medical assistance only benefits, or foster care benefits; or (B) when the support obligee has applied for services from the child advocate office or the support enforcement agency of another state or is otherwise receiving services from the child advocate office as provided for in chapter forty-eight-a of this code. In any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an
alternative arrangement, such order shall not provide
for income withholding to begin immediately.

(2) The order shall also provide that income withholding
will begin immediately upon the occurrence of any
of the following:

(A) When the payments which the obligor has failed
to make under the order are at least equal to the support
payable for one month, if the order requires support to
be paid in monthly installments;

(B) When the payments which the obligor has failed
to make under the order are at least equal to the support
payable for four weeks, if the order requires support to
be paid in weekly or biweekly installments;

(C) When the obligor requests the child advocate
office to commence income withholding; or

(D) When the obligee requests that such withholding
begin, if the request is approved by the court in
accordance with procedures and standards established
by rules and regulations promulgated by the director of
the child advocate office.

(c) On and after the first day of January, one thousand
nine hundred ninety-four, the wages of an obligor shall
be subject to withholding, regardless of whether child
support payments are in arrears, on the date the order
for child support is entered: Provided, That where one
of the parties demonstrates, and the court finds, that
there is good cause not to require immediate income
withholding, or in any case where there is filed with the
court a written agreement between the parties which
provides for an alternative arrangement, such order
shall not provide for income withholding to begin
immediately: Provided, however, That this subsection
shall have no force and effect, if prior to the first day
of January, one thousand nine hundred ninety-four, the
requirements regarding wage withholding imposed by
42 U.S.C. §666 are substantially modified by federal
statute or regulation.

(d) The supreme court of appeals shall make available
to the circuit courts standard language to be included
in all such orders, so as to conform such orders to the
applicable requirements of state and federal law
regarding the withholding from income of amounts
payable as support.

(e) Every support order entered by a circuit court of
this state prior to the effective date of this section shall
be considered to provide for an order of income
withholding, by operation of law, which complies with
the provisions of this section, notwithstanding the fact
that such support order does not in fact provide for such
order of withholding.

(f) The court shall consider the best interests of the
child in determining whether “good cause” exists under
this section. The court may also consider the obligor’s
payment record in making child support payments in
making this determination.

§48-2-15d. Child support beyond age eighteen; educa-
tional expenses.

(a) An order for child support entered pursuant to
sections thirteen and fifteen of this article may provide
that payments of such support continue beyond the date
when the child reaches the age of eighteen, marries or
is sooner emancipated, so long as the child is making
substantial progress towards a degree and is enrolled as
a full-time student in a secondary school or vocational
school: Provided, That such payments may not extend
past the date that the child reaches the age of twenty.

(b) The court may make an award for educational and
related expenses for an adult child up to the age of
twenty-three who has been accepted or is enrolled and
making satisfactory progress in an educational program
at a certified or accredited college. The amount of these
payments shall be related to the ability of the parent to
make the payments. The payments shall be made to the
custodial parent when the adult child is residing with
that parent or to a third party as designated by the
court. If the child is not residing with a parent, the
payments shall be paid to the child or to such third
parties as so designated by the court.
CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article
2. West Virginia Child Advocate Office.

ARTICLE 1. GENERAL PROVISIONS.

1 As used in this chapter:
2 (1) “Automatic data processing and retrieval system” means a computerized data processing system designed
to do the following:
5 (A) To control, account for and monitor all of the
6 factors in the support enforcement collection and
7 paternity determination process, including, but not
8 limited to:
9 (i) Identifiable correlation factors (such as social
10 security numbers, names, dates of birth, home addresses
11 and mailing addresses of any individual with respect to
12 whom support obligations are sought to be established
13 or enforced and with respect to any person to whom such
14 support obligations are owing) to assure sufficient
15 compatibility among the systems of different jurisdic-
16 tions to permit periodic screenings to determine
17 whether such individual is paying or is obligated to pay
18 support in more than one jurisdiction;
19 (ii) Checking of records of such individuals on a
20 periodic basis with federal, interstate, intrastate and
21 local agencies;
22 (iii) Maintaining the data necessary to meet applica-
23 ble federal reporting requirements on a timely basis;
24 and
25 (iv) Delinquency and enforcement activities;
26 (B) To control, account for and monitor the collection
27 and distribution of support payments (both interstate
28 and intrastate), the determination, collection and
29 distribution of incentive payments (both interstate and
30 intrastate), and the maintenance of accounts receivable
(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; or

(B) 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. The children's advocate may be empowered to prosecute an action brought pursuant to section twenty-nine, article five, chapter sixty-one of this code when appointed by a circuit judge pursuant to section eight, article seven, chapter seven of this code.

(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.

(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.
"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.

"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.

"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.

"Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the Federal Social Security Act" means:

(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; or

(C) Any individual who is an obligee in a support order, entered by a court of competent jurisdiction after the thirty-first day of December, one thousand nine hundred ninety-three.

(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-2-19. Providing information to consumer reporting agencies.

(a) For purposes of this section, the term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other
information on consumers for the purpose of furnishing consumer reports to third parties.

(b) The director shall propose and adopt a procedural rule in accordance with the provisions of sections four and eight, article three, chapter twenty-nine of this code, establishing procedures whereby information regarding the amount of overdue support owed by an obligor residing in this state will be made available by the office to any consumer reporting agency, upon the request of such consumer reporting agency.

(c) (1) If the amount of any overdue support is equal to or less than the amount of arrearage which would cause the mailing of a notice as provided for in subsection (b), section three, article five of this chapter, information regarding such amount may not be made available;

(2) If the amount of any overdue support exceeds the amount of arrearage which would cause the mailing of a notice as provided for in subsection (b), section three, article five of this chapter, information regarding such amount shall be made available.

(d) The procedural rule proposed and adopted shall provide that any information with respect to an obligor shall be made available only after notice has been sent to such obligor of the proposed action, and such obligor has been given a reasonable opportunity to contest the accuracy of such information.

(e) The procedural rule proposed and adopted shall afford the obligor with procedural due process prior to making information available with respect to the obligor.

(f) The information made available to the requesting consumer reporting agency regarding overdue support may be in the same form as information submitted to the secretary of the treasury of the United States in accordance with the provisions of section fifteen, article two of this chapter.

(g) The office may impose a fee for furnishing such information, not to exceed the actual cost thereof.
AN ACT to amend and reenact section six, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including a statement on the application for a marriage license that each applicant has protected rights in a marriage and that certain activities among spouses and other family members are crimes punishable by law.

Be it enacted by the Legislature of West Virginia:

That section six, article one, 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 1. MARRIAGE.

§48-1-6. Application for license; requirements for issuance of license.

Every license for marriage shall be issued by the clerk of the county commission of the county in which either party usually resides, except that where both parties are nonresidents of the state of West Virginia, the license shall be issued by the clerk of the county commission of the county in which application is made. The license shall be issued not sooner than three days after the filing with the clerk of a written application therefor. The day on which the application is filed shall be counted as the first day, but two full days shall elapse after the day of filing before the license shall be issued. Before any license is issued, each applicant shall file with the clerk a certificate or certificates from any physician duly licensed in the state, stating that each party has been given an examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than thirty days prior to the date on which license is issued, and stating that in the opinion of the physician the applicant either
is not infected with syphilis or, if so infected, is not in
the state of the disease which is or may later become
communicable. The examinations and tests required by
this section may be given as provided by section
nineteen, article four, chapter sixteen of this code.

The application for a marriage license shall contain
a statement of the full names of both parties, their social
security account numbers, their respective ages and
their places of birth and residence. Effective the first
day of September, one thousand nine hundred ninety-
three, the application for a marriage license shall also
contain the following statement:

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

It shall be signed by both of the parties to the
contemplated marriage, under oath before the clerk of
the county commission or before a person authorized to
administer oaths under the laws of this state. At the
time of the execution of the application, the clerk, or the
person administering the oath to the applicants, shall
require some evidence of the age of each of the
applicants. Evidence of the age of each applicant may
be in the form of a certified or photostatic copy of a birth
certificate, a voter's registration certificate, an opera-
tor's or chauffeur's license, an affidavit of both parents
or legal guardian of the applicant or other good and
sufficient evidence. Where such an affidavit is relied
upon as evidence of the age of an applicant, and one
parent is dead, the affidavit of the surviving parent or
of the guardian of the applicant shall suffice; if both
parents are dead, the affidavit of the guardian of the
applicant shall suffice. If the parents of the applicant
are living separate and apart, the affidavit of the parent
having custody of the applicant shall suffice. The
application shall be recorded in the register of mar-
riages provided for in section eleven of this article. The
date of the filing of the application shall be noted in the
register. The notation, or a certified copy thereof, is
legal evidence of the facts therein contained.

To the extent otherwise provided by section six-c of
this article, the provisions of this section do not apply.
Applications for licenses may be received and licenses
may be issued by the clerk of the county commission at
anytime his or her office is officially open for the
conduct of business.

CHAPTER 41
(Com. Sub. for H. B. 2427—By Delegates Brown, Trump, Kessel and Brum)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter forty-eight of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section fourteen, relating to telephone
authorization for arrest for assault or battery in
domestic violence matters; limited on-site arrest author-
ity; limitations on officer liability; applicability of
administrative rules; and bail conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.
§48-2A-14. Telephone authorization for arrest in domes-
tic violence matters; conditions.

(a) Notwithstanding any provision of this code, where
a family or household member is alleged to have
committed a violation of the provisions of subsection (b)
or subsection (c) of section nine, article two, chapter
sixty-one of this code against another family or house-
hold member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest the alleged perpetrator for said offense when:

(1) The law-enforcement officer has observed credible corroborative evidence that the offense has occurred;

(2) The law-enforcement officer has obtained a signed statement which has been voluntarily and knowingly executed, from the alleged victim setting forth the essential elements of the offense or has received such a statement from a witness to the alleged violation; and

(3) The law-enforcement officer investigating the alleged offense or another law-enforcement officer acting at the request of said officer has received oral or telephonic authorization from a magistrate having jurisdiction over the offense to arrest the alleged perpetrator after the magistrate has been presented with information sufficient to satisfy said magistrate that probable cause exists to believe that the offense was committed.

(b) Notwithstanding any provision of this section, upon a determination by the law-enforcement officer that credible corroborative evidence exists to believe that a violation of subsection (b) or (c), section nine, article two, chapter sixty-one has occurred, and upon obtaining a signed statement from the alleged victim or a witness setting forth the essential elements of either offense, or prior to the obtaining of the signed statement but having been earlier presented with verbal evidence sufficient to establish the existence of the essential elements of either offense and being informed of a willingness to execute a signed statement as provided for in subsection (a) of this section, the law-enforcement officer may, if circumstances exist which convince the law-enforcement officer that a danger exists to the health and safety of the alleged victim, the law-enforcement officer or another person, arrest the alleged perpetrator at the scene of the alleged violation solely for the purpose of protecting the health or safety of the alleged victim, the law-enforcement officer or another
person at the scene of the violation in order to obtain
the signed statement and seek the magistrate's author-
ization for arrest.

(c) Any person arrested at the site of the alleged
criminal violation pursuant to the provisions of subsec-
tion (b) of this section shall be immediately released if
the magistrate fails to authorize arrest or if the alleged
victim or the witness refuses to execute the statement
provided for in this section. If the magistrate authorizes
arrest, all other provisions of this section shall then be
applicable.

(d) No law-enforcement officer shall be subject to any
civil or criminal action for false arrest or unlawful
detention for affecting an arrest pursuant to subsection
(b) of this section solely due to a magistrate's failure to
authorize arrest or due to the fact that the alleged
victim or the witness refuses to execute a signed
statement as provided for in this section.

(e) Whenever any person is arrested pursuant to
subsection (a) of this section, the arrested person shall
be taken before a magistrate within the county in which
the offense charged is alleged to have been committed
in a manner consistent with the provisions of Rule 1 of
the Administrative Rules for the Magistrate Courts of
West Virginia.

(f) Upon his or her appearance before the magistrate
or circuit court, the person arrested shall be supplied
with a written complaint setting forth the facts and
circumstances supporting the charge which complies
with the provisions of West Virginia Rule of Criminal
Procedure 3.

(g) The provisions of this section shall not authorize
any law-enforcement officer to make an arrest outside
of his or her jurisdiction unless otherwise authorized by
law.

(h) The consideration by a magistrate of a request for
arrest authorization made orally or by telephone shall
constitute responding in a domestic violence matter as
required by Rule 1 of the Administrative Rules for the
Magistrate Courts of West Virginia.
(i) Where an arrest for a violation of subsection (c) of section nine, article two, chapter sixty-one of this code is authorized pursuant to this section, such shall constitute prima facie evidence that the person arrested constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

CHAPTER 42
(H. B. 2741—By Delegates Martin, Michael, Carper, Louisos, Oliverio and Evans)

[Passed April 10, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles two-a, two-c, five and six, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to repeal of economic development programs determined by the council for community and economic development of the West Virginia development office to be inactive or ineffective; repeal of the higher education-industry partnership program known as the Vandalia program; repeal of office of federal procurement assistance; repeal of the employee ownership assistance program; and repeal of the small business expansion assistance program.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating higher education-industry partnership program.

§2. Repeal of article creating office of federal procurement assistance.

§3. Repeal of article creating employee ownership assistance program.

§4. Repeal of article creating the small business expansion assistance program.

§1. Repeal of article creating higher education-industry partnership program.

1. Article two-a, chapter five-b of the code of West Virginia, one thousand nine-hundred thirty-one, as amended, is hereby repealed.
§2. Repeal of article creating office of federal procurement assistance.

1 Article two-c, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

§3. Repeal of article creating employee ownership assistance program.

1 Article five, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

§4. Repeal of article creating the small business expansion assistance program.

1 Article six, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 43
(Com. Sub. for H. B. 2160—By Delegate Ashcraft)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal section five, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six of said article; to amend and reenact section three, article one, chapter five-g of said code; to amend and reenact sections one-a, two and four, article five, chapter eighteen of said code; to further amend said article by adding thereto a new section, designated section fourteen; to amend and reenact sections two, three and six, article five-a of said chapter; to amend and reenact section three-a, article nine of said chapter; and to amend and reenact sections two and fourteen, article four, chapter eighteen-a of said code, all relating to repeal of obsolete language and clarification of statutory language relating to the election of county board of
education members; permitting county boards of education to start selection process over in original order of preference in negotiating for architect-engineer service bids; relating to the eligibility of members to serve and providing for the circuit court to remove a member who refuses to complete the required training; provides that members appointed to fill vacancies serve until the thirtieth day of June following the next primary election; requiring a public hearing on proposed county board budgets not less than ten days after the budget has been made available to the public and prior to submission of the budget to the state board for approval; requiring county boards to adopt enumerated policies; providing for election of members to local school improvement councils, changing election to September, setting an organizational meeting by the first day of October, providing for elected chair serving a one-year term and providing that members be elected for two-year terms on staggered election basis; authorizes school improvement councils to seek advisory opinions from the state board when a policy or rule waiver request is denied by or not acted upon by a county board and providing for records and reports of waivers which are requested; directing that curriculum teams be extended to all schools and making science and technology basic skills; changing the time for county boards to publish their financial statements to sixty days after the close of the fiscal year; and requiring planning periods during the school instructional day.

Be it enacted by the Legislature of West Virginia:

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

Chapter 3. Elections.
5G. Procurement of Architect-Engineer Services by State and its Subdivisions.
18. Education.
18A. School Personnel.

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6. Election of county board of education members at primary elections.

1 (a) An election for the purpose of electing members of the county board of education shall be held on the same date as the primary elections, as provided by law, but upon a nonpartisan ballot printed for the purpose.

5 (b) No more than two members may be elected or serve from the same magisterial district. The eligibility of candidates to be declared elected for full terms of four years and for unexpired terms of two or more years based on this limitation shall be determined at the time of certification of the election.

(1) Such eligibility shall be based on the magisterial district residence of incumbent members of the board whose terms will continue beyond the first day of July following the primary election.

(A) No person is eligible to be declared elected who resides in a district which has two such incumbent members.

(B) No more than one candidate is eligible to be declared elected who resides in a district which has one such incumbent member.

(C) A person with the highest number of votes may be declared elected to an unexpired term notwithstanding the fact that the person's magisterial district has two representatives serving on the board at the time of the election: Provided, That the number of representatives
from that magisterial district will be less than two as of the first day of July following the primary.

(2) The person declared elected to an unexpired term shall assume the duties of a member of the board of education according to the provisions of section two, article five, chapter eighteen of this code.

(c) In each nonpartisan election for board of education the board of canvassers shall:

(1) Declare and certify the election of the required number of eligible candidates receiving the highest numbers of votes to fill any full terms;

(2) Declare and certify the election of the required number of eligible candidates receiving the next highest numbers of votes, after all full terms are filled, to fill any unexpired terms.

(d) It is the intent of this statute that any person declared to be elected under the preceding provisions of this section shall take office as a duly elected member or members, even though the person may not have received a majority or plurality of all votes cast at such election.

(e) In case of a tie vote for a seat on a county board of education in any primary election, the provisions of section twelve, article six of this chapter shall control in breaking the tie.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.

In the procurement of architectural and engineering services for projects estimated to cost two hundred fifty thousand dollars or more, the director of purchasing shall encourage such firms engaged in the lawful
practice of the profession to submit an expression of
interest, which shall include a statement of qualifica-
tions and performance data, and may include antici-
pated concepts and proposed methods of approach to the
project. All such jobs shall be announced by public
notice published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code. A committee of three to five
representatives of the agency initiating the request shall
evaluate the statements of qualifications and perfor-
mance data and other material submitted by interested
firms and select a minimum of three firms which, in
their opinion, are best qualified to perform the desired
service. Interviews with each firm selected shall be
conducted and the committee shall conduct discussions
regarding anticipated concepts and proposed methods of
approach to the assignment. The committee shall then
rank, in order of preference, no less than three profes-
sional firms deemed to be the most highly qualified to
provide the services required, and shall commence scope
of service and price negotiations with the highest
qualified professional firm for architectural or engineer-
ing services or both. Should the agency be unable to
negotiate a satisfactory contract with the professional
firm considered to be the most qualified, at a fee
determined to be fair and reasonable, price negotiations
with the firm of second choice shall commence. Failing
accord with the second most qualified professional firm,
the committee shall undertake price negotiations with
the third most qualified professional firm. Should the
agency be unable to negotiate a satisfactory contract
with any of the selected professional firms, it shall select
additional professional firms in order of their compe-
tence and qualifications and it shall continue negotia-
tions in accordance with this section until an agreement
is reached: Provided, That county boards of education
may either elect to start the selection process over in the
original order of preference or it may select additional
professional firms in order of their competence and
qualifications and it shall continue negotiations in
accordance with this section until an agreement is
reached.
CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members.

No person shall be eligible for membership on any county board who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

No member or member-elect of any board shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member-elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointment to, such public office or committee.

Any person who is elected or appointed to a county board on or after the fifth day of May, one thousand nine hundred ninety-two, shall possess at least a high school diploma or a general educational development (GED) diploma: Provided, That this provision shall not apply to members or members-elect who have taken office prior to the fifth day of May, one thousand nine hundred ninety-two, and who serve continuously therefrom.

No person elected to a county board after the first day of July, one thousand nine hundred ninety, shall assume...
the duties of board member unless he or she has first
attended and completed a course of orientation relating
to boardsmanship and governance effectiveness which
shall be given between the date of election and the
beginning of the member's term of office: Provided,
That a portion or portions of subsequent training such
as that offered in orientation may be provided to
members after they have commenced their term of
office: Provided, however, That attendance at the session
of orientation given between the date of election and the
beginning of the member's term of office shall permit
such member or members to assume the duties of board
member, as specified in this section. Members appointed
to the board shall attend and complete the next such
course offered following their appointment: Provided
further, That the provisions of this section relating to
orientation shall not apply to members who have taken
office prior to the first day of July, one thousand nine
hundred eighty-eight, and who serve continuously
therefrom.

Commencing on the effective date of this section,
members shall annually receive seven clock hours of
training in areas relating to boardsmanship and
governance effectiveness. Such orientation and training
shall be approved by the state board and conducted by
the West Virginia school board association or other
organization or organizations approved by the state
board. Failure to attend and complete such an approved
course of orientation and training relating to boardsm-
manship and governance effectiveness without good
cause as determined by legislative rules of the state
board shall constitute neglect of duty.

In the final year of any four-year term of office, a
member shall satisfy the annual training requirement
before the first day of January. The state board shall
petition the circuit court of Kanawha County to remove
any county board member who has failed to or who
refuses to attend and complete the approved course of
orientation and training. If the county board member
fails to show good cause for not attending the approved
course of orientation and training, the court shall
§18-5-2. Filling vacancies.

(a) The board shall, by appointment, fill within forty-five days any vacancy that occurs in its membership. In the event that the board does not fill the vacancy within forty-five days, the state superintendent of schools shall appoint a person to fill the vacancy.

(b) (1) When the vacancy occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirtieth day of June following the next primary election, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs after the eighty-fourth day before a general election and not later than the close of candidate filing for the next succeeding primary election, and the affected term of office does not end on the thirtieth day of June following the next primary election, an election for the unexpired term shall be held at the next primary election, and the appointment shall continue until the thirtieth day of June following the primary election with the duly elected and certified successor taking office on the first day of July following the primary election and serving until the expiration of the original term of office.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in the general election, and the appointment shall continue until a successor is elected and certified.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

The board shall meet on the first Monday of January, except that in the year one thousand nine hundred eighty-two, and every year thereafter, the board shall meet on the first Monday of July, and upon the dates
provided by law for the laying of levies, and at such
other times as the board may fix upon its records. At
any meeting as authorized above and in compliance with
the provisions of article four of this chapter, the board
may employ such qualified teachers, or those who will
qualify by the time of entering upon their duties,
necessary to fill existing or anticipated vacancies for the
current or next ensuing school year. At a meeting of the
board, on or before the first Monday of May, the
superintendent shall furnish in writing to the board a
list of those teachers to be considered for transfer and
subsequent assignment for the next ensuing school year;
all other teachers not so listed shall be considered as
reassigned to the positions held at the time of this
meeting. Such list of those recommended for transfer
shall be included in the minute record and the teachers
so listed shall be notified in writing, which notice shall
be delivered in writing, by certified mail, return receipt
requested, to such teachers’ last-known addresses within
ten days following said board meeting, of their having
been so recommended for transfer and subsequent
assignment.

Special meetings may be called by the president or
any three members, but no business shall be transacted
other than that designated in the call.

In addition, a public hearing shall be held concerning
the preliminary operating budget for the next fiscal
year not less than ten days after such budget has been
made available to the public for inspection and within
a reasonable time prior to the submission of said budget
to the state board for approval and at such hearing
reasonable time shall be granted to any person or
persons who wish to speak regarding parts or all of such
budget. Notice of such hearing shall be published as a
Class I legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code.

A majority of the members shall constitute the
quorum necessary for the transaction of official
business.

Board members may receive compensation at a rate
not to exceed eighty dollars per meeting attended. But they shall not receive pay for more than fifty-two meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the board.

When, by a majority vote of its members, a county board deems it a matter of public interest, such board may join the West Virginia school board association and the national school board association, and may pay such dues as may be prescribed by said associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance shall be made except upon sworn itemized statements.

§18-5-14. Policies to promote school board effectiveness.

Prior to the first day of August, one thousand nine hundred ninety-four, each county board in this state shall adopt, and may modify thereafter as necessary, policies that:

(a) Establish direct links between the board and its local school improvement councils, and between the board and its faculty senates, for the purpose of enabling the board to receive information, comments and suggestions directly from the councils and senates regarding the broad guidelines for oversight procedures, standards of accountability and planning for future needs required by this section; and to further development of these linkages, boards shall meet at least annually with the full membership of each of their schools' local school improvement councils, at a time and in a manner determined by the board. For purposes of this provision, full membership is defined as at least a quorum of the members of each of the school improvement councils.

At the conclusion of the school year, each board shall
report to the state board details concerning such
meeting or meetings held with local school improvement
councils, as specified herein, and such information shall
become an indicator in the performance accreditation
process for each county.

Nothing herein shall prohibit boards from meeting
with representatives of local school improvement
councils: Provided, That at least one annual meeting is
held, as specified herein.

(b) Provide for the development of direct links
between the board and the community at large; allow
for community involvement at regular board meetings;
and specify how the board will regularly communicate
with the public regarding important issues;

(c) Provide for the periodic review of personnel
policies of the district in order to determine their
effectiveness;

(d) Set broad guidelines for the school district,
including the establishment of specific oversight
procedures, development and implementation of stand-
ards of accountability, and the development of long-
rangle plans to meet future needs required by this
section; and

(e) Use school-based accreditation and performance
data provided by the state board and other available
data in board decision making to meet the education
goals of the state and such other goals as the board may
establish.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election.
§18-5A-3. Authority and procedures for local school improvement councils
to request waivers of certain rules, policies and interpre-
tations.

§18-5A-2. Local school improvement councils; election.

1 (a) A local school improvement council shall be
2 established at every school consisting of the following:
3 (1) The principal, who shall serve as an ex officio
member of the council and be entitled to vote;

(2) Three teachers elected by the faculty senate of the school;

(3) Two school service personnel elected by the school service personnel employed at the school;

(4) Three parents or legal guardians of students enrolled at the school elected by the parent members of the school's parent teacher organization: Provided, That if there is no parent teacher organization, the parent or legal guardian members shall be elected by the parents and legal guardians of students enrolled at the school in such manner as may be determined by the principal;

(5) Two at-large members appointed by the principal, one of whom resides in the school's attendance area and one of whom represents business or industry, neither of whom is eligible for membership under any of the other elected classes of members;

(6) In the case of vocational-technical schools, the vocational director: Provided, That if there is no vocational director, then the principal may appoint no more than two additional representatives, one of whom represents business and one of whom represents industry;

(7) In the case of a school with students in grade seven or higher, the student body president or other student in grade seven or higher elected by the student body in those grades.

(b) The principal shall arrange for such elections to be held prior to the fifteenth day of September of each school year to elect a council and shall give notice of the elections at least one week prior to the elections being held. To the extent practicable, all elections to select council members shall be held within the same week. Parents, teachers, and service personnel elected to the council shall serve a two-year term, and elections shall be arranged in such a manner that no more than two teachers, no more than two parents or legal guardians, and no more than one service person are elected in a given year. All other non-ex-officio members shall serve
one-year terms. Council members may only be replaced upon death, resignation, failure to appear at three consecutive meetings of the council for which notice was given, or a change in personal circumstances so that the person is no longer representative of the class of members from which appointed. In the case of replacement, an election shall be held to elect another qualified person to serve the unexpired term of the person being replaced.

(c) As soon as practicable after the election of council members, and no later than the first day of October of each school year, the principal shall convene an organizational meeting of the school improvement council. The principal shall notify each member in writing at least two employment days in advance of the organizational meeting. At this meeting, the principal shall provide each member with a copy of the current applicable section of this code and any state board rule or regulation promulgated pursuant to the operation of these councils. The council shall elect from its membership a chair and two members to assist the chair in setting the agenda for each council meeting. The chair shall serve a term of one year and no person may serve as chair for more than two consecutive terms. If the chair's position becomes vacant for any reason, the principal shall call a meeting of the council to elect another qualified person to serve the unexpired term.

(d) Once elected, the chair is responsible for notifying each member of the school improvement council in writing two employment days in advance of any council meeting.

School improvement councils shall meet at least once every nine weeks or equivalent grading period at the call of the chair or by three fourths of its members.

(e) School improvement councils shall be considered for the receipt of school of excellence awards under section three of this article and competitive grant awards under section twenty-nine, article two of this chapter, and may receive and expend such grants for the purposes provided in such section.
In any and all matters which may fall within the scope of both the school improvement councils and the school curriculum teams authorized in section five of this article, the school curriculum teams shall be deemed to have jurisdiction.

In order to promote innovations and improvements in the environment for teaching and learning at the school, a school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

(1) Encourage the involvement of parents in their child's educational process and in the school;

(2) Encourage businesses to provide time for their employees who are parents to meet with teachers concerning their child's education;

(3) Encourage advice and suggestions from the business community;

(4) Encourage school volunteer programs and mentorship programs; and

(5) Foster utilization of the school facilities and grounds for public community activities.

§18-5A-3. Authority and procedures for local school improvement councils to request waivers of certain rules, policies and interpretations.

The intent of this section is to establish a mechanism which allows local school level initiatives to be designed and implemented to meet local school needs and circumstances. In accordance with this intent, a local school improvement council established under the provisions of this article may propose alternatives to the operation of the public school which alternatives will meet or exceed the high quality standards established by the state board and will increase administrative efficiency, enhance the delivery of instructional programs, promote community involvement in the local school system or improve the educational performance of the school generally. The proposal of the council shall set forth the objective or objectives to be accomplished
under the proposal, how the accomplishment of such
objective or objectives will meet or exceed the standards
established by the state board, the indicators upon
which the meeting of such standards should be judged
and a projection of any funds to be saved by the proposal
and how such funds will be reallocated within the
school. The alternatives proposed by the council may
include matters which require the waiver of policies or
rules promulgated by the state or county board and state
superintendent interpretations: Provided, That such
request for waiver be submitted to the appropriate
board adopting said rule or policy and that board may
approve the waiver. When a county board does not act
within two months after receiving a request for waiver
of a county board policy or rule or disapproves such a
request, the local school improvement council may seek
an advisory opinion from the state board regarding the
waiver request. The county board shall furnish the state
board with copies of all waiver requests together with
their response thereto: Provided, however, That when a
local school improvement council votes to waive a state
superintendent's interpretation, the state superintendent
need only be notified that the local council intends to
waive the state superintendent's interpretation: Pro-
vided further, That notwithstanding any other provisions
of the law to the contrary, council is not prohibited from
permitting off-site classrooms to be developed in
conjunction with local businesses if those sites have met
the requirements established by the local board and if
sites are located off campus. For an alternative to be
proposed, at least two thirds of the members must vote
in favor thereof: And provided further, That if the
alternative to be proposed relates to a waiver of policies
or rules promulgated by the state or county board and
state superintendent interpretations affecting em-
ployees, then prior to the proposal of the alternative, a
majority of the local affected employee group involved
must agree.

A council may also submit a written statement, with
supporting reasons, to the legislative oversight commis-
sion on education accountability recommending a
waiver of a statute or legislative rule, which the
commission shall review and determine whether a recommendation should be made to the Legislature to waive such statute or rule.

When a council decides to propose an alternative, it shall forward a copy of the proposal to the state board and the affected local board. The state board shall acknowledge receipt of the proposed alternative, promptly review the proposed alternative in consultation with the county board or their agents and, in its discretion, approve implementation of the alternative or reply to the council within a reasonable time as to its reasons for not approving the proposed alternative. If the state board approves a proposed alternative, the state board shall provide appropriate notice to the local school improvement council and the county board and shall establish a process for evaluation of the operation of the alternative. Approval for the operation of the alternative may be continued or revoked at any time based on the results and findings of the evaluation.

The state board shall submit a report to the legislative oversight commission on education accountability and the governor on the first day of September of each year summarizing the proposed alternatives received, approved or rejected, continued or revoked during the preceding school year and the results and findings of the evaluations. The report shall specifically identify all policy, rule, and interpretation waiver requests including those requests made to county boards by local school improvement councils received during the preceding year and the disposition of each.


There shall be established at each school in the state a school curriculum team composed of the school principal, the counselor designated to serve that school and no fewer than three teachers representative of the grades taught at the school and chosen by the faculty senate.

The school curriculum team shall establish the programs and methods for implementing a curriculum based on state-approved instructional goals and objec-
tives based on the needs of the individual school with
a focus on reading, composition, mathematics, science
and technology. The curriculum thus established shall
be submitted to the county board for approval or for
return to the school for reconsideration.

The school curriculum team may apply through the
school's local school improvement council for a waiver
from the textbook adoption process established in article
two-a of this chapter if, in the judgment of the team,
materials necessary for the implementation of such
curriculum are not available through the normal
adoption process.

The school team may apply for a grant from the state
board for the development or implementation, or both,
of remedial and accelerated programs to meet the needs
of the students at the individual school.

ARTICLE 9. SCHOOL FINANCES.

§18-9-3a. Preparation, publication and disposition of
financial statements by county boards of
education.

The county board of every county, within sixty days
after the beginning of each fiscal year, shall prepare on
a form to be prescribed by the state tax commissioner
and the state superintendent of free schools, and cause
to be published a statement revealing (a) the receipts
and expenditures of the board during the previous fiscal
year arranged under descriptive headings, (b) the name
of each firm, corporation, and person who received more
than fifty dollars in the aggregate from all funds during
the previous fiscal year, together with the aggregate
amount received from all funds and the purpose for
which paid: Provided, That such statement shall not
include the name of any person who has entered into a
contract with this board pursuant to the provisions of
sections two, three, four and five, article two, chapter
eighteen-a of this code, and (c) all debts of the board,
the purpose for which each debt was contracted, its due
date, and to what date the interest thereon has been
paid. Such statement shall be published as a Class I-0
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The county board shall pay the cost of publishing such statement from the maintenance fund of the board.

As soon as is practicable following the close of the fiscal year, a copy of the published statement herein required shall be filed by the county board with the state tax commissioner and with the state superintendent of free schools.

The county board shall transmit to any resident of the county requesting the same a copy of the published statement for the fiscal year designated, supplemented by a list of the names of all school personnel employed by the board during such fiscal year showing the amount paid to each, and a list of the names of each firm, corporation, and person who received less than fifty dollars from any fund during such fiscal year showing the amount paid to each and the purpose for which paid.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFIT.

§18A-4-2. State minimum salaries for teachers.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

§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 I" 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 contract year.

STATE MINIMUM SALARY SCHEDULE I

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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 I”, shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

Effective the first day of July, one thousand nine hundred ninety-four and thereafter, each teacher shall receive the amount prescribed in the “state minimum salary schedule II” 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 contract year.

### STATE MINIMUM SALARY SCHEDULE II

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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 II”, shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

(1) Notwithstanding the provisions of section seven, article two of this chapter, every teacher who is employed for a period of time more than one-half the class periods of the regular school day and every service personnel whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount indicated in the “state minimum pay scale” as set forth in section eight-a of this article.
shall be provided a daily lunch recess of not less than thirty consecutive minutes, and such employee shall not be assigned any responsibilities during this recess. Such recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of such employee being granted a recess under the provisions of this section.

(2) Every teacher who is regularly employed for a period of time more than one-half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection: Provided, That any substitute teacher who is employed to teach a minimum of two consecutive days in the same position shall be granted a planning period pursuant to this section.

(3) Nothing in this section shall be construed to prevent any teacher from exchanging his lunch recess or a planning period or any service personnel from exchanging his lunch recess for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent: Provided, That a teacher and the superintendent or his agent may not agree to terms which are different from those
available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among such teachers within the individual school, and that service personnel granted rights under this section and the superintendent or his agent may not agree to terms which are different from those available to any other service personnel within the same classification category granted rights under this section within the individual school or to terms which in any way discriminate among such service personnel within the same classification category within the individual school.

CHAPTER 44
(Com. Sub. for H. B. 2224—By Delegates Proudfoot and Lindsey)
[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to whom public schools are open; and requiring county board approval prior to public school enrollment by student suspended or expelled from public or private school.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

1 (a) The board shall provide a school term for its schools which shall be comprised of (1) an employment term for teachers and (2) an instructional term for pupils. Nothing in this section shall prohibit the establishment of year-round schools in accordance with rules to be established by the state board.
The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term. The employment term shall be fixed within such beginning and closing dates as established by the state board: Provided, however, That the time between the beginning and closing dates does not exceed forty-three weeks.

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the federal emergency management agency. Instructional and noninstructional activities may be scheduled during the same employment day. Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach. The instructional term shall commence no earlier than the first day of September and shall terminate no later than the eighth day of June.

Noninstructional days in the employment term may be used for making up canceled instructional days, curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. In addition, each board shall designate and schedule for teachers and service personnel six days to be used by the employee outside the school environment. However, no more than eight noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

Notwithstanding any other provisions of the law to the contrary, if the board has canceled instructional days equal to the difference between the total instructional days scheduled and one hundred seventy-eight, each succeeding instructional day canceled shall be rescheduled, utilizing only the remaining noninstructional
days, except holidays, following such cancellation, which
are available prior to the second day before the end of
the employment term established by such county board.

Where the employment term overlaps a teacher's or
service personnel's participation in a summer institute
or institution of higher education for the purpose of
advancement or professional growth, the teacher or
service personnel may substitute, with the approval of
the county superintendent, such participation for not
more than five of the noninstructional days of the
employment term.

The board may extend the instructional term beyond
one hundred eighty-five instructional days provided the
employment term is extended an equal number of days.
If the state revenues and regular levies, as provided by
law, are insufficient to enable the board of education to
provide for the school term, the board may at any
general or special election, if petitioned by at least five
percent of the qualified voters in the district, submit the
question of additional levies to the voters. If at the
election a majority of the qualified voters cast their
ballots in favor of the additional levy, the board shall
fix the term and lay a levy necessary to pay the cost of
the additional term. The additional levy fixed by the
election shall not continue longer than five years without
submission to the voters. The additional rate shall not
exceed by more than one hundred percent the maximum
school rate prescribed by article eight, chapter eleven
of the code, as amended.

(b) The Legislature finds and declares that excess
levies as they currently exist create unequal educational
opportunities from county to county based on the
difference in the will of the voters and also based on the
differences in property wealth among the counties; that
prior to the first day of July, one thousand nine hundred
ninety-four, the Legislature shall proceed to equalize
educational opportunities over and above the opportuni-
ties afforded by each county's property values by
considering the existence or nonexistence of excess
levies as a factor in the distribution of equity moneys;
and that on and after the first day of July, one thousand
nine hundred ninety-four, the Legislature shall implement a plan for the equitable distribution of funds so as to eliminate the inequities resulting from county excess levies.

(c) The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That any student suspended or expelled from public or private school shall only be permitted to enroll in public school upon the approval of the superintendent of the county where the student seeks enrollment: Provided, however, That in making such decision, the principal of the school in which the student may enroll shall be consulted by the superintendent and the principal may make a recommendation to the superintendent concerning the student’s enrollment in his or her new school: Provided further, That if enrollment to public school is denied by the superintendent, the student may petition the board of education where the student seeks enrollment.

Persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: Provided, That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.

CHAPTER 45
(Com. Sub. for H. B. 2124—By Delegate Browning)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,
relating to state teachers retirement system; and allowing members who have taken advantage of early retirement incentive program to teach up to twelve semester hours at free-standing community colleges if board of directors determines that such employment is in accordance with adjunct faculty policy.

Be it enacted by the Legislature of West Virginia:

That section thirty-five-b, article seven-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 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions and exceptions; certain positions abolished; special rule of eighty; effective, termination and notice dates.

1 The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary, early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active, contributing members of this retirement system on the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. No. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further finds that maintaining an actuarially sound retirement fund is essential and
that the reemployment in any manner, including reemployment on a contract basis, by the state of any person who retires under this section is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund.

(a) For the purposes of this section: (1) "Contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or for which the total compensation exceeds two thousand five hundred dollars in any twelve-month period. The term "contract" does not include any agreement obtained by a retiree through a bidding process and which is for the furnishing of any commodity to a government agency; (2) "governmental entity" means the state of West Virginia; a constitutional branch or office of the state government, or any subdivision thereof; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the public employees insurance agency; or any officer or official of any entity listed above who is acting in his or her official capacity; (3) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counselling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing real person employed in a specific position who is temporarily absent from that specific position; (4) "part-time elected or appointed office" means any elected or appointed office that compensates its members in an amount less than two thousand five hundred dollars or requires less than sixty days of service in any twelve-month period.

(b) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight (or as extended by contract or by eligibility qualification requirement, as hereinafter specified), eligible members, being those active, contributing
members actually and currently employed on such beginning date, retiring pursuant to this section (except disability retirees, but including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for deferred benefits), may elect to participate in this incentive program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member’s annuity, the normal final average salary shall be computed and one eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:

A member may elect a lump sum payment, in addition to his regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:

A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member’s final average salary factor of computation.

(c) Eligible, active, contributing members, aforesaid, employed under agreement and rendering services during school year one thousand nine hundred eighty-eight—eighty-nine shall, if retiring pursuant to the provisions of this section and the early retirement incentive program set forth herein, make application for retirement, including choice of their respective option, and give notice to their respective county boards of education by the thirty-first day of December, one thousand nine hundred eighty-eight, but shall be permitted to postpone actual retirement until imme-
diately after the close of such agreement period and said
school year; with proper credit to be granted for such
extended period.

Also, eligible, active, contributing members em-
ployed, not under agreement, who desire to retire under
this section but who are unable to retire by the thirty-
first day of December, one thousand nine hundred
eighty-eight, because an element of eligibility for
retirement, such as age or other element, will not be met
until a date after the thirty-first day of December, one
thousand nine hundred eighty-eight, and before the first
day of July, one thousand nine hundred eighty-nine,
shall be permitted to postpone actual retirement until
the date of fulfilling such element of eligibility and shall
retire on such date, before the temporary retirement
incentive program ends on the thirtieth day of June, one
thousand nine hundred eighty-nine; with proper credit
to be granted for such extended period: Provided, That
members eligible under the preceding paragraph and
this paragraph shall have made application for retire-
ment, including choice of their respective option, and
given notice to their respective employer by the thirty-
first day of December, one thousand nine hundred
eighty-eight, although postponing actual retirement, as
aforesaid: Provided, however, That an application for
retirement under the provisions of the preceding
paragraph and this paragraph shall be binding upon a
member unless the member provides the retirement
system and the local board of education or other
educational agency with written notification of his or
her decision not to retire by the first day of April, one
thousand nine hundred eighty-nine: Provided further,
That an eligible member under this paragraph or the
preceding paragraph who has a grievance or court
proceeding which is pending on the passage date of this
bill, shall be required to give final notice of decision not
to retire by the thirtieth day of June, one thousand nine
hundred eighty-nine: And provided further, That the
state teachers retirement board on or before the twenty-
fourth day of March, one thousand nine hundred eighty-
nine, shall provide calculations of anticipated retirement
benefits to those members who intend to retire pursuant
to the provisions of this section.

Eligible members, other than those covered under the provisions of the two preceding paragraphs, desiring to retire under this incentive program shall make their option election prior to and take their respective retirement by the close of the thirty-first day of December, one thousand nine hundred eighty-eight.

Any eligible member who retires hereunder during the school year (after the first day of July, one thousand nine hundred eighty-eight, and on any date prior to the thirtieth day of June, one thousand nine hundred eighty-nine) shall have included such months of such school year and the salary in respect thereof, if ones of higher salary, in place of and for any like number of months in his or her five-year period for computation of annuities as provided for in section twenty-six of this article.

(d) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from a governmental entity: Provided, That nothing in this section shall effect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request for good cause shown, an exception allowing a retirant to perform work on a contract basis: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he or she shall not receive an incentive option under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office, such incentive option shall resume. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive option under this section during the term of service in said office, but the same shall be suspended during such
period: *And provided further*, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: *And provided further*, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

If such elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in such elective or appointive office with no loss of the benefits provided under this section.

Prior to the initiation or renewal of any contract entered into pursuant to this section or the acceptance of any elective or appointive office, a person who has elected to retire under the early retirement provisions of this article shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall promulgate rules, pursuant to chapter twenty-nine-a of this code, regarding the form and contents of the waiver and disclosure statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive option benefit is reduced in accordance with the provisions of this section. The administrator shall then certify such action in writing to the appropriate governmental entity.

In any event, an eligible member may retire under this section and thereafter continue to receive his incentive annuity and be employed as a substitute teacher, as adjunct faculty, as a school service personnel substitute, or as a part-time member of the faculty of
Southern West Virginia Community College or West Virginia Northern Community College: Provided, That the board of directors determines that the part-time employment is in accordance with policies to be adopted by the board regarding adjunct faculty. For purposes of this section, a "part-time member of the faculty" means an individual employed solely to provide instruction for not more than twelve college credits per semester.

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by constitutional provision.

The additional annuity allowed for temporary early retirement under these options is intended to be paid from the retirement incentive account hereby created as a special account in the state treasury and from the funds therein established with moneys required to be applied or transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect to such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source. No such additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for such purpose, as for the base annuity.

(e) The executive secretary of the retirement system shall provide forms for applicants. Such forms shall include a detailed description of the incentive plan options.

The executive secretary of the retirement system shall file a report to the Legislature no later than the fifteenth day of February, one thousand nine hundred eighty-nine, and quarterly thereafter, detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year
two thousand.

(f) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member's retirement: Provided, That county boards of education in replacing employees leaving under this temporary early retirement incentive program shall be eligible to replace in that number as authorized by the basic school aid formula and pursuant to those guidelines in respect of number of positions lost or projected to be lost due to declining enrollment, changes in statutes, changes in state appropriations and the other guidelines set forth and contained within said basic school aid formula. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retirant's employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer, as aforesaid, the remaining salary and fringe benefit appropriations: Provided, however, That this vacant position abolishment provision shall not apply to any county position, other than those under the authority of county boards of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the governor may exempt or amend under such abolishment provision upon his recommendation that such exemption or amendment is necessary to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government
and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

(g) Special rule of eighty. — Any active, contributing member of the retirement system as of the first day of April, one thousand nine hundred eighty-eight, who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service, up to two years of which may be military service, or prior service, or already paid and credited out-of-state service (if so paid and credited by the first day of April, one thousand nine hundred eighty-eight) or any combination thereof not exceeding an aggregate of two years.

(h) Termination of temporary retirement incentives program. — The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on the thirtieth day of June, one thousand nine hundred eighty-nine.

CHAPTER 46
(Com. Sub. for H. B. 2482—By Mr. Speaker, Mr. Chambers, and Delegates Mezzatesta, D. Miller, Bennett, Collins, Fealy and L. White)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-i, relating to providing supported employment services to persons with disabilities through the West Virginia division of rehabilitation services; setting forth findings; defining terms; establishing a model supported employment program; specifying services which may be provided under the program; setting forth eligibility criteria; setting forth the eligibility requirements and primary focus of the program; and providing
for the administration and implementation of the program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10I. WEST VIRGINIA SUPPORTED EMPLOYMENT PROGRAM.

§18-10I-1. Findings.

(a) The West Virginia Legislature acknowledges that persons with severe disabilities can be productive, contributing members of the community, and that supported employment is a way of accomplishing the goal of employment for many persons with severe disabilities.

(b) If persons with disabilities are afforded opportunities to work in socially valued jobs with dignity, opportunities for advancement, and fair pay and compensation, then West Virginians with disabilities will lead more independent and productive lives, pay taxes, and decrease their need for public assistance. Studies have shown that supported employment is cost effective, and it is in the interest of the Legislature and the citizens of West Virginia to experiment within limited resources, through a model program of supported employment for persons with severe disabilities.

§18-10I-2. Definitions.

(a) "Competitive work" means work performed weekly on a part-time or full-time basis, as determined in each individualized written rehabilitation program, and for which compensation is consistent with the wage standards provided for in the Fair Labor Standards Act.

(b) "Division of rehabilitation services" means the
state agency created by section one, article ten-a, chapter eighteen of this code.

(c) "Integrated work setting" means job sites where one or more nonhandicapped or nondisabled individuals interact with one or more handicapped or disabled employees on a regular basis in the performance of their respective job duties.

(d) "Supported employment" means competitive work in an integrated work setting with on-going support services for persons with a severe disability for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of severe handicaps.

(e) "Person with a severe disability" means an individual who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, work tolerance, self-care, self-direction, or interpersonal, communication or work skills) in terms of an employment outcome; and who will require multiple vocational rehabilitation services over an extended period of time.


(a) Within the available funds as appropriated by the Legislature, the division of rehabilitation services shall establish a model supported employment program in an unserved area of the state. The model program shall be selected through a request for proposal process including proposal review and selection by the West Virginia division of rehabilitation services in cooperation with the state developmental disabilities planning council.

(b) The model supported program and existing supported employment programs approved by the West Virginia division of rehabilitation services shall promote employment services to eligible individuals including:

(1) Job development services to secure competitive jobs;

(2) Services to assist the person with a severe disability in maintaining his or her supported employment position; and
(3) Other employment services not funded through the West Virginia division of rehabilitation services federal Title I and Title VI, Part C programs.

(c) An existing sheltered workshop shall implement the model program selected to be established, with the advice and consultation of the state developmental disabilities planning council.

(d) The division of rehabilitation services shall administer the supported employment program.

§18-10I-4. Eligibility; primary focus.

(a) The primary focus of the supported employment program is providing employment supports for persons with severe disabilities who have never worked or have only worked intermittently due to their disability.

(b) To be eligible for the supported employment program, a person must have a severe disability as defined in section two of this article.

CHAPTER 47

(Com. Sub. for S. B. 377—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed April 21, 1993; in effect from passage. Approved by the Governor.]
and reenact sections one, three and four, article three of said chapter; to amend and reenact section two, article three-a of said chapter; to further amend said chapter by adding thereto a new article, designated article three-c; to amend and reenact sections one and two, article four of said chapter; to amend and reenact section two, article five of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section one, article six of said chapter; to amend and reenact sections one and five, article seven of said chapter; to further amend said article by adding thereto five new sections, designated sections six, seven, eight, nine and ten; to amend and reenact section three, article eight of said chapter; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections four and five, article nine of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections one and fourteen, article ten of said chapter; to amend and reenact article thirteen of said chapter; to amend article fourteen of said chapter by adding thereto a new section, designated section three; to amend and reenact sections two and three, article seventeen of said chapter; and to amend chapter eighteen-c of said code by adding thereto a new article, designated article five, all relating to higher education; advancing certain recommendations of the higher education advocacy team; providing for quarterly allotment shortfalls through temporary special revenue transfers and special consideration by secretary of administration; stating legislative intent and goals regarding distance learning; placing secretary of education and the arts on distance learning council; placing council under jurisdiction of secretary of education and the arts; allowing term extension of chair of distance learning council; transferring funds of distance learning coordinating council to secretary of education and the arts; setting forth goals for post-secondary education; providing for implementation of said goals; redefining community college terms; requiring governing boards and state board of education to
provide secretary of education and the arts with requested information in timely manner; requiring post-secondary academic success score testing; authorizing distance learning pilot program; requiring specified periodic studies as part of five-year review; giving governing boards jurisdiction over teacher education programs; requiring presidential performance evaluations to be written; allowing governing boards to enter into contracts and consortium agreements for specified purposes; requiring rules for advance placement; requiring individuals to work with state auditor and treasurer and report to legislative oversight commission on education accountability regarding efficient expenditure methods that ensure payment within fifteen days of properly submitted requests therefor; requiring uniform method for conducting personnel transactions; allowing federal employees to serve on higher education governing boards; requiring boards and institutions to adopt salary policies; stating legislative intent to provide funds for salaries from appropriations; establishing consortium of comprehensive child development centers and providing generally therefor; giving Fairmont state and West Virginia institute of technology primary responsibility for technical preparation teacher training programs; specifying duties of board of directors regarding comprehensive community college system; requiring board of directors to delegate authority as deemed prudent to community college presidents; providing for joint administrative board for facilities shared by public and higher education; deleting vice chancellor for community colleges; replacing said vice chancellor with chancellor of board of directors on joint commission for vocational-technical-occupational education; creating governor's council on higher and other post-secondary education and providing generally therefor; setting forth powers and duties of council and limitations thereto; updating duties of senior administrator; requiring governing boards to establish resource allocation model and policies; requiring funds, including funds for salary increases, be distributed in accordance with policies; authorizing certain transfers of general and special revenue funds within and among certain
higher education accounts in accordance with stated procedure and with stated limitations; authorizing and providing generally for special efficiency surplus revolving fund which may be carried over to next fiscal year and expended only by line item appropriation; authorizing Legislature to transfer certain funds and redesignate same; requiring reports regarding line item transfer and surplus fund; requiring institutional board of advisors to provide advice and assistance to president relating to certain activities; authorizing administrative officer appointed to institutional board of advisors to serve more than two terms and coordinate institution's economic development activities; providing for preferential hiring of existing classified employees; requiring boards to establish policies, with assistance of faculty and/or classified employees, regarding continuing education and staff development, adjunct faculty, professional productivity, teaching and research duties of faculty-rank campus administrators and employment innovations; providing across-the-board annual salary increase of two thousand dollars for full-time faculty, including extension faculty, subject to appropriation; providing across-the-board annual salary increase of fifteen hundred dollars for full-time, nonclassified employees subject to appropriation of funds; setting forth timeline for approval and implementation of uniform employee classification system for classified employees without additional appropriation; stating need for emergency rule in regard thereto; declaring certain provisions null and void upon implementation of rule; providing across-the-board monthly salary increase of one hundred twenty-five dollars for full-time classified employees, including extension employees, subject to appropriations; providing classified employee salary increase be prorated for part-time classified employees as defined; allowing classified employees at maximum salary to receive limited salary increase; authorizing future salary increases for nonclassified and classified employees and faculty; stating goal for level of tuition and required fees for resident and nonresident students at state institutions of higher education; setting forth fees for off-campus courses; defining full-time enrol-
lement for fee purposes; providing alternative methods for payment of fees and extensions in cases of legal work stoppages; requiring boards to adopt standardized refund policy; requiring penalties, by rule, for excessive course registration; authorizing public interest research group fee; suggesting stated textbook policies in order to minimize costs; streamlining provision regarding higher education-industry partnerships; limiting tax credits and deferrals; requiring certain reports; authorizing southern West Virginia community college to sell real property as set forth; authorizing legislative rules; recodifying higher education grant program; removing administration from the state commission on higher education and placing it with senior administrator; requiring additional one and one-half million dollars appropriation each year for five years to that grant program; deleting obsolete code provision dealing with the task force on faculty salaries; and deleting or updating outdated code sections.

Be it enacted by the Legislature of West Virginia:

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

Chapter 5A. Department of Administration.

10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.


18B. Higher Education.

18C. Student Loans; Scholarships and State Aid.

CHAPTER 5A.

DEPARTMENT OF ADMINISTRATION.

ARTICLE 2. FINANCE DIVISION.

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

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

§5A-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.
The secretary shall examine the expenditure schedule of each spending unit, and if it conforms to the appropriations made by the Legislature, the requirements of this article, and is in accordance with sound fiscal policy, the secretary shall approve the schedule. In addition, the secretary shall give special consideration in the approval of expenditure schedules to accounts in which the appropriations consist predominantly of personal services funds so that the quarterly allotments of funds to the various spending units pursuant to section fifteen of this article are sufficient to pay such personnel costs in the quarter in which they are due.

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

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

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

The secretary shall examine the requests, giving special consideration to accounts in which the appropriations consist predominantly of personal services funds so that the quarterly allotments of funds to the various spending units are sufficient to pay such personnel costs in the quarter in which they are due, and, if the secretary finds that the amounts requested are in
accordance with the approved expenditure schedules
and are in accordance with sound fiscal policy, the
secretary shall submit the requests to the governor. The
secretary shall also submit a summary statement
showing the amounts expended under the budget for
each preceding quarter of the fiscal year and the total
amount requested for allotment during the ensuing
quarter.

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

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS; ROSTER OF
SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2a. West Virginia distance learning coordinating
council; creation; duties.

(a) The Legislature finds that the educational benefits
of making a broader range of courses available to West
Virginia students, and the economic benefits from
continuing education and staff development for
businesses, industry and the professions, are
immeasurable and that distance learning technology
offers an efficient means of delivering such education
and personnel development courses. The Legislature
further finds that distance learning technology requires
a substantial financial investment and the acquisition
and utilization of such technology should, therefore, be
cordinated among the various affected agencies.
(b) To facilitate such coordination, there is hereby created a West Virginia distance learning coordinating council which shall be composed of one representative of each of the following: SatNet, EdNet, the educational broadcasting authority, the West Virginia library commission, the state department of education, the higher education central office, the department of administration's division of information systems and communications and the office of the secretary of education and the arts. The chair elected by the council shall serve a term of one year, at which time the council shall elect a new chair. A member of the council may not serve for more than two consecutive terms as chair, except by unanimous vote of the council.

The council shall meet at least quarterly and shall develop long-range plans to integrate the instructional telecommunications system, to coordinate distance learning in West Virginia and to clarify the roles of the agencies involved in the state's distance learning enterprise. The council shall submit an annual report to the governor and the Legislature, which includes its recommendations for achieving the best use of limited resources in the development and operation of a distance learning technology system.

(c) A goal of the council is the creation of a statewide technology system linking universities and colleges, schools, libraries and, eventually, homes with software, data bases and video learning capabilities. In pursuit of this goal, the council shall determine the most effective and efficient ways to integrate the capabilities of the state for producing, delivering and receiving electronic instruction and establish a comprehensive long-range plan to further the cooperation and coordination of the various educational and other agencies of the state, and the county boards of education, in establishing distance learning technology.

(d) There is hereby created in the state treasury a special fund designated the “Distance Learning Fund” which shall be under the jurisdiction of the secretary of education and the arts for use solely for the purposes of the distance learning grant program as provided in this
Appropriate guidelines for participation by school districts, state institutions of higher education, public libraries and public broadcasting stations, in the grant program, shall be established by the distance learning coordinating council subject to approval by the legislative oversight commission on education accountability. Such guidelines shall include application procedures and shall establish policies for awarding grants in the event that more grant applications are received than there are funds available to honor the applications in any fiscal year. In allocating funds to applicants, the council may give due consideration to revenues available from all other sources. The state board of education shall approve courses offered through this program at the elementary and secondary education level. The higher education governing boards shall approve courses taught at the post-secondary level.

(e) In any fiscal year moneys in the fund shall be used first to ensure that any and all school districts, state institutions of higher education, public libraries and public television stations seeking aid under this program shall receive telecommunications equipment necessary to participate in the satellite learning process; second, to provide the school districts and state institutions of higher education with access to subjects at the advanced level or the remedial level or which are not taught in the schools of the district or the service area or campus; and third, to provide enrichment classes, continuing education and professional development. However, the council may set aside a portion of the funds to be used to contract with state institutions of higher education, state institutions of public education and public broadcasting stations to develop instructional programs for grades kindergarten through twelve. Funds may also be used for undergraduate and graduate course work suitable for broadcast to the school districts, state institutions of higher education, as appropriate, for continuing education and professional development for business and industry seminars and to develop the capability to
transmit programs cited in this section.

(f) Participation by a local school district, a state institution of higher education, a public library or a public broadcasting station in the program established by this section shall be voluntary. No school district, state institution of higher education, public library or public broadcasting station receiving funds under this program shall use those funds for any purpose other than that for which they were intended. Any school district, state institution of higher education, public library or public broadcasting station shall be eligible to receive funds under this program regardless of its curriculum, local wealth or previous contractual arrangements to receive satellite broadcast instruction.

(g) The secretary of education and the arts on behalf of the state of West Virginia may contract with institutions of higher education and the state board of education for the development or operation, or both, of state employee training programs transmitted by telecommunications technology.

Instructional programs developed under this section which are transmitted one-way through the airwaves or by cable shall be available to all residents of this state without charge or fee to the extent permitted by the West Virginia constitution. "Without charge or fee" shall not require the providing of equipment to transmit or receive telecommunications instruction or the providing of commercial cable service. If the instructional program involves two-way, interactive communication between the instructor and the participant, the district or institution operating the program may prescribe academic prerequisites and limit the number of persons who may enroll in the specific program and give preference to residents of the district or institutional attendance area who are age twenty-one or younger but shall not discriminate against any resident on any other basis. A fee may be charged which will be paid directly by the individual participant for the specific program, but the fee shall be equal for all such participants. If a subscription fee is charged by the originator of the program, the district or institution
may pay the subscription fee for all participants from a grant under this section or from any other public or private fund legally authorized to be used for this purpose. Printed materials designed to facilitate or complement telecommunications programs or electronic reproduction thereof may be made available for loan by the school district, institution of higher education through the public library system or the curriculum technology resource center, subject to the normal rules and regulations of the lending system and in such quantities as may be approved by the governing body of the district or institution.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-8. Requisition on behalf of institutions to be accompanied by statement showing funds on hand.

No requisition shall be made upon the auditor for any money appropriated for the penitentiary, the West Virginia schools for the deaf and blind, state mental health facilities, state hospitals, corrections facilities, or for any other public institution for education, charity or correction, institutions governed by the university of West Virginia board of trustees and by the board of directors of the state college system, unless such requisition shall be accompanied by the statement in writing of the treasurer or other financial officer of such institution, showing the amount of money in his or her hands to the credit of such institution, or otherwise in its control, on the day such requisition is forwarded for payment.

CHAPTER 18B. HIGHER EDUCATION.

Article
1. Governance.
2. University of West Virginia Board of Trustees.
3. Board of Directors of the State College System.
3A. West Virginia Joint Commission for Vocational-Technical-Occupational Education.
3C. Governor's Council on Higher and Other Post-Secondary

(a) Findings and directives. — The Legislature finds that higher education is a vital force in the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, West Virginia should invest in its people through a strong and dynamic higher education system.

The Legislature further finds that the people of West Virginia have demonstrated their support for this finding through their involvement and comments at meetings held throughout the state pursuant to Senate Concurrent Resolution No. 30 adopted at the regular session of the West Virginia Legislature, one thousand nine hundred ninety-two. The Legislature, also, endorses the report submitted by the higher education advocacy team pursuant to said resolution and directs the affected educational agencies to implement unified strategies for accomplishing the needed improvements.

(b) Goals and objectives. — In the pursuance of the above findings, the following goals and objectives are hereby adopted with respect to the investments which
are necessary for higher education in West Virginia to contribute fully to the growth, development and quality of life of the state and its citizens:

(1) Students should be better prepared in high school to meet college standards jointly agreed upon by higher education and the public schools as required under subsection (c), section five of this article. Those standards should be conveyed to students prior to entering tenth grade;

(2) More students should obtain education beyond the high school level for our individual and collective economic development:

(A) The awareness of post-secondary educational opportunities among the state's citizens should be expanded and their motivation to take advantage of available opportunities should be enhanced;

(B) Assistance in overcoming the financial barriers to post-secondary education should be provided;

(C) A student-friendly environment should be created within post-secondary education to encourage and expand participation for the increasingly diverse student population;

(3) Students should be prepared to compete in a global economy in which the good jobs will require an advanced education and level of skill which far surpasses former requirements:

(A) Academic preparation should be improved to ensure that students enrolling in programs of post-secondary education are adequately prepared to be successful in their selected fields of study and career plans;

(B) College graduates should meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

(C) College graduates should meet or exceed national and international standards for performance in their
fields through national accreditation of programs and
through outcomes assessment of graduates;

(4) Resources should be focused on programs and
courses which offer the greatest opportunities for
students and the greatest opportunity for job creation
and retention in the state:

(A) An entrepreneurial spirit and flexibility should be
created within higher education to respond to the needs
of the current work force and other nontraditional
students for college-level skills upgrading and
retraining;

(B) A focus should be created on programs supportive
of West Virginia employment opportunities and the
emerging high technology industries;

(C) Closer linkages should be established among
higher education and business, labor, government,
community and economic development organizations;

(5) Resources should be used to their maximum
potential and faculty and technology should be combined
in a way that makes West Virginia higher education
more productive than similar institutions in other states:

(A) Institutional missions should be clarified and
resources should be shifted to programs which meet the
current and future work force needs of the state;

(B) Program duplication necessary for geographic
access should be determined and unnecessary
duplication should be eliminated;

(C) Systematic ongoing mechanisms should be
established for each state institution of higher education
to set goals, measure the extent to which those goals are
met and use results of quantitative evaluation processes
to improve institutional effectiveness;

(D) Institutional productivity and administrative
efficiency standards should be established to ensure that
state institutions of higher education are more
productive and efficient than similar institutions in
other states; and
(6) The compensation of faculty, staff and administrators should be established at competitive levels to attract and keep quality personnel at state institutions of higher education:

(A) Faculty and staff classification and compensation at state institutions of higher education should be competitive with relevant market levels; and

(B) Available revenues should be distributed in an equitable fashion which enables each state institution of higher education to fulfill its mission and reward its employees appropriately.

§18B-1-1b. Implementation of findings, directives, goals and objectives.

The board of trustees and the board of directors shall develop a plan for implementation of the legislative findings, directives, goals and objectives set forth in section one-a of this article and to ensure accountability in implementing said findings, directives, goals and objectives in consultation with the secretary of education and the arts, the president of the state board of education, the president of the West Virginia association of private colleges, the president of the joint commission for vocational-technical-occupational education and the president of the West Virginia economic development council. A written report of the plan required by this section shall be submitted to the governor and the legislative oversight commission on education accountability by the first day of December, one thousand nine hundred ninety-three.

§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) "Freestanding community colleges" means southern West Virginia community college and West Virginia northern community college, which shall not be operated as branches or off-campus locations of any other state institution of higher education;

(d) "Community colleges" means freestanding community colleges, branches or off-campus locations of state institutions of higher education within the state college system and programs offered at state institutions of higher education within the state college system which are two years or less in duration;

(e) "Community college component" means any program operated by a state institution of higher education within the university system which is two years or less in duration, which program may be offered at the institution or at a branch or off-campus location;

(f) "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;

(g) "Higher educational institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(h) "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;

(i) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(j) "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;

(k) "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;

(l) "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;

(m) "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;

(n) "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;

(o) "University", "university of West Virginia" and "state university system" means the multi-campus, integrated university of the state, consisting of West Virginia university including West Virginia university at Parkersburg, Potomac state college of West Virginia university 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.

§18B-1-5. Board of trustees and board of directors under department of education and the arts.

(a) The board of trustees and the board of directors, created in articles two and three of this chapter, are under the jurisdiction of the department of education and the arts created in article one, chapter five-f of this code, and are subject to the supervision of the secretary of education and the arts. Rules adopted by the governing boards shall be subject to approval by the secretary of education and the arts. The budget submitted by each board pursuant to the provisions of
section eight of this article shall be subject to approval
of the secretary of the department of education and the
arts, all pursuant to the provisions of article two,
chapter five-f of this code.

(b) The secretary of education and the arts is
responsible for the coordination of policies and purposes
of the state university system and the state college
system and shall provide for and facilitate sufficient
interaction between the governing boards, and between
the governing boards and the state board of education,
to assure appropriate mission and program coordination
and cooperation among: (1) The state university system;
(2) the state college system, exclusive of the community
colleges; (3) the community colleges, including free-
standing community colleges, and community college
components; and (4) the vocational-technical centers in
the state, recognizing the inherent differences in the
missions and capabilities of these four categories of
institutions. The governing boards and the state board
of education shall provide any and all information
requested by the secretary of education and the arts and
legislators in a timely manner.

(c) The secretary of education and the arts, the
chancellors of the board of trustees and the board of
directors and the state superintendent of schools shall
develop standards and suggest implementation methods
for a standardized test to be used to predict post-
secondary educational success such as the test offered by
the American college testing program. The test,
hereinafter referred as the post-secondary academic
success score or PASS, is to be administered to all
students during the fall semester of the eighth grade.
The secretary of education and the arts, the chancellors
of the board of trustees and the board of directors, and
the state superintendent of schools shall submit a joint
report outlining their findings to the governor and the
legislative oversight commission on education
accountability by the first day of December, one
thousand nine hundred ninety-three.

§18B-1-5a. Pilot program of delivering educational
services via distance learning.
(a) The intent of the Legislature in enacting this section is to create the framework for establishing an educational delivery system to address findings that:

(1) The strength of the economy of the state of West Virginia is directly affected by the percentage of the available work force possessing college degrees and/or an advanced vocational-technical education from which an employer may draw;

(2) Real and perceived barriers within West Virginia and its systems of higher education, such as the cost of a college education, the availability of appropriate course work at locations and times convenient for students with families and/or jobs, and inadequate preparation for college-level work, have created road blocks for West Virginians in achieving their educational goals and, in turn, have limited the economic opportunities available to them and the state of West Virginia; and

(3) Because of the state's history of a low college-going rate and a low percentage of state residents who hold college degrees, meeting the current and future work force needs of West Virginia will require attention to the needs of working-age adults for upgrading their skills, continuing their educations, preparing for new careers and other lifelong learning pursuits, in addition to attending to the educational needs of traditional college age students.

(b) Such a delivery system should employ the best available technology and qualified instructors to provide courses of instruction to students at remote locations by means of electronic transmission and computer assisted instruction. The delivery system should make maximum use of the currently existing resources, facilities, equipment and personnel in the state's systems of public and higher education and other educational and administrative agencies and should be low-tuition, commuter-oriented, open door admissions, serving adults of all ages. The courses of instruction offered through such a system should be relevant to the needs of the target population as expressed in the major
findings listed in subsection (a) of this section and should meet the several goals of helping students to prepare for college level work, to increase their likelihood of securing gainful employment given their other relevant life circumstances, to obtain higher education core curriculum course work that is universally accepted at all state institutions of higher education with the grade earned and to minimize the amount of additional course work they will be required to take at less convenient times and locations to achieve their educational goals. The delivery system should also include adequate student support services such as student advising, career counseling, library access and immediate interaction with peers and instructors.

(c) The secretary of education and the arts is responsible for establishing a three-year pilot program consisting of no more than eight sites within the state for the delivery of educational programs consistent with the goals established in this section. To assist in the development of this program, the secretary shall appoint an advisory committee comprised of persons from public education, higher education, the West Virginia distance learning coordinating council, the Legislature and the business community. In consultation with the advisory committee, the secretary shall contract with the appropriate governing board or other body to offer courses or programs of various levels and types to meet the objectives of this section. The contracts shall specify the pilot sites for offering the educational programs, the various technologies for program delivery, the types of courses to be offered, the course instructors and site coordinators and their training, the fees to be charged, the institutions in the state willing to enroll the student participants, the collection of tuition and fees, a method for accounting for the funds collected and expended and other issues relevant to program administration. There is hereby established in the state treasury a special revolving fund within the account of the secretary of education and the arts into which appropriations, course fees, charitable contributions and other moneys received by the secretary for the purposes of the program shall be paid for expenditures in the operation of the pilot


program. During each year of the pilot program, the secretary shall report to the governor and the Legislature on the progress of the program, whether it should be continued or discontinued, and, if continued, any recommended modifications in program scope and mission and any action which is necessary on behalf of the governor or the Legislature to improve the success of the program. At the end of the pilot program, the secretary shall make a final report to the governor and the Legislature as to whether the findings set forth in this section are being addressed through such an educational delivery system and shall recommend whether it should become permanent. If the secretary recommends that the delivery system should become permanent, the secretary shall also recommend specific structures for program support and administration, instructional development and objectives, technology, student support services and other relevant policy issues.

§18B-1-7. Supervision by governing boards; delegation to president.

On and after the first day of July, one thousand nine hundred eighty-nine, the governing boards shall determine, control, supervise and manage all of the policies and affairs of the state institutions of higher education under their jurisdiction and shall exercise and perform all such powers, duties and authorities respecting those institutions as were previously exercised and performed by the West Virginia board of regents.

The governing boards have the general determination, control, supervision and management of the financial, business and educational policies and affairs of all state institutions of higher education under their jurisdiction. The board of trustees and the board of directors shall seek the approval of the West Virginia Legislature before either governing board takes action that would result in the creation or closing of a state institution of higher education.

Except as otherwise provided by law, each board's
responsibilities shall include, but shall not be limited to,
the making of studies and recommendations respecting
higher education in West Virginia; allocating among the
state institutions of higher education under their
jurisdiction specific functions and responsibilities;
submitting budget requests for such institutions; and
equitably allocating available state appropriated funds
between the boards and among such institutions in
accordance with the resource allocation model and
policies required by section two, article five of this
chapter.

Each board shall delegate, as far as is lawful, efficient
and fiscally responsible and within prescribed standards
and limitations, such part of its power and control over
financial, educational and administrative affairs of each
state institution of higher education to the president or
other administrative head of those institutions. This
shall not be interpreted to include the classification of
employees, lawful appeals made by students in
accordance with board policy, lawful appeals made by
faculty or staff or final review of new or established
academic or other programs.

§18B-1-8. Powers and duties of governing boards
generally.

(a) Each governing board shall separately have the
to:

(1) Determine, control, supervise and manage the
financial, business and educational policies and affairs
of the state institutions of higher education under its
jurisdiction;

(2) Prepare a master plan for the state institutions of
higher education under its jurisdiction, setting forth the
goals, missions, degree offerings, resource requirements,
physical plant needs, state personnel needs, enrollment
levels and other planning determinates and projections
necessary in such a plan to assure that the needs of the
state for a quality system of higher education are
addressed: Provided, That the master plan for post-
secondary vocational education is subject to approval by
the joint commission for vocational-technical-
occupational education. The plan shall also address the roles and missions of private post-secondary education providers in the state. Each board shall involve the executive and legislative branches of state government and the general public in the development of all segments of the plan for post-secondary education in the state. The plan shall be established for periods of not less than five nor more than ten years and shall be periodically revised as necessary, including the addition or deletion of degree programs as, in the discretion of the boards, may be necessary. Whenever a state institution of higher education desires to establish a new degree program, such program proposal shall not be implemented until the same is filed with both governing boards. Upon objection thereto within sixty days by either governing board, such program proposal shall be filed with the secretary of education and the arts, who shall approve or disapprove such proposal within one year of the filing of said program proposal;

(3) Prescribe and allocate among the state institutions of higher education under its jurisdiction, in accordance with its master plan, specific functions and responsibilities to meet the higher education needs of the state and to avoid unnecessary duplication;

(4) Consult with the executive branch and the Legislature in the establishment of funding parameters, priorities and goals;

(5) Establish guidelines for and direct the preparation of budget requests for each of the state institutions of higher education under its jurisdiction, such requests to relate directly to missions, goals and projections in its state master plan;

(6) Consider, revise and submit to the appropriate agencies of the executive and legislative branches of state government separate budget requests on behalf of the state institutions of higher education under its jurisdiction or a single budget for the state institutions of higher education under its jurisdiction: Provided, That when a single budget is submitted, that budget shall be accompanied by a tentative schedule of
proposed allocations of funds to the separate state
institutions of higher education under its jurisdiction;

(7) Prepare and submit to the speaker of the House
of Delegates and the president of the Senate, no later
than the first day of each regular session of the
Legislature, and to any member of the Legislature upon
request, an analysis of the budget request submitted
under subdivision (6) of this subsection. The analysis
shall summarize all amounts and sources of funds
outside of the general revenue fund anticipated to be
received by each state institution of higher education
under its jurisdiction and the effect of such funds on the
budget request;

(8) Prepare and submit to the legislative auditor, no
later than the first day of July of each year, the
approved operating budgets of each state institution of
higher education under its jurisdiction for the fiscal
year beginning on that date and, no later than the first
day of August, a summary of federal and other external
funds received at each such institution during the
previous fiscal year;

(9) Establish a system of information and data
management that can be effectively utilized in the
development and management of higher education
policy, mission and goals;

(10) Review, at least every five years, all academic
programs offered at the state institutions of higher
education under its jurisdiction. The review shall
address the viability, adequacy and necessity of the
programs in relation to its master plan and the
educational and work force needs of the state. As a part
of such review, each governing board shall require each
of its institutions to conduct periodic studies of its
graduates and their employers to determine placement
patterns and the effectiveness of the educational
experience. Where appropriate, these studies should
make use of the studies required of many academic
disciplines by their accrediting bodies. The governing
boards shall also ensure that the sequence and
availability of academic programs and courses is such
that students have the maximum opportunity to complete programs in the time frame normally associated with program completion, that the needs of nontraditional college age students are appropriately addressed, and that core course work completed at any state institution of higher education is transferable to another state institution of higher education for credit with the grade earned. Notwithstanding any other provision of this code to the contrary, after the effective date of this section the appropriate governing board shall have the exclusive authority to approve the teacher education programs offered in the institutions under their control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the boards may select and utilize one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(11) Utilize faculty, students and classified staff in institutional level planning and decision making when those groups are affected;

(12) Administer a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators;

(13) Establish a uniform system for the hearing of employee grievances and appeals therefrom, so that aggrieved parties may be assured of timely and objective review;

(14) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the state institutions of higher education;

(15) Appoint a president or other administrative head for each institution of higher education from candidates submitted by the search and screening committees of the institutional boards of advisors pursuant to section one, article six of this chapter;

(16) Conduct written performance evaluations of each institution's president in every fourth year of
employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board;

(17) Submit to the joint committee on government and finance, no later than the first day of December of each year, an annual report of the performance of the system of higher education under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and budget appropriations for that fiscal year; and

(18) The governing boards shall have the power and authority to enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of public institutions of higher education or at off-campus locations in such institutions’ regional educational service areas. To accomplish this goal, the boards are permitted to share resources among the various groups in the community. The governing boards shall promulgate uniform legislative rules providing for entering into said contracts and consortium agreements and for determining and granting credit for work experience for courses offered by the consortium.

(b) The power, herein given to each governing board to prescribe and allocate among the state institutions of higher education under its jurisdiction specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication, shall not be restricted by any provision of law assigning specified functions and responsibilities to designated state institutions of higher education, and such power shall supersede any such provision of law: Provided, That each governing board may delegate, with prescribed standards and limitations, such part of its power and control over the business affairs of a particular state institution of higher education to the president or other
administrative head of such state institution of higher education in any case where it deems such delegation necessary and prudent in order to enable such institution to function in a proper and expeditious manner: Provided, however, That such delegation shall not be interpreted to include classification of employees, lawful appeals made by students in accordance with the appropriate governing board's policy, lawful appeals made by faculty or staff or final review of new or established academic or other programs. Any such delegation of power and control may be rescinded by the appropriate governing board at any time, in whole or in part.

(c) The governing boards shall promulgate uniform legislative rules by the first day of September, one thousand nine hundred ninety-three, setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department.

(d) Each governing board and/or an individual appointed by the president of each institution shall consult, cooperate and work with the state treasurer and the state auditor to develop an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds for higher education that ensures that properly submitted requests for payment be paid within fifteen days of receipt in the state auditor's office. The system shall be established and implemented as soon as practical and the governing boards shall report to the legislative oversight commission on education accountability prior to the first day of January, one thousand nine hundred ninety-four, regarding the efficacy of the system.

(e) The governing boards shall implement by the first day of July, one thousand nine hundred ninety-four, a
uniform and consistent method of conducting personnel transactions including, but not limited to, hiring, dismissal, promotions and transfers at all institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which will be submitted to the respective governing boards, secretary of education and the arts, department of finance and administration and the legislative oversight commission on education accountability.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.


§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The board of trustees shall consist of seventeen persons, of whom one shall be the chancellor of the board of directors of the state college system, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other twelve trustees shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate.

Each of the trustees appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or
Except for the ex officio trustees, no person shall be eligible for appointment to membership on the board of trustees who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or an appointee or employee of the board of trustees or the board of directors: Provided, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of trustees. Of the twelve trustees appointed by the governor from the public at large, not more than six thereof shall belong to the same political party and at least two trustees shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint twelve trustees as soon after the first day of July, one thousand nine hundred eighty-nine, as is practicable, and the original terms of all trustees shall commence on that date.

The terms of the trustees appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, four shall be appointed to terms of two years, four shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of six years.

The governor shall appoint a trustee to fill any vacancy among the twelve trustees appointed by the governor, by and with the advice and consent of the Senate, which trustee appointed to fill such vacancy shall serve for the unexpired term of the vacating trustee. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.
All trustees appointed by the governor shall be eligible for reappointment: Provided, That a person who has served as a trustee or director during all or any part of two consecutive terms shall be ineligible to serve as a trustee or director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a trustee, each trustee shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia, and the certificate thereof shall be filed with the secretary of state.

(d) No trustee appointed by the governor shall 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 of the state elective officers by the governor.


(a) The trustees shall govern the university of West Virginia. The trustees shall develop a master educational plan for the university system in the state, establish research policies for the several institutions within the university system and shall oversee graduate, professional and medical education at the appropriate institutions of higher education under their jurisdiction to the end of avoiding duplication in advanced study, specialty institutes and research.

(b) The board of trustees shall adopt a faculty salary program with an overall goal of attaining salaries equal to the average faculty salaries within similar groups of
disciplines and program levels at comparable peer institutions within member states of the southern regional educational board Four-Year 1 at West Virginia university; Four-Year 3 at Marshall university; and appropriate levels at the West Virginia graduate college, Potomac state college of West Virginia university, West Virginia university at Parkersburg and the school of osteopathic medicine as determined by the board of trustees. It is the intent of the Legislature, limited by the extent of appropriations provided specifically therefor, to provide the board of trustees with sufficient funds to meet this goal by fiscal year one thousand nine hundred ninety-six.


(a) There is hereby established a consortium of comprehensive child development centers under the auspices of the board of trustees and under the direction and administration of the vice chancellor for health sciences. The goals of the consortium include, but are not limited to:

(1) Recommending a comprehensive diagnostic and technical support system to assist faculty and students in providing educational programs for students with disabilities;

(2) Providing a system for the comprehensive interdisciplinary diagnosis, treatment and follow-up of children and young adults with special needs and their families;

(3) Offering programs for the training of parents and families;

(4) Creating significant links between disciplines, departments, schools, colleges, universities and agencies;

(5) Providing all services (clinical, training, technical assistance and consultation) at child development centers and at strategically planned outreach sites, including institutions of higher education;
(6) Planning and implementing a statewide system of care for children with special needs and their families;

(7) Providing family-centered, community-based, culturally sensitive, coordinated care;

(8) Assuring interdisciplinary, interagency cooperation;

(9) Linking community-based health and educational services with institutions of higher education;

(10) Establishing a statewide comprehensive diagnostic support team and advisory boards at each center composed of agency representatives, physicians, education providers, center personnel, parents and others; and

(11) Facilitating significant parent and family participation, including parents as members of the statewide team and representing a majority of the membership of each center's advisory boards.

(b) Subject to appropriations by the Legislature, the board of trustees is authorized and directed to establish at least four comprehensive child development sites at existing university health science centers located at Morgantown, Charleston, Huntington and Lewisburg. Planning of at least these four centers and the establishment of advisory boards shall be completed by the first day of July, one thousand nine hundred ninety-three. The board of trustees shall establish at least these four sites prior to the first day of January, one thousand nine hundred ninety-four.

The board of trustees may enter into a contractual relationship with each child development center, which shall be in accordance with laws that apply to publicly funded partnerships with private, nonprofit entities and the provisions of section three, article five of this chapter.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The board of directors of the state college system shall consist of seventeen persons, of whom one shall be the chancellor of the university of West Virginia board of trustees, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other twelve directors shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate.

Each of the directors appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or interest in the field.

Except for the ex officio directors, no person shall be eligible for appointment to membership on the board of directors who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions, or an appointee or employee of the board of trustees or board of directors:

Provided, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of directors. Of the twelve directors appointed by the governor from the public at large, not more than six thereof shall belong to the same political party and at least two directors of the board
shall be appointed from each congressional district. 

Except as provided in this section, no other person may be appointed to the board. 

(b) The governor shall appoint twelve directors as soon after the first day of July, one thousand nine hundred eighty-nine, as is practicable, and the original terms of all directors shall commence on that date. The terms of the directors appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, four shall be appointed to terms of two years, four shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be appointed to a term of six years. 

The governor shall appoint a director to fill any vacancy among the twelve directors appointed by the governor, by and with the advice and consent of the Senate, which director appointed to fill such vacancy shall serve for the unexpired term of the vacating director. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy. 

All directors appointed by the governor shall be eligible for reappointment: Provided, That a person who has served as a director or trustee during all or any part of two consecutive terms shall be ineligible to serve as a director for a period of three years immediately following the second of the two consecutive terms. 

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves. 

(c) Before exercising any authority or performing any duties as a director, each director shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution
of West Virginia, and the certificate thereof shall be filed with the secretary of state.

(d) No director appointed by the governor shall 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 the state elective officers.

§18B-3-3. Additional duties of board of directors.

(a) The board of directors of the state college system shall govern the state college system.

(b) The board of directors shall determine programs to be offered by state institutions of higher education under its jurisdiction, shall clarify the missions of the institutions under its jurisdiction, and, in so doing, ensure that Fairmont state and West Virginia institute of technology are given primary responsibility for technical preparation teacher training programs.

(c) The board of directors shall govern community colleges and shall organize eight community college service areas in accordance with section four of this article.

(d) The board of directors shall adopt a faculty salary program with an overall goal of attaining salaries equal to the average faculty salaries within similar groups of disciplines and program levels at comparable peer institutions within member states of the southern regional education board. It is the intent of the Legislature, limited by the extent of appropriations made specifically therefor, to provide the board of directors with sufficient funds to meet this goal by fiscal year one thousand nine hundred ninety-six.

§18B-3-4. Community colleges.

(a) Effective the first day of July, one thousand nine hundred eighty-nine, the following institutions are hereby established or continued as freestanding community colleges: southern West Virginia community college and West Virginia northern community college.
Such freestanding community colleges shall not be operated as branches or off-campus locations of any other state institution of higher education.

(b) The directors, in accordance with article two-b, chapter eighteen of this code, shall cooperate with the state board of education, the state council of vocational-technical education and the joint commission for vocational-technical-occupational education to develop a comprehensive system of academic, vocational, technical and career development programs to serve the educational needs of adults for college preparatory, two-year associate degree, continuing education, work force training and retraining, and other such programs within the state. The board of directors shall delegate such authority as they deem prudent to the community college presidents, or other administrative heads, to work with campus level advisory committees to assess the work force needs of business and industry within their service areas, regularly review and revise curricula to ensure that the work force needs are met, develop new programs and phase out or modify existing programs as appropriate to meet such needs, provide professional development opportunities for faculty and staff, establish cooperative programs and student internships with business and industry, streamline procedures for designing and implementing customized training programs and to accomplish such other complements of a quality comprehensive community college. In developing such a system, the various educational agencies shall establish cooperative relationships to utilize existing community colleges and programs, public school vocational centers and other existing facilities to serve the identified needs within the service area. The community colleges, including freestanding community colleges, shall be organized into eight community college service areas which shall have the same boundaries as the regional educational service agencies established by the state board of education pursuant to section twenty-six, article two, chapter eighteen of this code: Provided, That any community college and the branches thereof existing on the effective date of this section may be located in more
than one community college service area created pursuant to this section and shall not be affected by such service area boundary.

(c) A separate division of community colleges shall be established under the board of directors. Programs at community colleges shall be two years or less in duration.

(d) The board of directors may fix tuition and establish and set such other fees to be charged students as it deems appropriate, and shall pay such tuition and fees collected into a revolving fund for the partial or full support, including the making of capital improvements, of any community college established, continued or designated hereunder. Funds collected at any such community college may be used only for the benefit of that community college. The board of directors may also establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes. Such special fees shall be paid into special funds and used only for the purposes for which collected.

Moneys collected at a branch college or off-campus location of a state institution of higher education which is subsequently designated as a community college shall be transferred to and vested in the successor community college.

(e) The board of directors may allocate funds from the appropriations for the state college system for the operation and capital improvement of any community college continued, established or designated under authority of this section and may accept federal grants and funds from county boards of education, other local governmental bodies, corporations or persons. The directors may enter into memoranda of agreements with such governmental bodies, corporations or persons for the use or acceptance of local facilities and/or the acceptance of grants or contributions toward the cost of the acquisition or construction of such facilities. Such local governmental bodies may convey capital
improvements, or lease the same without monetary consideration, to the board of directors for the use by the community college, and the board of directors may accept such facilities, or the use or lease thereof, and grants or contributions for such purposes from such governmental bodies, the federal government or any corporation or person.

(f) To facilitate the administration, operation and financing of programs in shared facilities of the state college system or the university of West Virginia system and a county board or boards of education, the affected governing board and county board or boards of education may appoint a joint administrative board consisting of five members to be appointed as follows: The county board of education shall appoint two members in consultation with the county superintendent of schools; the appropriate governing board shall appoint two members in consultation with the president of the affected state institution of higher education; and one at-large member, who shall chair the joint administrative board, shall be appointed by mutual agreement of the respective boards in consultation with their superintendent and president. When two or more county boards of education are participating in such shared program, such county board appointments shall be made by mutual agreement of each of the participating county boards in consultation with their respective superintendents. Members shall serve for staggered terms of three years. With respect to initial appointments, one member appointed by the county board or boards of education and one member appointed by the governing board shall serve for one year, one member appointed by the county board or boards of education and one member appointed by the governing board shall serve for two years, and the at-large member shall serve for three years. Subsequent appointments shall be for three years. A member may not serve more than two consecutive terms. Members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties as board members from funds allocated to the shared facility, except that members who are employed
by a board of education, governing board or state institution of higher education shall be reimbursed by their employer.

ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.

§18B-3A-2. Composition of commission; terms of members; qualifications of members.

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 West Virginia development office, 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 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.

ARTICLE 3C. GOVERNOR'S COUNCIL ON HIGHER AND OTHER POST-SECONDARY EDUCATION.

§18B-3C-1. Legislative findings; statement of purpose.
§18B-3C-2. Governor's council on higher and other post-secondary education established.
§18B-3C-3. Powers and authority of council generally.
§18B-3C-4. Funding and budgetary needs for higher and other post-secondary education.
§18B-3C-5. Increased enrollment.
§18B-3C-6. Student financing and cost of providing higher and other post-secondary education.
§18B-3C-7. Succeeding in higher and other post-secondary education endeavors.
§18B-3C-8. Interaction among the state's education professionals.
§18B-3C-9. Assistance for students with disabilities.

§18B-3C-1. Legislative findings; statement of purpose.
1 (a) The Legislature finds that West Virginia's economic future depends in part on the number of citizens with higher and other post-secondary education. In today's knowledge-based economy, higher education or other training beyond the high school level is required for most jobs that allow our citizens to maintain or improve their standard of living. To that end, access to higher and other post-secondary education must be expanded for students currently enrolled in school, as well as nontraditional students. This requires adequate planning and preparation, as well as the acquisition of strong basic skills, thinking and learning skills and human relation skills, so that the education may be successfully completed.

15 The Legislature further finds that real and perceived barriers within West Virginia's education systems
hamper West Virginians from achieving their educational goals and limit citizens' economic opportunities. To overcome these barriers, the education providers must address issues such as cost and availability of courses at locations and times convenient to students with families and jobs, as well as adequate preparation.

The Legislature further finds that clear expectations and objectives among the institutions, boards and other entities providing higher and post-secondary education can be improved, with a view toward accountability, efficiency and productivity. The state board of education, the governing board of the state college system, the governing board of the university system, the joint commission on vocational-technical-occupational education and the administrations of the many private colleges and universities and private, proprietary schools are all important components in the delivery of higher and other post-secondary education in this state and will play a vital role in meeting the challenges of the future. Cooperation and planning among the public and private institutions is necessary for effective work force preparation.

The Legislature further intends, by this article, to extend post-secondary and higher educational opportunities to diverse populations, thereby requiring sensitivity to regional, cultural, ethnic, economic, age and other differences so as to enhance West Virginians preparedness for, awareness of, interest in and access to such education and to eliminate barriers to receiving such education. The emphasis must be to meet the needs of all West Virginians.

(b) To that end, the Legislature intends to regularly convene those persons at the highest legislative and education policy-making levels of state government, as well as private educational institutions and economic development entities, to fulfill the responsibilities set forth in this article, as well as to adopt other strategies to meet the goals set forth in this article.

The Legislature intends this council to be an advisory,
57 coordinating council with no governing authority over
58 the state's educational institutions.

§18B-3C-2. Governor's council on higher and other post-
secondary education established.

1 There is hereby created the governor's council on
2 higher and other post-secondary education, hereinafter
3 referred to as the "HOPE council" or the "council". In
4 addition to such other persons as the governor may
5 appoint to the HOPE council, the council shall include
6 the secretary of education and the arts, the chairs of
7 each of the higher education governing boards, the
8 president of the state board of education, the president
9 of the association of independent colleges, the president
10 of the joint commission on vocational-technical-
11 occupational education, the president of the council on
12 economic development and the chairs of the education
13 committees of both the Senate and the House of
14 Delegates, both of whom shall serve in an advisory
15 capacity only.

16 The HOPE council shall be chaired by the governor
17 and shall convene at least quarterly. The HOPE council
18 shall establish bylaws which govern its decision making.

§18B-3C-3. Powers and authority of council generally.

1 (a) In addition to all other powers granted to the
2 HOPE council in this article and elsewhere by law, the
3 HOPE council shall have the power and authority to:

4 (1) Make such budget recommendations as may be
5 necessary for financing the work coordinated or
6 facilitated by the council, such recommendation to be
7 submitted to the governor for inclusion in the executive
8 budget in one or more appropriate existing accounts;

9 (2) Promote the work of the HOPE council in order
10 to engender strong support from the community,
11 education providers, the Legislature and business
12 leaders;

13 (3) Report annually to the Legislature and to such
14 other entities as the HOPE council may deem
15 appropriate on issues relating to higher and other post-
secondary education and develop a means of
communication with education providers and advisory
councils and with community members and business
leaders who are involved in activities which further the
goals, objectives and duties set forth in this article;

(4) Facilitate written agreements and procedures
between and among the higher education governing
boards, the state board of education, county boards of
education, the joint commission for vocational-technical-
occupational education, the distance learning
coordinating council and other boards, agencies and
entities involved in activities which further the goals,
objectives and duties set forth in this article;

(5) Review any rules, policies and procedures to the
extent that they impact on or create barriers to higher
or post-secondary education;

(6) Solicit proposals in furtherance of any program or
service required by this article, especially for the
implementation of pilot programs, and direct such
proposals to the appropriate entity for possible
implementation;

(7) Solicit grants, gifts, bequests, donations and other
funds for the benefit of any board, agency, commission
or other public entity best suited to administer or
facilitate the purpose of the grant, gift, bequest,
donation or other funds; and

(8) Report to the Legislature not later than the first
day of January, one thousand nine hundred ninety-four,
a common protocol for the education and certification of
teachers in the public schools of this state which shall
be developed with input from the center for professional
development.

(b) The HOPE council shall not have the authority to
hire personnel, nor shall the council have a separate
budget or direct control over any state funds.

§18B-3C-4. Funding and budgetary needs for higher and
other post-secondary education.

(a) The HOPE council shall analyze the accounts in
the state budget that address or impact upon higher
education and other post-secondary educational
opportunities, review budgetary needs and revenue
sources and make recommendations regarding the
governor's proposed budget and the redirection of
resources. In making such recommendations, the HOPE
council shall educate themselves on the availability of
and eligibility for federal, local and private funding,
with the goal of maximizing federal, local and private
revenues for enhancing higher education and other post-
secondary educational opportunities.

(b) The HOPE council shall consider statutory
changes necessary to further the intent of this article:
Provided, That any legislative recommendation shall be
accompanied by a proposal or plan for sufficient
funding. In exploring all aspects of funding possibilities,
the HOPE council shall consider innovative, flexible
funding such as inter-board and inter-agency funding
and reimbursement and joint funding pools.

(c) The HOPE council shall recommend fiscal
incentives for institutions offering higher and other
post-secondary education that adopt and implement
policies and programs that result in substantial cost
savings. Any resulting savings shall be identified,
deposited in a special revenue account and expended in
accordance with legislative appropriation: Provided,
That any resulting savings shall be retained by the
school, state institution of higher education, board,
commission or other public entity responsible for the
savings: Provided, however, That the governing boards
may redirect no more than fifty percent of savings
identified by specific institutions of higher education if
the appropriate governing board decides that the
savings should not be retained by the institution:
Provided further, That any savings accruing to accounts
which are subject to appropriation by the Legislature
shall remain in said appropriated accounts and may be
expended only upon subsequent appropriation by the
Legislature.

§18B-3C-5. Increased enrollment.
(a) The HOPE council shall work to increase all West Virginians' preparedness for, awareness of, interest in and access to higher and other post-secondary education through effective means that include, but are not limited to, recommending or coordinating:

1. Marketing programs and other means of disseminating information illustrating the benefits of higher and other post-secondary education, including information regarding lifetime earning potential projections and specific job opportunities which require higher or other post-secondary education;

2. Clear definitions of expectations and needs regarding academic competencies required for success in higher and other post-secondary educational programs;

3. Utilization of students, alumni, advisory councils and business and community leaders to promote the importance of education;

4. Coordinated information systems and examples of forms, including admission and other forms, designed to provide people with complete, easy-to-read information on higher and other post-secondary education and to simplify the admissions process;

5. Public information whereby citizens can receive information on higher and other post-secondary education which may include television programs, public service announcements and any other effective means of providing information on, communicating or promoting higher and other post-secondary education, including an expansion of "Project Go" and other computerized services intended to designate appropriate institutions of higher education to meet the goals, needs and abilities of potential students; and

6. Support, assistance and encouragement to currently enrolled students and other citizens, especially in minority or other groups under-represented in the post-secondary student population, who may need same to begin or return to higher or other post-secondary education, which shall include an expansion of the
federally-funded talent search project.

(b) As to students currently enrolled in elementary and secondary school programs, the council shall work to increase their preparedness for, awareness of, interest in and access to higher and other post-secondary education through effective means that include, but are not limited to, facilitating:

1. Having college student volunteers tutor in the elementary and secondary schools;

2. Providing career counseling to each student, with at least two in-depth sessions, including one during the middle or junior high school years;

3. Emphasizing strong basic skills in math, science and communication, together with total wellness concepts that recognize the link between good physical health and mental aptitude;

4. Eliminating the general curriculum and, instead, focusing on college preparation, technical preparation ("tech prep") or occupational preparation;

5. Developing and signing onto a high school curriculum plan for each eighth grade student that steers each student into appropriate career directions without setting up limitations and educational and career barriers for any student;

6. Organizing at least annually career day programs and career fairs and inviting guest lecturers in careers requiring higher or other post-secondary education;

7. Developing an early warning system for elementary and secondary school students to identify academic deficiencies, which includes an opportunity for each student to be evaluated and assesses each student's progress regarding potential entry into post-secondary education by each student's tenth grade year;

8. Providing sequential assessment in junior and senior high school to periodically measure student academic achievement, utilizing such means of assessment as the education planning and assessment system (EPAS) offered by American college testing
(9) Providing information on financing post-secondary education to each sixth grade student;

(10) Extending by the one thousand nine hundred ninety-three—ninety-four school year to students entering the ninth grade the warranty of proficiency that is given in the form of a certificate of proficiency in basic skills to public school system graduates that enables them to return to the public school system to receive additional schooling in the areas where proficiency is lacking;

(11) Informing each eleventh grade student, by the mid-point of the eleventh grade year, of standardized test-taking requirements for college entrance, providing instruction on how to prepare for such tests, explaining college application procedures and providing financial aid information;

(12) Assisting students in the twelfth grade and their parents with admission and financial aid forms;

(13) Exposing each student to a college campus through at least one academic visit to a college campus and providing opportunities for high school juniors and seniors to spend time on campus; and

(14) Expanding college courses offered in high schools and enrolling advanced high school students in college courses.

(c) As to nontraditional students, the council shall work to increase their preparedness for, awareness of, interest in and access to higher and other post-secondary education through effective means that include, but are not limited to, facilitating:

(1) Outreach in familiar environments by community organizations and by employment services and public assistance organizations;

(2) Development of a retraining fund for persons who have been in the work force for four or more years;

(3) Provision of child care services;
(4) College recruitment programs for retired military personnel;

(5) Advisory groups of employees and trade councils;

(6) Institution of courses attractive and available to business and industry employees and employers who require advanced training or retraining;

(7) Funding for rapid responses to the needs of business and industry, making courses available when needed and where needed without developing permanent programs, in an amount to be appropriated by the Legislature to the West Virginia development office for a competitive grant program;

(8) Courses at locations and times convenient for students with families and/or jobs, such as modular courses in nontraditional formats and at nontraditional times such as on weekends;

(9) Work toward an amendment of federal law to allow unemployed workers to become full-time students without losing benefits;

(10) Sensitivity training for faculty, staff and students regarding cultural diversity; and

(11) Coordinating in-service training for all faculty and staff to inform them of the requirements of Public Law 101-336, the Americans with Disabilities Act, and any amendments thereto, to sensitize them to the needs of individuals with disabilities.

§18B-3C-6. Student financing and cost of providing higher and other post-secondary education.

(a) In addition to other provisions in this article and code relating to student financing of higher and other post-secondary education, the HOPE council shall address issues regarding the cost of higher and other post-secondary education in an attempt to render such education more affordable and shall utilize effective means that include, but are not limited to:

(1) Recommending increases in available funds
subject to legislative appropriation for grants and loans, including the higher education grant program created pursuant to article five, chapter eighteen-c of this code;

(2) Encouraging new student aid funded primarily from local community resources in return for the future performance of public service jobs by students receiving such aid;

(3) Facilitating the sale or offering of bonds pursuant to the individual higher education savings plan program set forth in section five, article nine-d, chapter eighteen of this code;

(4) Publicizing the availability of unsubsidized guaranteed loans;

(5) Arranging for the publication of brochures about applying for financial aid and make same widely available in convenient locations;

(6) Addressing the financial needs and sources of funds for state institutions of higher education with a goal that tuition and fees for state residents are approximately the median of the average of fees for comparable institutions within the southern regional education board area and so that, beginning with the school year beginning on the first day of July, one thousand nine hundred ninety-five, and continuing thereafter, tuition and fees for nonresident students covers the full cost of instruction at state institutions of higher education;

(7) Assisting the governing boards with the development of flexible means for the payment of tuition and fees, including installment payment plans, and payment by credit card or other commonly accepted form of credit;

(8) Assisting the governing boards with the development of policies which minimize textbook changes, utilize textbooks system-wide and statewide to the extent possible and require that each campus implement a textbook exchange program, which program shall be extended system-wide and statewide; and
(9) Exploring ways that students can earn money while having higher and other post-secondary educational opportunities.

(b) In addition to other provisions in this article and code relating to fiscal efficiency and accountability in the provision of higher and other post-secondary education, the HOPE council shall address issues regarding the cost of higher and other post-secondary education in an attempt to reduce the cost of providing such education and shall utilize effective means that include, but are not limited to:

(1) Assisting with the expansion of computer-assisted instruction and technological delivery, including the expanded use of public libraries for this delivery; the integration to the greatest extent possible of the higher education, public education and public library systems; the delivery of the general education core curriculum by technology-based instruction; and other distance learning technologies set forth in section two-a, article five, chapter ten of this code;

(2) As regards the general education core curriculum, facilitating the establishment of standards and strategies for assessing student learning of the technology-based instruction, including standards for minimum competencies in basic skill areas, higher order thinking skills, and general knowledge, utilizing the college assessment of academic proficiency (CAAP) component of the educational planning and assessment system (EPAS) offered by American college testing (ACT); and

(3) Recommending the elimination of unnecessary duplicate programs and courses.

§18B-3C-7. Succeeding in higher and other post-secondary education endeavors.

(a) The HOPE council shall facilitate the adoption of policies and the implementation of programs that assist students currently enrolled in higher education and other post-secondary educational programs in completing such programs, such policies and programs
to include, but not be limited to:

(1) Standard systems for assessing students and their proficiency for entrance and placement in either college-level credit courses or noncredit development courses and periodic evaluations of these systems;

(2) Procedures to monitor individual student progress and assess student proficiencies during the second year of enrollment;

(3) Counseling and academic advising services that give students an understanding of the academic program requirements necessary for successful program or degree completion, with a view toward each student's career goals, which services should be accessible to the student in terms of the hours that student service offices are open and the location of such services;

(4) Other student support services such as library access, prompt interaction with peers and instructors and peer mentoring for new students;

(5) Course reviews intended to assure that full-time undergraduate students can earn degrees in a reasonable length of time, to minimize the amount of additional course work that must be taken at less convenient times and locations before an undergraduate degree may be completed, and to ensure that the sequence and availability of academic programs and courses is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion; and

(6) Transferability of course work credits, especially core course work credits, among the state institutions of higher education in each system, between the systems and with private colleges and universities, including transferability of core course work completed at any state institution of higher education to another state institution of higher education at the grade earned.

(b) The HOPE council shall facilitate the adoption of policies and the implementation of programs that assist students currently enrolled in higher education and
other post-secondary educational programs in completing such programs, such policies and programs to include, but not be limited to:

(1) A smooth transition from secondary and post-secondary vocational programs to associate degree programs, including the provision of enough resources to meet the influx of students from vocational programs;

(2) Encouragement to each student to complete the associate degree even if that student intends to earn a higher education bachelor's degree through appropriate counseling services;

(3) Encouragement to each student, after completion of the associate degree, to continue toward a higher education bachelor's degree through appropriate counseling services; and

(4) Facilitation of the completion of the associate degree and the continuation of education to completion of a higher education bachelor's degree by providing more "two plus two" programs which combine two-year associate degree programs with two more years of study toward a bachelor's degree.

(c) While encouraging all students to receive as much higher or other post-secondary education as their means and circumstances may allow, the HOPE council shall recognize the appropriateness of technical certificates and associate degrees, shall not treat the programs as second-class programs and shall give attention to such programs through effective means that include, but are not limited to:

(1) Cooperation between private, public and higher education in the delivery of vocational, occupational and technical programs and courses, including the sharing of advanced technology;

(2) Competitive grants administered by the joint commission on vocational-technical-occupational education as set forth in article three-a of this chapter, with priority given to grants intended to match state and federal funds for expansion of technical preparation programs; and
(3) Definitions regarding expectations for secondary and associate degree levels programs and the successful completion thereof.

(d) The HOPE council shall assure that the higher and other post-secondary education offered in this state prepares the student for entering the work force through effective means that include, but are not limited to:

(1) Utilizing campus-level, system-wide and statewide advisory groups, assess work force, business and industry and market needs; prepare students for specialized and other careers that meet these needs; regularly review and revise programs and curricula designed to train for specialized and other careers that meet the work force needs; and develop new programs and phase out or modify existing programs as appropriate to meet work force, business and industry and market needs;

(2) Emphasizing science and technology courses;

(3) Encouraging the establishment of courses and programs which incorporate into the curriculum field placements, internships, cooperative or apprenticeship components, on-the-job training, service internships and/or work experiences;

(4) Facilitating the study of the placement of the patterns of students receiving a general education degree to assess the effectiveness of the general education experience, using studies required of accrediting bodies;

(5) Assuring that graduates meet performance standards through national accreditation and through outcome assessments of graduates determined through such means as follow-up studies of performances on licensure exams and other objective indicia of meeting performance standards and surveys and interviews with subsequent employers; and

(6) Recommending ways to streamline procedures for designing and implementing customized training programs to meeting the needs of employers for specific
programs of limited duration.

(e) The HOPE council shall assist students who have completed higher and other post-secondary education in finding suitable employment through effective means that include, but are not limited to:

(1) Coordinating the maintenance of a statewide job bank for persons holding vocational, associate and college degrees;

(2) Inviting committees of private citizens and business leaders to identify work force needs, expand opportunities and aid in job placement;

(3) Making recommendations regarding resource placement based on economic realities and job opportunities;

(4) Periodically assessing employee supply and job demands in order to make recommendations regarding the adjustment of programs to accommodate employment needs and produce appropriate number of graduates;

(5) Assisting with the development of systems for enrollment management so that the number of students corresponds to the demand for graduates in that area of training; and

(6) Recommending increases in admission and graduation standards in programs producing too many graduates.

(f) The HOPE council shall facilitate the provision of evaluative feedback to the public and private secondary schools in this state to determine the effectiveness of the educational experience and the performance of their alumni through periodic studies of its graduates and reports to the schools, which feedback shall include information relating to:

(1) The graduates' general readiness for higher and other post-secondary educational experiences;

(2) Student performance levels; and

(3) Job offers and job placement to the extent such
information is available.

(g) The HOPE council shall facilitate the provision of evaluative feedback to higher education institutions and other post-secondary schools in this state to determine the effectiveness of the educational experience and the job placement of their alumni through periodic studies of its graduates and reports to the schools, which feedback shall, where appropriate, make use of studies required of many academic disciplines by their accrediting bodies and shall include information relating to:

(1) The graduates' general readiness for additional higher and other post-secondary educational experiences or for entry into the work force;

(2) Job offers and job placement; and

(3) General evaluative information regarding the graduates' employment performance levels.

§18B-3C-8. Interaction among the state's education professionals.

(a) The HOPE council shall encourage interaction among elementary, secondary, post-secondary and higher education faculty and counselors through effective means that include, but are not limited to:

(1) Communications and academic alliances among educators in similar academic fields, especially among middle and high school counselors and higher education personnel in student advising roles, regarding academic standards, expectations and needs; and

(2) Strategies to ensure that school counselors are well informed about the efforts of the council to help students prepare for, be aware of and interested in and have access to, higher education and other post-secondary educational opportunities.

(b) The HOPE council shall facilitate the coordination of secondary, post-secondary and higher education programs through effective means that include, but are not limited to:
(1) Administration of community colleges and technical schools in a single system;

(2) Post-baccalaureate courses for teachers that are more subject-matter based; and

(3) Professional development opportunities.

§18B-3C-9. Assistance for students with disabilities.

(a) The HOPE council shall coordinate efforts among the state institutions of higher education to work with educational professionals in the public and private elementary and secondary schools to increase training, education and awareness regarding individuals with disabilities and to develop and implement the adolescent plan for transition services.

(b) The HOPE council shall encourage schools and educational institutions to solicit input, advice and consultation regarding issues that impact individuals with disabilities through an advisory disability council established at the schools and institutions. Membership on the disability council should include individuals with disabilities, teachers and faculty members, parents, agency representatives, principals or other administrative personnel, counselors and others whose input would be helpful to the council. The HOPE council shall encourage that each school or institution with an advisory council make every effort to coordinate with existing community networks and give them appropriate representation on the council.

(c) The HOPE council shall make recommendations regarding teacher education training to enable future teachers to meet the unique educational needs of individuals with disabilities.

(d) The HOPE council shall coordinate the dissemination of information about programs, services and activities for individuals with disabilities and shall make recommendations to facilitate the development of a public relations program regarding services available for individuals with disabilities.

(e) The HOPE council shall recommend funding
sources for services and equipment for individuals with disabilities and shall facilitate written agreements between or among agencies and foundations that provide direct or support services to individuals with disabilities.

(f) The HOPE council shall examine and make recommendations for the modification of existing enrollment procedures to better facilitate timely identification of students with disabilities who should be provided the opportunity of higher and other post-secondary education and the resources necessary to meet that objective.

(g) The HOPE council shall encourage the development of an orientation program for education professionals, students and parents concerning student disabilities and availability of services.

(h) The HOPE council shall encourage education personnel to assist students with disabilities by monitoring the performance of students, making referrals for counseling and services and developing a system that provides students on probation with counseling and assessment services.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

§18B-4-2. Senior administrator's powers and duties generally.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

(a) At its annual meeting in June of each year, each governing board shall elect from its members appointed by the governor a president and such other officers as it may deem necessary or desirable: Provided, That the initial annual meeting shall be held during July, one thousand nine hundred eighty-nine. The president and such other officers shall be elected for a one-year term commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year. The president of the board shall
serve no more than two consecutive terms.

(b) Each governing board shall employ a chancellor who shall serve at the will and pleasure of the employing board and shall assist the governing board in the performance of its duties and responsibilities. No chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor. Each chancellor is responsible for carrying out the directives of the governing board by which employed and shall work with such board in developing policy options. For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents of the institutions under their jurisdiction and their staffs. The respective chancellors shall jointly agree to, and shall hire, one senior administrator who shall serve at their will and pleasure in accordance with section two of this article.

c) The director of health shall serve as the vice chancellor for health affairs, who shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine. The vice chancellor for health affairs shall conduct a special study of the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine to determine the role and mission of said institutions in the reorganized system of higher education in the state. The special study shall include, but is not limited to, coordinating medical education, training and delivery of health services in the state; preparing nurse midwives, nurse practitioners, medical technologists and other members of the allied health professions; and providing for rural health care. The vice chancellor shall submit a report on said study to the governor and to the Legislature by the first day of December, one thousand nine hundred eighty-nine.

d) Suitable offices for the senior administrator and other staff shall be provided in Charleston.
§18B-4-2. Senior administrator's powers and duties generally.

(a) The senior administrator has a ministerial duty, in consultation with and under direction of the chancellors, to perform such functions, tasks and duties as may be necessary to carry out the policy directives of the governing boards and such other duties as may be prescribed by law.

(b) The senior administrator may employ and discharge, and shall supervise, such professional, administrative, clerical and other employees as may be necessary to these duties and shall delineate staff responsibilities as deemed desirable and appropriate. The senior administrator shall fix the compensation and emoluments of such employees: Provided, That effective the first day of July, one thousand nine hundred ninety, those employees whose job duties meet criteria listed in the system of job classifications as stated in article nine of this chapter shall be accorded the job title, compensation and rights established in said article as well as all other rights and privileges accorded classified employees by the provisions of this code.

(c) The senior administrator shall follow state and national educational trends and gather data on higher educational needs.

(d) The senior administrator, in accordance with established guidelines and in consultation with and under the direction of the chancellors, shall administer, oversee or monitor all state and federal student assistance and support programs administered on the state level, including those provided for in chapter eighteen of this code.

(e) The senior administrator has a fiduciary responsibility to administer the tuition and registration fee capital improvement revenue bond accounts of the governing boards.

(f) The senior administrator shall administer the purchasing system or systems of the governing boards.

(g) The senior administrator shall be responsible for
the management of the West Virginia network for educational telecomputing (WVNET). The senior administrator shall establish a computer policy board, which shall be representative of both the university system and the college system. It shall be the responsibility of the computer policy board to recommend to the secretary of the department of education and the arts policies for a statewide shared computer system.

(h) Any program or service authorized or required to be performed by the governing boards and not specifically assigned to the board of trustees or the board of directors may be administered by the senior administrator. Such program or service may include, but shall not be limited to, telecommunications activities and other programs and services provided for under grants and contracts from federal and other external funding sources.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-2. Resource allocation model and policies; allocation of appropriations.

§18B-5-2a. Authorizing certain transfers within and among general and special revenue accounts for state institutions of higher education.

§18B-5-2. Resource allocation model and policies; allocation of appropriations.

1 (a) To promote the missions and achieve the goals and objectives of the systems under their jurisdiction and to provide information and guidance for the allocation of funding between the two systems in an equitable manner, the governing boards, through the central office, shall develop a resource allocation model for the allocation of general revenue funds appropriated for the state system of higher education. In developing the resource allocation model, the boards shall consider such factors as peer institution information, enrollment information and such other data as shall further an equitable distribution of general revenue funds for higher education. The governing boards, through the central office, shall develop the model prior to the first day of July, one thousand nine hundred ninety-three,
and may modify the model thereafter: Provided, That such modifications are subject to the provisions of article three-a, chapter twenty-nine-a of this code.

At such time as budget information for the next fiscal year shall be due, each year the governing boards shall make allocation decisions for the upcoming fiscal year in accordance with the model then in effect and shall inform the secretary of education and the arts of the division of the recommended appropriation for higher education for submission to the appropriate state agency for incorporation in the executive budget. The governing boards shall provide such other information as may be requested by the secretary of education and the arts to support the allocation division. Prior to the first day of January of each year, the governing boards shall present this and any other appropriate information to the Legislature to support the proposed allocation of appropriation as between the governing boards.

(b) To promote the missions and achieve the goals and objectives of the institutions under the jurisdiction of the board of trustees and board of directors and to provide information and guidance for the allocation of funding among the institutions in the separate systems in an equitable manner in relation to their missions, goals and objectives, the board of trustees and the board of directors shall each develop a resource allocation policy based on comparative information which includes the following factors:

(1) Full-time equivalent enrollment;

(2) Average state appropriations per full-time-equivalent student at similar institutions in the southern regional education board; and

(3) Other relevant factors.

The Legislature finds that an emergency situation exists and therefore, the governing boards are hereby authorized to establish by emergency rule a resource allocation policy for each governing board prior to the first day of January, one thousand nine hundred ninety-four. Either governing board may modify its policy
thereafter, such modification to be submitted to the legislative oversight commission on education accountability subject to the provisions of article three-a, chapter eighteen-a of this code.

Upon approval of the resource allocation policy, each governing board, prior to the first day of January of each year, shall present information to the secretary of education and the arts and the Legislature which sets forth the allocation decisions made by the respective governing boards for the then current fiscal year based on the policy then in effect, and the allocation decisions proposed for the next year, based on the policy in effect for the next succeeding fiscal year.

(c) From appropriations to the institutional control accounts of the respective governing boards for allocation to the state institutions of higher education under their jurisdiction, the governing boards shall allocate all such funds above the amounts actually allocated from appropriations for fiscal year one thousand nine hundred ninety-three to their respective institutions proportional to such amounts as are indicated by application of the resource allocation policy then in effect.

For fiscal year one thousand nine hundred ninety-four, all funds that are in excess of the funds received by the governing boards for expenditure by the state institutions of higher education for fiscal year one thousand nine hundred ninety-three shall be allocated in accordance with the governing boards’ resource allocation model and each governing board’s institutional resource allocation policy to the extent that a policy is in place, whether or not the policy has been approved in accordance with the provisions of subsection (b) of this section.

(d) Beginning with fiscal year one thousand nine hundred ninety-five, each governing board shall apply its resource allocation policy to existing base budgets in order to effect an equalization of the institutional state funding differences at twenty percent per year over a five-year period until such time as the percentage of
institutional differences as determined by the resource allocation policy for that system are equalized. After a five-year phase-in period, all appropriations to the institutional accounts of the respective governing boards shall be allocated to their respective institutions proportional to such amounts as are indicated by application of the resource allocation policy for that system.

(e) From appropriations for the higher education governing boards, the governing boards shall jointly allocate funds for the operation of the central office under the senior administrator and shall share equally the cost of suitable offices for the senior administrator and other staff in Charleston.

(f) Any tuition and registration fee collections paid into tuition and registration fee special capital improvement funds and special revenue bond funds which accrue in excess of the amounts necessary to protect the interests of all holders of obligations for which such fees were pledged by the board of regents and shall remain pledged under the governing boards, shall be allocated to each governing board in proportion to the amounts of such fees collected through the institutions under its jurisdiction and shall be deposited in special capital improvement funds in the state treasury under the name of the governing board for expenditure for capital improvements at the institutions under the appropriate board's jurisdiction.

§18B-5-2a. Authorizing certain transfers within and among general and special revenue accounts of state institutions of higher education.

(a) In accordance with the provisions of section seventeen, article two, chapter five-a of this code, the transfer of amounts between items of appropriations, or the transfer of moneys in a special account established for a particular purpose into another account for expenditure for another purpose, are specifically authorized for a spending unit under the jurisdiction of the governing boards subject to the following conditions:
(1) The president or other administrative head of a state institution of higher education submits a written request to the appropriate governing board. The appropriate governing board approves the request for the transfer and submits a written request for the transfer to the secretary of education and the arts. The legislative auditor and the legislative oversight commission on education accountability are to be furnished a copy of the request;

(2) The secretary of education and the arts, after consultation with the appropriate governing board, gives written approval to a request for a transfer and follows such procedures as may be required by the secretary of administration, the auditor and the treasurer to effect the transfer prior to any expenditure of the moneys so transferred;

(3) Such a transfer does not:

(A) Expand a program, establish a new program or provide capital for an expense that cannot be paid during the current fiscal year; or

(B) Increase the moneys allocated or appropriated to personal services unless:

(i) Such transfer to personal services is made on an emergency basis for the employment of personnel for summer school, and then only in such amounts as mandated for salary purposes by articles eight and nine of this chapter: Provided, That moneys transferred for the employment of personnel for summer school shall be separately accounted for to indicate which of the accounts appropriated by the Legislature are increased or reduced as a result of the transfer; or

(ii) A quarterly allotment of funds pursuant to section fifteen, article two, chapter five-a of this code is insufficient to meet the appropriated personal services budget of the spending unit in that fiscal quarter, in which case a transfer may only be made to meet the insufficiency and shall be accompanied by a pledge to replace funds in the original accounts by the end of that fiscal year;
(4) Not more than five percent of the total allocation or appropriation in any general revenue account of a state institution of higher education may be transferred between the items of allocation or appropriation thereof or between the accounts established for such institution;

(5) The transfer of moneys in a special account established for a particular purpose into another account for expenditure for another purpose shall not exceed such amounts as are determined by the president or other administrative head of the institution to be in excess of that reasonably required to accomplish the purposes for which the account was established, unless such excess balances are insufficient to provide the amounts necessary for a temporary transfer in the case of a quarterly allotment which is insufficient to meet the appropriated personal services budget;

(6) Funds in any general or special account established for a specific state institution of higher education shall not be transferred pursuant to this section for use by another state institution of higher education.

(b) Notwithstanding the procedures and restrictions set forth in subsection (a) of this section, except to the extent that the section explicitly relates to transfers due to quarterly allotment insufficiencies, and notwithstanding any other provision of this code to the contrary, if a quarterly allocation of appropriations from the general revenue fund to the respective governing boards is insufficient to meet the cash flow needs within their respective systems to meet their payroll requirements, the boards may authorize the institutions to transfer funds from the various special revenue accounts under their jurisdiction to meet these needs, except funds whose use is governed by bonding covenants: Provided, That the legislative auditor shall be notified by the institution at the time of transfer and shall be provided whatever documentation that may be required to maintain records of the amounts transferred and subsequently restored: Provided, however, That the amounts of funds so transferred shall be restored to the accounts from which the transfers were made by the end of the fiscal year in which the transfers occurred:
Provided further, That if the records in the office of the legislative auditor indicate any amounts transferred have not been restored by the end of the fiscal year, the legislative auditor shall notify the secretary of administration, auditor and treasurer, and thereafter no funds appropriated or allocated to the institution shall be encumbered or expended until such amounts are replaced: And provided further, That the respective spending units have first pursued appropriate administrative remedies to avoid anticipated cash flow shortages: And provided further, That nothing herein restricts the ability of the boards to respond to reductions of appropriations imposed in accordance with article two, chapter five-a of this code within the restoration period.

(c) If, due to increased efficiency in operations, a state institution of higher education accumulates balances in any of its accounts, or accounts established for the institution by its governing board, which are in excess of the amounts needed to accomplish the purposes for which the accounts were established, either general or special revenue, the institution may employ the transfer provisions established in subdivisions (1) and (2), subsection (a) of this section to transfer such excess balances into a special efficiency surplus revolving fund which shall be created in the state treasury for the institution and which shall be carried forward into the subsequent fiscal years: Provided, That expenditures from any special efficiency surplus fund shall only be made upon line item appropriation by the Legislature. In the case of such transfers, the president shall, in addition to the request for a transfer, also submit to the secretary of education and the arts, the appropriate governing board, the legislative auditor and the legislative oversight commission on education accountability, documentation of the efficiencies accomplished which resulted in the excess balance. Funds transferred into the special surplus fund of an institution shall be budgeted by the president or other administrative head of the institution in consultation with the faculty senate, classified staff and student government organization to meet the highest academic priorities of the institution:
Provided, however, That such funds may not be used to support a continuing operation or expense unless the efficiencies which resulted in such funds becoming available are likewise continuing: Provided further, That the restrictions on fund transfers set forth in subdivisions (3), (4) and (5) of said subsection shall not apply to transfers to the efficiency surplus revolving fund: And provided further, That the restriction set forth in subdivision (6) of said subsection shall apply to such transfers.

(d) If the Legislature finds that amounts deposited in any fund created pursuant to this section or transferred to any fund exceed the amounts needed to effectuate any of the purposes set forth in this section, such amounts may be transferred to other accounts or funds and redesignated for other purposes upon appropriation by the Legislature.

(e) Reports setting forth the exercise of any authority granted by this section shall be submitted with specificity to the legislative commission on oversight accountability and the joint committee on government and finance on the first day of January of any year in which such authority was exercised during the prior twelve-month period.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors.

(a) There shall be established at each state institution of higher education, hereinafter referred to as the "institution", excluding centers and branches thereof, an institutional board of advisors. The board of advisors shall consist of eleven members, including an administrative officer of the institution appointed by the president of the institution; a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and, appointed by the appropriate governing board, seven lay citizens of the state who have demon-
strated a sincere interest in and concern for the welfare of that institution and who are representative of its population and fields of study, including at least two alumni of the institution. Of the seven lay citizen members, no more than four may be of the same political party.

The administrative officer, faculty member, student member and classified staff member shall serve for a term of one year, and the seven lay citizen members shall serve terms of four years each. All members, except the administrative officer, shall be eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled within sixty days of the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term.

Each board of advisors shall hold a regular meeting at least quarterly, commencing in July of each year. Additional meetings may be held upon the call of the chairman, president of the institution or upon the written request of at least four members. A majority of the members shall constitute a quorum for conducting the business of the board of advisors.

(b) One of the seven lay citizen members shall be elected as chairman by the board of advisors in July of each year: Provided, That no member shall serve as chairman for more than two consecutive years at a time.

The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the board of advisors and the institution under this section shall be paid from funds allocated to the institution for such purpose.
(c) The board of advisors shall review, prior to the submission by the president to its governing board, all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it deems proper. Such written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include such comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(d) The board of advisors shall review, prior to their implementation by the president, all proposals regarding institution-wide personnel policies. The board of advisors may comment on such proposals in writing.

(e) The board of advisors shall provide advice and assistance to the president in establishing closer connections between higher education and business, labor, government, community and economic development organizations to give students greater opportunities to experience the world of work, such as business and community service internships, apprenticeships and co-operative programs; to communicate better and serve the current work force and work force development needs of their service area, including the needs of nontraditional students for college-level skills upgrading and retraining and the needs of employers for specific programs of limited duration; and to assess the performance of the institution's graduates and assist in job placement. The administrative officer of the institution serving on the advisory council may be assigned the responsibility for coordinating the institution's activities related to economic development.

(f) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors shall
serve as a search and screening committee for candidates to fill the vacancy under guidelines established by its governing board. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, such additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the governing board for consideration and appointment. If the governing board rejects all candidates so submitted, the committee shall submit the names of at least three additional candidates, and this process shall be repeated until the governing board appoints one of the candidates so submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

(a) Definitions for terms used in this section shall be in accordance with those provided in section two, article nine of this chapter except that the provisions of this
section shall apply only to classified employees whose employment, if continued, shall accumulate to a minimum total of one thousand forty hours during a calendar year and extend over at least nine months of a calendar year.

(b) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution must demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same 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 hereinafter provided. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classification(s) in which the employee had
previously been employed or to any lateral position for
which the employee is qualified. An employee on the
preferred recall list shall not forfeit the right to recall
by the institution if compelling reasons require such
employee to refuse an offer of reemployment by the
institution.

The institution shall be required to notify all em-
ployees maintaining active listings on the preferred
recall list of all position openings that from time to time
exist. Such notice shall be sent by certified mail to the
last known address of the employee. It shall be the duty
of each employee listed to notify the institution of any
change in address and to timely renew the listing with
the institution. No position openings shall be filled by
the institution, whether temporary or permanent, until
all employees on the preferred recall list have been
properly notified of existing vacancies and have been
given an opportunity to accept reemployment.

(d) A nonexempt classified employee, including a
nonexempt employee who has not accumulated a
minimum total of one thousand forty hours during the
calendar year or whose contract does not extend over at
least nine months of a calendar year, who meets the
minimum qualifications for a job opening at the
institution where the employee is currently employed,
whether the job be a lateral transfer or a promotion, and
applies for same shall be transferred or promoted before
a new person is hired unless such hiring is affected by
mandates in affirmative action plans or the require-
ments of Public Law 101-336, the Americans with
Disabilities Act. If more than one qualified, nonexempt
classified employee applies, the best-qualified non-
exempt classified employee shall be awarded the
position. In instances where such classified employees
are equally qualified, the nonexempt classified employee
with the greatest amount of continuous seniority at that
state institution of higher education shall be awarded
the position. A nonexempt classified employee is one to
whom the provisions of the federal Fair Labor Stand-
ards Act, as amended, apply.

§18B-7-5. Faculty and classified employee continuing
education and development program.

(a) Each state institution of higher education shall have the authority to establish and operate a faculty and classified employee continuing education and development program under rules adopted by the appropriate governing board. Funds allocated or made available may be used to compensate and pay expenses for faculty or classified employees who are pursuing additional academic study or training to better equip themselves for their duties at the state institutions of higher education.

(b) Before the first day of January, one thousand nine hundred ninety-four, each governing board, with the advice and assistance of the faculty senates, staff councils and other groups representing classified employees, shall adopt policies which encourage continuing education and staff development. The policies shall require that selection shall be made on a nonpartisan basis, using fair and meaningful criteria which will afford all faculty and classified employees with opportunities to enhance their skills. Such policies may also include reasonable provisions for the continuation or return of any faculty or classified employee receiving the benefits of such education or training, or for reimbursement by the state for expenditures incurred on behalf of such faculty or classified employee.

§18B-7-6. Adjunct faculty; part-time and temporary classified employees.

(a) Before the first day of January, one thousand nine hundred ninety-four, each governing board, with the advice and assistance of the faculty senates, shall establish a policy pursuant to the provisions of article three-a, chapter twenty-nine-a of this code regarding the role of adjunct faculty at state institutions of higher education and define an appropriate balance between full-time and adjunct faculty members.

(b) Before the first day of January, one thousand nine hundred ninety-four, each governing board, with the advice and assistance of the staff councils and other groups representing classified employees, shall establish
a policy pursuant to the provisions of article three-a, chapter twenty-nine-a of this code regarding the role of part-time classified employees at state institutions of higher education. Such policy shall discourage the hiring of part-time employees solely to avoid the payment of benefits or in lieu of full-time employees and shall provide all qualified classified employees with nine-month or ten-month contracts with the opportunity to accept part-time or full-time summer employment before new persons are hired for the part-time or full-time employment.

§18B-7-7. Professional productivity.

Before the first day of January, one thousand nine hundred ninety-four, each governing board, with the advice and assistance of the faculty senates, shall establish a policy pursuant to the provisions of article three-a, chapter twenty-nine-a of this code regarding productivity of faculty and administrators, which policy shall require faculty productivity that is ten percent more than the average of similar institutions in other states by the fiscal year one thousand nine hundred ninety-five, such productivity to be based on the average number of student credit hours taught, and administrative productivity that is ten percent more than the average of similar institutions in other states by the fiscal year one thousand nine hundred ninety-five.

§18B-7-8. Campus administrators.

Before the first day of January, one thousand nine hundred ninety-four, each governing board, with the advice and assistance of the faculty senates, shall establish a policy pursuant to the provisions of article three-a, chapter twenty-nine-a of this code requiring all campus administrators holding faculty rank to teach at least one course during each eighteen-month employment period or to perform on-going research in lieu of teaching.

§18B-7-9. Employment innovations.

Before the first day of January, one thousand nine hundred ninety-four, each governing board, with the
advice and assistance of the staff councils and other groups representing classified employees, shall establish a policy pursuant to the provisions of article three-a, chapter twenty-nine-a of this code that discourages temporary, nonemergency, institutionally-imposed changes in an employee's work schedule; that maintains reasonable continuity in working schedules and conditions for employees; and that requires institutions to consider feasible and innovative ways to most efficiently utilize the institution's classified employees, such innovations to include flexibility in employee scheduling, job-sharing and four-day work weeks.

§18B-7-10. Salary increases for cooperative extension workers.

(a) Subject to appropriation by the Legislature therefor, each full-time cooperative extension worker employed pursuant to the provisions of section one, article eight, chapter nineteen of this code who is considered to be extension faculty shall be granted an annual salary increase of two thousand dollars effective the first day of July, one thousand nine hundred ninety-three, and the salary increases authorized in subsection (b), section three-a, article eight of this chapter.

(b) Subject to appropriation by the Legislature therefor, each full-time, nonfaculty cooperative extension worker employed pursuant to the provisions of section one, article eight, chapter nineteen of this code shall be granted a monthly salary increase of one hundred twenty-five dollars effective the first day of July, one thousand nine hundred ninety-three, and the salary increases authorized in section eleven, article nine of this chapter.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-3. Assignment to salary schedule; actual salary.

§18B-8-3a. Institutional salary policies; distribution of faculty salary increases; distribution of nonclassified administrative salary increases.

§18B-8-3. Assignment to salary schedule; actual salary.

(a) On or before the first day of July of each year, each
faculty member then employed shall be given notice by
the appropriate governing board of the placement on the
minimum salary schedule which is appropriate to such
faculty member's years of experience and to which such
individual has been assigned, notwithstanding the
actual salary paid under the provisions of this article.

(b) Each full-time faculty member employed as of the
effective date of this section shall receive for full-time
employment at the same academic rank during the
academic year one thousand nine hundred ninety-three
—ninety-four, and thereafter, a salary which is no less
than the salary being paid such faculty member for the
academic year one thousand nine hundred ninety-two—
ninety-three. No full-time faculty member shall receive
a salary which is less than the salary for zero years of
experience for the appropriate academic rank as set
forth in section two of this article.

(c) Effective the first day of July, one thousand nine
hundred ninety-three, subject to appropriation by the
Legislature therefor, each full-time faculty member
shall receive an annual salary increase of two thousand
dollars. The Legislature may by general appropriation,
or the secretary of the department of education and the
arts may allocate through authority set forth under the
provisions of chapter five-f of this code, funds to be
distributed for the purpose of accommodating market
and equity conditions within the system. Any remaining
funds shall be applied in accordance with the provisions
of subsection (d) of this section.

(d) Funds remaining after meeting the salary of each
full-time faculty member in accordance with subsections
(b) and (c) of this section shall be used to pay that
amount that is the difference between such salary and
the appropriate salary for each full-time faculty
member's appropriate placement on the schedule:
Provided, That such amount may be reduced proportion-
ately based upon the amount of funds available for such
purpose.

(e) The salary of any full-time faculty member shall
not be reduced by the provisions of this article.
(f) Upon promotion in rank, placement on the minimum salary schedule shall be such as to provide a salary increase of at least ten percent and shall be at least the amount prescribed for the appropriate academic rank to which promoted at zero years of experience.

§18B-8-3a. Institutional salary policies; distribution of faculty salary increases; distribution of nonclassified administrative salary increases.

(a) Beginning with the fiscal year commencing on the first day of July, one thousand nine hundred ninety-four, faculty salary increases shall be distributed within each state institution of higher education, to the extent of legislative appropriation therefor in accordance with a written institutional salary policy which achieves or moves toward the following goals:

(1) Each full-time faculty member receives at least the amount indicated by the minimum salary schedules pursuant to section two of this article;

(2) Each full-time faculty member within a discipline group receives a salary which is competitive with those in similar disciplines at peer institutions;

(3) Faculty are recognized for outstanding performance;

(4) Equity among salaries is maintained; and

(5) The institution's faculty are effectively involved in the administration of the campus-level faculty salary policy.

(b) To the extent of legislative appropriation therefor, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-four, an amount averaging one thousand dollars per full-time faculty member is recommended to be appropriated and distributed in that fiscal year for salary increases for full-time faculty members, and, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-five, an amount averaging two thousand
dollars per full-time faculty member is recommended to be appropriated and distributed in that fiscal year for salary increases for full-time faculty members, such distribution to be in accordance with the resource allocation policies developed pursuant to the provisions of section two, article five of this chapter and the salary policies required in subsection (a) of this section.

(c) Subject to appropriation by the Legislature therefor, each full-time nonclassified administrative staff person shall be granted an annual salary increase for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-three, of one thousand five hundred dollars; for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-four, seven hundred fifty dollars and for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-five, one thousand five hundred dollars.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

§18B-9-5. Classified employee salary.

§18B-9-11. Institutional salary policies; salary increase authorization.

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

(a) Before the first day of January, one thousand nine hundred ninety-four, the governing boards shall establish by rule and implement an equitable system of job classifications, with the advice and assistance of staff councils and other groups representing classified employees, each classification to consist of related job titles and corresponding job descriptions for each position within a classification, together with the designation of an appropriate pay grade for each job title, which system shall be the same for corresponding positions in institutions under both boards: Provided, That before implementing the classification system, each classified employee is given an opportunity in a public hearing setting to address decisions affecting his or her classification assignment and pay scale. The
system of job classifications shall be submitted to the
director of education and the arts for review and
approval prior to implementation.

By such date and with consideration to recommenda-
tions of the institutions, the appropriate governing
board shall furnish each classified employee written
confirmation of the assignment to the appropriate
classification, job title and pay grade and of the proper
placement on a salary schedule. Such assignment may
be appealed in accordance with article twenty-nine,
chapter eighteen of this code and all agencies are
directed to expedite and give priority to grievances
regarding the employee's initial assignment under the
terms of this section: Provided, That nothing herein
shall nullify or void any personnel classification system
in effect immediately prior to the first day of July, one
thousand nine hundred eighty-nine.

(b) Beginning with the fiscal year commencing on the
first day of July, one thousand nine hundred ninety-four,
classified staff salary increases distributed within each
state institution of higher education shall be in accor-
dance with a uniform employee classification system
and salary policy which is adopted by the respective
governing boards and approved in accordance with the
provisions of article three-a, chapter twenty-nine-a of
this code.

(c) The Legislature finds that an emergency situation
exists and, therefore, the governing boards are hereby
authorized to establish by emergency rule, under the
procedures of article three-a, chapter twenty-nine-a of
this code, a rule to implement the provisions of this
article, after approval by the legislative oversight
commission on education accountability, which shall
receive said proposed rule by the first day of November,
one thousand nine hundred ninety-three. Upon approval
of such emergency rule by the legislative oversight
commission on education accountability, and the effec-
tive date of the implementation of said rule, the salary
schedule set out in section three of this article shall be
deemed null and void and without the force and effect
of law. Any other provisions of this article inconsistent
with said rule shall be deemed null and void and without
the force and effect of law. Any other provisions of this
article inconsistent with said rule shall be deemed null
and void upon lawful implementation of the rule:
Provided, That nothing in this subsection shall be
interpreted to require that the Legislature appropriate
any additional funds for such implementation.

§18B-9-5. Classified employee salary.

(a) Each classified employee who is employed by a
governing board on the first day of July, one thousand
nine hundred ninety-three, shall receive for the same
employment at the same pay grade during the fiscal
year commencing on such date and thereafter, subject
to an appropriation by the Legislature therefor, and in
addition to the experience increment increase provided
for in subsection (b) of this section, a monthly salary
which is at least one hundred twenty-five dollars more
than the final base monthly salary paid such classified
employee for the fiscal year commencing on the first day
of July, one thousand nine hundred ninety-two, to be
paid in equal installments within the regular pay
periods and to be prorated for classified employees
working less than thirty-seven and one-half hours per
week.

(b) Commencing with the fiscal year beginning on the
first day of July, one thousand nine hundred ninety-one,
and each fiscal year thereafter, each classified employee
with three or more years of experience shall receive an
annual salary increase equal to thirty-six dollars times
the employee's years of experience: Provided, That such
annual salary increase shall not exceed the amount
granted for the maximum of twenty years of experience.
These incremental increases shall be in lieu of any
salary increase received pursuant to section two, article
five, chapter five of this code; shall be in addition to any
across-the-board, cost-of-living or percentage salary
increases which may be granted in any fiscal year by
the Legislature; and shall be paid in like manner as the
annual payment to eligible state employees of the
incremental salary increases based on years of service
under the provisions of said section.
(c) Each classified employee whose monthly salary under subsections (a) and (b) of this section is less than the minimum monthly salary for zero years of experience for the appropriate pay grade as set forth in section three of this article shall receive additional compensation such that the monthly salary is at least the minimum amount prescribed for the appropriate pay grade at zero years of experience: Provided, That such amounts may be reduced proportionately based upon the amount of funds available for such purpose.

(d) Any funds remaining after increasing the monthly salary of each classified employee to at least the minimum amount prescribed for the appropriate pay grade at zero years of experience shall be used to place classified employees on the salary schedule at their appropriate years of experience: Provided, That such amount may be reduced proportionately based upon the amount of funds available for such purpose.

(e) Any classified employee may receive merit increases and/or salary adjustments in accordance with policies established by the board: Provided, That funds for such increases and/or adjustments shall be distributed in accordance with rules of the appropriate governing board and shall be available to all state institutions of higher education on an equitable basis.

(f) The current monthly salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article shall be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if such promotion is in accordance with the provisions of this article and the personnel classification system established by the appropriate governing board.

§18B-9-11. Institutional salary policies; salary increase authorization.

(a) Beginning with the fiscal year commencing on the first day of July, one thousand nine hundred ninety-four, classified employee salary increases shall be distributed within each state institution of higher education, to the
extent of legislative appropriation therefor, in accordance with a written institutional salary policy which does not conflict with the uniform employee classification system and which achieves or moves toward the following goals:

(1) Each classified employee receives at least the amount indicated by the minimum salary schedules pursuant to section three of this article;

(2) Each classified employee within a classification group receives a salary which will achieve salary equity as defined in the uniform employee classification system established pursuant to subsection (b), section four of this article;

(3) Classified employees are recognized for outstanding performance;

(4) Equity among salaries is maintained; and

(5) The institution’s classified employees are effectively involved in the administration of the campus-level classified employee salary policy.

(b) Subject to an appropriation by the Legislature therefor, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-four, an amount equal to seven hundred fifty dollars per full-time classified employee is recommended to be appropriated and distributed in that fiscal year for salary increases for classified employees, and, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-five, an amount equal to one thousand five hundred dollars per full-time classified employee is recommended to be appropriated and distributed in that fiscal year for salary increases for classified employees, such distribution to be in accordance with the resource allocation policies developed pursuant to the provisions of section two, article five of this chapter and the salary policies required in subsection (a) of this section: Provided, That nothing in this section shall be construed to prohibit future salary increases for classified employees determined to be at the maximum for their pay grade under any new
classification system promulgated in accordance with subsection (b), section four of this article and in accordance with policies which shall be adopted by each governing board relating to salary increases for classified employees determined to be at maximum salary: Provided, however, That such policies shall provide that, when there is a system-wide, mandated salary increase, those employees determined to be at the maximum shall receive a percentage or across-the-board salary increase in an amount equal to not less than one half of the percentage or across-the-board increase granted to the employee within the same pay grade receiving the smallest percentage or across-the-board increase.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment; tuition and other fees at educational institutions; refund of fees.


§18B-10-1. Enrollment, tuition and other fees at educational institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among such fees any one or more of the following: (1) Health service fees; (2) infirmary fees; (3) student activities, recreational, athletic and extracurricular fees, which said fees may be used to finance a student's attorney to perform legal services for students in civil matters at such institutions: Provided, That such legal services shall be limited to only those types of cases, programs or services approved by the administrative head of such institution where such legal services are to be performed; and (4) graduate center fees and branch college fees, or either, if the establishment and operations of graduate centers or branch colleges are otherwise authorized by law. All fees collected at any graduate center or at any branch college shall be paid into special funds and shall be used solely for the maintenance and operation of the graduate center or
branch college at which they were collected: Provided, however, That the governing boards shall use the median of the average tuition and required fees at similarly classified institutions in member states of the southern regional education board as a goal in establishing tuition and required fee levels for residents at state institutions of higher education under their jurisdiction: Provided further, That the governing boards shall use the actual instructional cost as the same shall be determined in accordance with board rule, in establishing nonresident undergraduate fees, with the goal of having tuition and fees cover the actual cost by fiscal year one thousand nine hundred ninety-six: And provided further, That students enrolled in undergraduate courses offered at off-campus locations shall pay an off-campus instruction fee and shall not pay the athletic fee and the student activity fee. The off-campus instruction fee shall be used solely for the support of off-campus courses offered by the institution. Off-campus locations for each institution shall be defined by the appropriate governing board. The schedule of all fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board, and the board shall file with the legislative auditor a certified copy of such schedule and changes.

(b) In addition to the fees mentioned in the preceding paragraph, each governing board may impose and collect a student union building fee. All such building fees collected at an institution shall be paid into a special student union building fund for such institution, which is hereby created in the state treasury, and shall be used only for the construction, operation and maintenance of a student union building or a combination student union and dining hall building or for the payment of the principal of and interest on any bond issued to finance part or all of the construction of a student union building or a combination student union and dining hall building or the renovation of an existing structure for use as a student union building or a combination student union and dining hall building, all as more fully provided in section ten of this article. Any moneys in such funds not immediately needed for such purposes
may be invested in any such bonds or other securities
as are now or hereafter authorized as proper invest-
ments for state funds.

(c) The boards shall establish the rates to be charged
full-time students enrolled during a regular academic
term. For fee purposes a full-time undergraduate
student shall be one enrolled for twelve or more credit
hours in a regular term, and a full-time graduate
student shall be one enrolled for nine or more credit
hours in a regular term. Undergraduate students taking
fewer than twelve credit hours in a regular term shall
have their fees reduced pro rata based upon one twelfth
of the full-time rate per credit hour, and graduate
students taking fewer than nine credit hours in a
regular term shall have their fees reduced pro rata
based upon one ninth of the full-time rate per credit
hour.

Fees for students enrolled in summer terms or other
nontraditional time periods shall be prorated based
upon the number of credit hours for which the student
enrolls in accordance with the above provisions.

(d) All fees are due and payable by the student upon
enrollment and registration for classes except as
provided for in this subsection:

(1) The governing boards shall permit fee payments
to be made in up to three installments over the course
of the academic term. The payments shall include
interest at a rate set by the governing board: Provided,
That all fees must be paid prior to the awarding of
course credit at the end of the academic term.

(2) The governing boards shall also authorize the
acceptance of credit cards or other payment methods
which may be generally available to students for the
payment of fees: Provided, That the governing boards
may charge the students for the reasonable and custom-
ary charges incurred in accepting credit cards and other
methods of payment.

(3) If a governing board determines that any student
was adversely, financially affected by a legal work
102 stoppage that commenced on or after the first day of
103 January, one thousand nine hundred ninety-three, it
104 may allow the student an additional six months to pay
105 the fees for any academic term: Provided, That the
106 governing board shall determine if a student was
107 adversely, financially affected on a case-by-case basis.

108 (e) The governing boards shall establish legislative
109 rules regarding the refund of any fees upon the
110 voluntary or involuntary withdrawal from classes of any
111 student which rules shall comply with all applicable
112 state and federal laws and shall be uniformly applied
113 throughout the systems.

114 (f) The governing boards shall establish legislative
115 rules using the fee structure or other penalties to
116 provide a disincentive for students to register for classes
117 in excess of the typical full-time course load, that being
118 from twelve to eighteen credit hours for an undergrad-
119 uate student and from nine to fifteen credit hours for
120 a graduate student, and then to withdraw from such
121 excess classes after the semester has begun.

122 (g) In addition to the fees mentioned in the preceding
123 subsections, each governing board may impose, collect
124 and distribute a fee to be used to finance a nonprofit,
125 student-controlled public interest research group:
126 Provided, That the students at such institution demon-
127 strate support for the increased fee in a manner and
128 method established by that institution's elected student
129 government: Provided, however, That such fees shall not
130 be used to finance litigation against the institution.


1 The appropriate governing board of each state
2 institution of higher education shall have the authority
3 to establish and operate a bookstore at the institution.
4 The bookstore shall be operated for the use of the
5 institution itself, including each of its schools and
6 departments, in making purchases of books, stationery
7 and other school and office supplies generally carried in
8 college stores, and for the benefit of students and faculty
9 members in purchasing such products for their own use,
10 but no sales shall be made to the general public. The
prices to be charged the institution, the students and the
faculty for such products shall be fixed by the governing
board, shall not be less than the prices fixed by any fair
trade agreements, and shall in all cases include in
addition to the purchase price paid by the bookstore a
sufficient handling charge to cover all expenses in-
curred for personal and other services, supplies and
equipment, storage, and other operating expenses, to the
end that the prices charged shall be commensurate with
the total cost to the state of operating the bookstore.

Each governing board shall also ensure that book-
stores operated at institutions under its jurisdiction
meet the additional objective of minimizing the costs to
students of purchasing textbooks by adopting policies
which may require the repurchase and resale of
textbooks on an institutional or a statewide basis and
provide for the use of certain basic textbooks for a
reasonable number of years.

All moneys derived from the operation of the store
shall be paid into a special revenue fund as provided in
section two, article two, chapter twelve of this code.
Each governing board shall, subject to the approval of
the governor, fix and, from time to time, change the
amount of the revolving fund necessary for the proper
and efficient operation of each bookstore.

Moneys derived from the operation of the bookstore
shall be used first to replenish the stock of goods and
to pay the costs of operating and maintaining the store.
From any balance in the Marshall university bookstore
fund not needed for operation and maintenance and
replenishing the stock of goods, the governing board of
that institution shall have authority to expend a sum not
to exceed two hundred thousand dollars for the construc-
tion of quarters to house the bookstore in the university
center at Marshall university. Until such quarters for
housing the bookstore are completed, the governing
board of Marshall university and the governor shall take
this authorization into account in fixing the amount of
the revolving fund for the Marshall university book-
store.
ARTICLE 13. HIGHER EDUCATION-INDUSTRY PARTNER- 
SHIPS.

§18B-13-1. Legislative purpose.


§18B-13-4. High-Tech 2000 research zones and parks; tax exemptions.

§18B-13-5. Use of state property and equipment; faculty.

§18B-13-1. Legislative purpose.

1 A pressing need exists for collaborative research and 
2 development between institutions of higher education 
3 and industry. This need also extends to assisting 
4 companies to develop and adapt to new technology. A 
5 commitment by the state to support cooperative univer-
6 sity-industry partnerships will preserve existing jobs 
7 and create new jobs; promote development of business 
8 enterprises and help them become competitive; and 
9 enable West Virginia to achieve the goals of economic 
10 growth and full employment by revitalizing and 
11 diversifying the West Virginia economy. Focused 
12 research and technical assistance efforts related to West 
13 Virginia industry will speed such development, improve 
14 technology transfer, assist companies in becoming 
15 growth leaders and link basic research and technolog-
16 ical developments to economic advancement.

17 It is the purpose of the Legislature to have as the 
18 state's goals the movement of the state of West Virginia 
19 into the forefront of science and technology by the year 
20 two thousand; the attraction of business, federal 
21 contracts and industry; and the creation of jobs for the 
22 people of this state, through applied science and 
23 technology and partnership programs.

§18B-13-2. Higher education-industry collaboration and 
technical assistance.

1 Institutions of higher education shall develop a plan 
2 to engage in collaborative projects designed to assist 
3 business to adapt or develop new technology under this 
4 article.


1 The West Virginia state development council in
consultation with the higher education governing boards is hereby authorized and directed to develop a strategic comprehensive plan and grant program to attract new science and high technology industries, to retain and expand current state industries through technology and other processes and to increase research grants, contracts, matching funds and procurement arrangements from the federal government, private industry and other agencies. Such initial, and annually updated, strategic comprehensive plan shall be developed and annually filed with the governor and Legislature.

The West Virginia state development council in consultation with the higher education governing boards shall review the work and projects undertaken by the center of regional progress, the center for economic research, the institute for international trade development and the West Virginia foundation for science and technology.

§18B-13-4. High-Tech 2000 research zones and parks; tax exemptions.

(a) The state development council shall work with the county commissions, the municipalities and local development authorities where state colleges and universities are located and shall develop a plan and program for the establishment and operation of qualifying High-Tech 2000 research zones, parks and technology centers on or near the campuses of selected universities and colleges to attract local business and industry engaged in science and technology related research.

The state development council shall coordinate the development of such plan and program, which shall include qualifications for eligible High-Tech 2000 research zones, parks and research centers and which qualifications shall require a minimum partnership commitment from the private sector either in the construction, operation or location of the research parks or zones or technology centers; and the West Virginia economic development authority shall have authority to enter into agreements with state institutions of higher
education, private developers or other interested businesses or persons to acquire, finance, construct, operate, own, lease or otherwise manage any research park or zone and to collect rentals or other forms of payment for the operation of the research parks or zones or technology centers.

The West Virginia economic development authority is hereby authorized either singularly or in conjunction with any county commission, municipality or local development authority to issue special High-Tech 2000 bonds for the purpose of this section, including, but not limited to, special project revenue bonds and special user bonds limited to the actual cost of construction and start-up of any qualifying and approved research park or zone or technology centers, and improvements necessary thereto, pursuant to article twelve-b, chapter eighteen of this code.

(b) Notwithstanding any other provision of this code to the contrary relating to any other exemptions or credits to which any business may be entitled under this code, the following exemptions shall only apply to qualified, approved High-Tech 2000 research park or zone or technology center:

(1) The enterprise zone tax exemptions as provided in section five, article two-b, chapter five-b of this code;

(2) A tax credit for qualified business, in the amount of the workers' compensation premium paid in accordance with article two, chapter twenty-three of this code, which credit shall be credited against any corporate net income tax or personal income tax of the qualified business or liability of the owners of the qualified business which is a proprietorship or a partnership;

(3) The deferral for qualified business of all state corporate net income tax, business and occupation tax, telecommunications tax, severance tax, business franchise tax or other state income tax liability for the start-up period of the business not to exceed three years, and qualified business shall be entitled to an exemption from any such deferred tax if such business both employs at
least seven persons on a full-time basis as of the due date
of the deferred tax liability, and the qualified business
maintains an average employment of at least seven full-
time employees over the last two years of the three year
start-up period.

Notwithstanding any other provision herein to the
contrary, the amount of total credits and deferrals
allowable under this section or section five, article two-
b, chapter five-b of this code shall not exceed two and
one-half million dollars in any one fiscal year for all
eligible businesses: Provided, That the credits allowed
by this section are nonrefundable so that a taxpayer
shall not claim a total credit amount that reduces the
taxpayer's tax liability to less than zero.

§18B-13-5. Use of state property and equipment; faculty.

(a) The governing boards are authorized to provide for
the low cost and economical use and sharing of state
property and equipment, including computers, research
labs and other scientific and necessary equipment to
assist any qualified business within an approved
research park or zone or technology center. The
governing boards shall approve a schedule of nominal
or reduced cost reimbursements to the state for such
use.

(b) The governing boards shall develop and provide
for a program of release time, sabbaticals or other forms
of faculty involvement or participation with any
qualifying business.

(c) The Legislature finds that cooperation, commun-
ication and coordination are integral components of
higher education's involvement in economic develop-
ment. In order to proceed in a manner that is cost
effective and time efficient, it shall be the duty of the
governing boards to review and coordinate such aspects
of the programs administered by the governing boards.
Such review and coordination shall not operate so as to
adversely affect sources of funding nor shall it affect any
statutory characterization of any program as an
independent entity. The governing boards shall report
on an annual basis to the Legislature and the governor.
26 The report shall contain the following information:
27 (1) The number of seminars and workshops conducted;
28 (2) The subject matter addressed in each seminar and workshop;
29 (3) The number of feasibility studies conducted and the subject matter contained in each study;
30 (4) An accounting of the cost of all travel expenses, seminars, workshops and feasibility studies; and
31 (5) The extent to which the authority provided for in subsection (b) of this section has been exercised, with specificity as to the institution and faculty member involved in the program.

ARTICLE 14. MISCELLANEOUS.

§18B-14-3. Southern West Virginia community college authorization to sell property; use of net proceeds.

1 Notwithstanding the provisions of article one-a, chapter twenty of this code, southern West Virginia community college, with the approval of the board of directors, is hereby authorized and empowered to sell any surplus real property and deposit the net proceeds into a special revenue account to be utilized for the purchase of additional real property or for capital improvements: Provided, That prior to such action the board of directors shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the two appraisals: Provided, however, That the net proceeds which exceed the funds needed for the purchase of real property or for capital improvements may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§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.

(c) The legislative rules filed in the state register on the eighth day of September, one thousand nine hundred ninety-two, relating to the board of trustees (holidays), are authorized.

(d) The legislative rules filed in the state register on the third day of April, one thousand nine hundred ninety-two, relating to the board of trustees (alcoholic beverages on campuses), 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.
(d) The legislative rules filed in the state register on the nineteenth day of March, one thousand nine hundred ninety-two, as modified and refiled in the state register on the tenth day of July, one thousand nine hundred ninety-two, relating to the board of directors (presidential appointments, responsibilities and evaluations), are authorized.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-1. Declaration of public need for grant assistance; establishment of grant program.

§18C-5-2. Definitions.

§18C-5-3. Grant program to be administered by senior administrator; higher education grant fund created.

§18C-5-4. Powers and duties of senior administrator.

§18C-5-5. Eligibility for a grant.

§18C-5-6. Recipients, awards and distribution of awards of grants; authority of senior administrator to enter into reciprocal agreements with other states concerning grants.

§18C-5-1. Declaration of public need for grant assistance; establishment of grant program.

The Legislature declares that although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace, and although the state now provides a limited grant program for students attending an institution of higher education in West Virginia, there continues to exist an underdevelopment of the state's human talent and resources because of the inability of many able but needy students to finance a higher educational program.

The Legislature further declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of the individual's capabilities and only if the state assists in removing such financial barriers to the individual's educational goals as may remain after the individual has utilized all resources and work opportunities available to him.

It is therefore the policy of the Legislature and the
purpose of this article to establish, within the limits of appropriations made therefor from time to time by the Legislature, a broad-scale state grant program designed to guarantee that the most able and needy students from all sectors of the state are given the opportunity to continue their program of self-improvement in an approved institution of higher education of their choice located in this state.

§18C-5-2. Definitions.

(a) "Approved institution of higher education" means a state institution of higher education as defined in section two, article one, chapter eighteen-b of this code, and Alderson-Broaddus college, Appalachian bible college, Bethany college, the college of West Virginia, Davis and Elkins college, Ohio Valley college, Salem-Teikyo college, the university of Charleston, West Virginia Wesleyan college and Wheeling Jesuit college, all in West Virginia, and any other institution of higher education in this state, public or private, approved by the senior administrator.

(b) "Grant" or "grant program" means a grant or the grant program authorized and established by the provisions of this article.

(c) "Senior administrator" means the senior administrator defined in section two, article one, chapter eighteen-b of this code.

§18C-5-3. Grant program to be administered by senior administrator; higher education grant fund created.

The grant program established and authorized by this article shall be administered by the senior administrator. Moneys appropriated or otherwise available for such purpose shall be allocated by line item to an appropriate account.

In addition to an amount no less than the amount of funds available for the higher education grant program pursuant to the repealed sections of article twenty-two-b, chapter eighteen of this code prior to the effective date of this section, there may be appropriated by the
Legislature by line item, to the extent that funds may be available, an additional one and one-half million dollars per year for the next five years, beginning with the fiscal year beginning on the first day of July, one thousand nine hundred ninety-three.

§18C-5-4. Powers and duties of senior administrator.

Subject to the provisions of this article and within the limits of appropriations made by the Legislature, the senior administrator is authorized and empowered: (1) To prepare and supervise the issuance of public information concerning the grant program; (2) to prescribe the form and regulate the submission of applications for grants; (3) administer or contract for the administration of such examinations as may be prescribed by the senior administrator; (4) select qualified recipients of grants; (5) award grants; (6) accept grants, gifts, bequests and devises of real and personal property for the purposes of the grant program; (7) administer federal and state financial loan programs; (8) cooperate with approved institutions of higher education in the state and their governing boards in the administration of the grant program; (9) make the final decision pertaining to residency of an applicant for grant or renewal of grant; (10) employ or engage such professional and administrative employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall serve at the will and pleasure and under the direction and control of the senior administrator; (11) employ or engage such clerical and other employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall be under the direction and control of the senior administrator; (12) prescribe the duties and fix the compensation of all such employees; and (13) promulgate reasonable rules and regulations not inconsistent with the provisions of this article relating to the administration of the grant program.

§18C-5-5. Eligibility for a grant.

A person shall be eligible for consideration for a grant
if the person:

1. Is a citizen of the United States;

2. Has been a resident of the state for one year immediately preceding the date of application for a grant or a renewal of a grant;

3. Meets the admission requirements of the approved institution of higher education to which admission is sought or meets the admission requirements of a three-year registered nurse diploma program which is offered by a nonprofit West Virginia hospital and approved by the West Virginia board of examiners for registered professional nurses and is subsequently admitted;

4. Satisfactorily meets the qualifications of financial need and academic promise, as well as academic achievement, as established by the senior administrator.

§18C-5-6. Recipients, awards and distribution of awards of grants; authority of senior administrator to enter into reciprocal agreements with other states concerning grants.

The grant recipient shall be free to attend any approved institution of higher education in this state or any three-year registered nurse diploma program which is approved by the West Virginia board of examiners for registered professional nurses and which is offered at a nonprofit West Virginia hospital.

The institution is not required to accept the grant recipient for enrollment, but is free to exact compliance with its own admission requirements, standards and policies.

Grants shall only be made to undergraduate students and to students enrolled in approved three-year registered nurse diploma programs, as provided in this article.

Each grant is renewable until the course of study is completed, but not to exceed an additional three academic years beyond the first year of the award. These may not necessarily be consecutive years, and the grant will be terminated if the student receives a degree
in a shorter period of time. Qualifications for renewal
will include maintaining satisfactory academic stand-
ing, making normal progress toward completion of the
course of study and continued eligibility, as determined
by the senior administrator.

Grant awards shall be made without regard to the
applicant's race, creed, color, sex, national origin or
ancestry; and in making grant awards, the senior
administrator shall treat all approved institutions of
higher education in a fair and equitable manner.

The senior administrator from time to time shall
identify areas of professional, vocational and technical
expertise that are, or will be, of critical need in this state
and, to the extent feasible, may direct grants to students
that are pursuing instruction in those areas.

The senior administrator may enter into reciprocal
agreements with state grant and grant program
agencies in other states which provide financial assist-
ance to their residents attending institutions of higher
education located in West Virginia. In connection
therewith, the senior administrator may authorize
residents of West Virginia to use financial assistance
under this article to attend institutions of higher
education in such other states. Residents of West
Virginia requesting financial assistance to attend
institutions of higher education located in any such
states must meet all of the eligibility standards set forth
in section five of this article.

Grant awards shall be limited to the lesser of the
payment of tuition and those related compulsory fees
charged by an institution to all West Virginia under-
graduate students or an amount equal to the average
state general fund support for each full-time equivalent
student at state institutions of higher education for the
preceding academic year as calculated by the senior
administrator. Payments of grants shall be made
directly to the institution.

In the event that a grant recipient transfers from one
approved institution of higher education or approved
three-year registered nurse diploma program to another
approved institution of higher education or approved
three-year registered nurse diploma program, the grant
shall be transferable only with the approval of the senior
administrator.

Should the recipient terminate enrollment for any
reason during the academic year, the unused portion of
the grant shall be returned by the institution to the
appropriate governing board in accordance with the
governing board’s policy for issuing refunds, for
transfer to the appropriate account and allocation for
expenditure pursuant to the provisions of this article.

CHAPTER 48
(H. B. 2460—By Delegates Prezioso, Adkins, Overington,
Paxton and Schoonover)

[Passed March 17, 1993; 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 reductions in force of professional educators; requiring
that such reductions be based solely on seniority; and
requiring local boards to adopt policy defining lateral
positions.

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:

§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: Provided further, That, if an employee subject to release holds certification and/or licensure in more than one lateral area and if such employee's seniority is greater than the seniority of any other employee in one or more of those areas of certification and/or licensure, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification and/or licensure.

For the purpose of this article, all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter, shall be lateral positions. For all other professional positions the county board of education shall adopt a policy by the thirty-first day of October, one thousand nine hundred ninety-three, and may modify said policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit same to the legislative oversight commission on education accountability by the thirty-first day of December, one thousand nine hundred ninety-three, and by such date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting such a policy, the board shall give consideration to the rank of each position in terms of title, nature of responsibilities, salary level, certification and/or licensure, and days in the period of employment.

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 profes­
sional 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 profes­
sional 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 perfor-
mance 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 and/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
inged mutually agree to the reassignment.

When the total number of classroom teaching posi-
tions 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 deter-
mined 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.

CHAPTER 49
(H. B. 2782—By Delegate Ashcraft)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section eight-g; and to amend and reenact sections two and eight, article five of said chapter, all relating to providing additional compensation for certain service personnel who work interrupted schedules; redefining “director or coordinator of services”; eliminating the provision authorizing the state board of education to establish other class titles and providing the attendant pay grades; providing additional methods of determining and further specifying service personnel seniority; designating West Virginia Day as a legal school holiday; and deleting a provision addressing the basis upon which an aide may be hired.

Be it enacted by the Legislature of West Virginia:

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

Article
4. Salaries, Wages and Other Benefits.
5. Authority; Rights; Responsibility.
ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8g. Determination of seniority for service personnel.

§18A-4-8. Employment term and class titles of service personnel; definitions.

The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of these personnel for a longer term. The beginning and closing dates of the ten-month employment term shall not exceed forty-three weeks.

Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.

Service personnel employed in the same classification for more than the two hundred day minimum 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 at least a full day of work for each such day.

Custodians, aides, maintenance, office and school
lunch employees 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: Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule.

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
73 by service personnel.

74 "Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

77 "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.

81 "Accountant III" means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

84 "Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

87 "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.

94 "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.

101 "Aide IV" means personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.
“Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

“Auditor” means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

“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.

“Inventorv 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 school system.

"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods.

"Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

"Welder" means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby
authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

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-4-8g. Determination of seniority for service personnel.

1 The seniority for service personnel shall be determined in the following manner:

2 Seniority accumulation for a regular school service employee shall begin on the date such employee enters upon regular employment duties pursuant to a contract
as provided in section five, article two of this chapter and shall continue until the employee's employment as a regular employee is severed with the county board of education. Seniority shall not cease to accumulate when an employee is absent without pay as authorized by the county board or the absence is due to illness or other reasons over which the employee has no control as authorized by the county board. Seniority accumulation for a substitute employee shall begin upon the date the employee enters upon the duties of a substitute as provided in section fifteen, article four of this chapter, after executing with the board a contract of employment as provided in section five, article two of this chapter. The seniority of a substitute employee, once established, shall continue until such employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter or employment as a substitute with the county board of education is severed. Seniority of a regular or substitute employee shall continue to accumulate except during the time when an employee is willfully absent from employment duties because of a concerted work stoppage or strike or is suspended without pay.

For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article: Provided, That when implementing a reduction in force, an employee with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by an employee within the classification category shall not be taken into consideration when implementing a reduction in force.

On or before the first day of September and the fifteenth day of January of each school year, county boards of education shall post at each county school or working station the current seniority list or lists of each school service classification. Each list shall contain the name of each regularly employed school service person-
nel employed in each classification and the date that each employee began performing his assigned duties in each classification. Current seniority lists of substitute school service personnel shall be available to employees upon request at the county board of education office.

The seniority of an employee who transfers out of a class title or classification category of employment and subsequently returns to said class title or classification category of employment shall be calculated as follows:

The county board of education shall establish the number of calendar days between the date the employee left the class title or category of employment in question and the date of return to the class title or classification category of employment. This number of days shall be added to the employee's initial seniority date to establish a new beginning seniority date within the class title or classification category. The employee shall then be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date. The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in a like manner.

A substitute school service employee may acquire regular employment status and seniority if said employee receives a position pursuant to section fifteen, subsections (2) and (5), article four of this chapter. County boards of education shall not be prohibited from providing any benefits of regular employment for substitute employees, but such benefits shall not include regular employee status and seniority.

If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

A board of education shall conduct such random selection within thirty days upon said employees establishing an identical seniority date. All employees with an identical seniority date within the same class
title or classification category shall participate in the random selection. As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board of education shall be permanent for the duration of the employment within the same classification category of said employees by the board of education. This random selection priority shall apply to the filling of vacancies and to the reduction in force of school service personnel.

Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill such vacancy.

Seniority acquired as a substitute and as a regular employee shall be calculated separately and shall not be combined for any purpose. Seniority acquired within different classification categories shall be calculated separately: Provided, That when a school service employee makes application for a position outside of the classification category currently held, if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purposes of bidding on the position.

School service personnel who hold multi-classification titles shall accrue seniority in each classification category of employment which said employee holds and shall be considered an employee of each classification category contained within his multi-classification title. Multi-classified employees shall be subject to reduction in force in any category of employment contained within their multi-classification title based upon the seniority accumulated within said category of employment: Provided, That if a multi-classified employee is reduced in force in one classification category, said employee shall retain employment in any of the other classification categories that he holds within his multi-classification title. In such a case, the county board of education shall delete the appropriate classification title or classification category from the contract of the multi-
When applying to fill a vacancy outside the classification categories held by the multi-classified employee, seniority acquired simultaneously in different classification categories shall be calculated as if accrued in one classification category only.

The seniority conferred herein shall apply retroactively to all affected school service personnel, but the rights incidental thereto shall commence as of the effective date of this section.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

Schools shall not be kept open on any Saturday nor on the following days which are designated as legal school holidays, namely: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day, West Virginia Day, and any day on which a primary election, general election or special election is held throughout the state or school district and any day appointed and set apart by the president or the governor as a holiday of special observance by the people of the state.

When any such holiday falls within the employment term, it shall be considered as a day of the employment term and the full-time school personnel shall receive his or her pay for same. When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday; when any such falls on Sunday, the schools shall be closed on the following Monday.

Special classes may be conducted on Saturdays, provided they are conducted on a voluntary basis, for pupils and by teachers and service personnel, and that
such teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control. Under any or all of the above provisions, the time lost by the closing of schools is counted as days of employment and as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. On such day or days, county boards of education may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the above provisions. Professional and service personnel shall receive pay the same as if school were in session. Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.

In addition to any other provisions of this chapter, the board is further authorized to provide in its annual budget for meetings, workshops, vacation time or other holidays through extended employment of personnel at the same rate of pay.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

(a) Within the limitations provided herein, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over pupils as is required of a teacher as defined and provided in section one of this article. The principal shall designate such aides in the school who agree to exercise such authority on the basis of seniority as an aide and shall enumerate the instances in which such authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned: Provided, That such authority does not extend to suspending or expelling any pupil, participating in the administration of corporal punishment or performing instructional
duties as a teacher or substitute teacher.

An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the minimum salary to which said aide would otherwise be entitled under section eight-a, article four of this chapter, and any county salary schedule in excess of the minimum requirements of this article.

(b) An aide shall not be required by the operation of this section to perform noninstructional duties for an amount of time which exceeds that required under the aide's contract of employment or that required of other aides in the same school, unless the assignment of such duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval. The terms and conditions of such agreement shall be in writing, signed by both parties, and may include additional benefits. Such agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school. Aides shall have the option of agreeing to supervise students and of renewing related assignments annually: Provided, That should an aide elect not to renew the previous agreement to supervise students, the minimum salary of such aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(c) For the purposes of this section, aide shall mean and include any aide class title as defined in section eight, article four of this chapter, regardless of numeric classification.

(d) An aide may transfer to another position of employment one time only during any half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval: Provided, That during the first year of employment as an aide, an aide shall not transfer to another position of employment during the first one-half school term of employment,
(e) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall be required to hold a high school diploma or have received a general educational development certificate and shall have opportunity to receive appropriate training pursuant to subsection (10), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.
election officials; refining definitions of various election officials; providing for an expanded receiving board; when such expanded receiving board to serve; reducing size of paper ballot precincts where optional counting board may serve; requiring county commissions to designate number and types of boards and to notify executive committees of number of officials needed to serve; clarifying nomination procedure for election officials; prescribing method and time periods in which executive committees may file nominations; providing procedure for notice of appointment of election officials; how vacancies filled on election day; eliminating certain archaic provisions; prescribing oath to be taken by election officials; establishing procedure for substitution, exchange or removal of election officials; modifying training program requirements; authorizing qualified employees of the secretary of state to conduct investigations and to enforce election and criminal laws; modifying procedure for postcard registration; clarifying exemptions for absentee voting identification requirements; authorizing special early absentee voting; empowering county commissions to adopt policies for absentee voting at nursing homes; rewriting certain code provisions for stylistic purposes; removing certain forms from statutory provisions and authorizing the secretary of state to prescribe certain forms; modifying form of absentee envelopes; eliminating requirement for physician's affidavit; establishing distances for access to absentee voting booths and prohibiting campaign literature from within three hundred feet therefrom; providing for absentee voting by physically disabled persons; modifying requirements for special absentee voting list; modifying procedures for voting absentee ballots in person and by mail; establishing a procedure for federal postcard registration; modifying provisions for voting by special write-in absentee ballots; changing certain terminology; establishing procedure for absentee voting in nursing homes; modifying procedure for delivery of absentee ballots at polling places; requiring secretary of state to supply county and circuit clerks with provisions of overseas voting act; authorizing secretary of state to establish procedures for special
absentee voting; codifying changes in law governing precincts using voting machines, consistent with other modifications; modifying requirements for the publication of ballots for all voting systems; clarifying the identification of persons who may observe the counting of votes; authorizing a representative of a group supporting or opposing an issue to be present; modifying the procedure for the counting of write-in votes for all voting systems; clarifying the requirements of ballot labels used in electronic voting systems to accommodate write-in voting; prescribing and clarifying procedures for the counting of write-in and other votes; revising procedure for the return of election supplies following primary elections; providing for the filing requirements of official write-in candidates; limiting the counting of write-in votes to only official candidates; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

2A. State Election Commission and Secretary of State.
2. Registration of Voters.
3. Voting by Absentees.
4. Voting Machines.
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-28. Election officials; eligibility, suspension of eligibility.
§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.
§3-1-30. Nomination and appointment of election officials and alternates: notice of appointment; appointment to fill vacancies in election boards.
§3-1-30a. Oaths of election commissioners and poll clerks, substitution of persons.
§3-1-46. Training program for election officials.

§3-1-28. Election officials; eligibility, suspension of eligibility.

(a) To be eligible to be appointed or serve as an election official in any state, county or municipal election held in West Virginia, a person:

1. (1) Must be a registered voter of the county for elections held throughout the county, and a registered voter of the municipality for elections held within the municipality;

2. (2) Must be registered as affiliated with the political party for which appointed; except that, persons registered without party affiliation or as adherents to a political group other than the two majority political parties then recognized are eligible to serve in nonpartisan elections;

3. (3) Must be able to read and write the English language;

4. (4) May not be a candidate on the ballot in the election;

5. (5) May not be the parent, child, sibling or spouse of a candidate on the ballot in the precinct where the official serves;

6. (6) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute;
(7) May not have been previously convicted of a violation of any election law; and
(8) May not be a person who has served as deputy sheriff within six months prior to the election.

(b) The county commission may, upon majority vote, suspend the eligibility to serve as election official in any election for four years, for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;
(2) Failure to perform the duties of an election official as required by law;
(3) Improper interference with a voter casting a ballot, or violating the secrecy of the voter's ballot;
(4) Being under the influence of alcohol or drugs while serving as election official; or
(5) Having anything wagered or bet on an election.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years, upon petition of twenty-five registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in subsection (b) hereof, providing the petition requesting the suspension of the election official is filed with the county commission at least ninety days prior to an election date. The names of those persons signing such petition shall be kept confidential.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

(a) For the purpose of this article:

(1) The term “standard receiving board” means those election officials charged with conducting the process of voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner;
(2) The term "expanded receiving board" means a standard receiving board as defined in subdivision (1) hereof and one additional team of poll clerks;

(3) The term "counting board" means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner; and

(4) The term "team of poll clerks" or "team of election commissioners" means two persons of opposite political parties appointed to perform the specific functions of the office.

(b) The composition of boards of election officials shall be as follows:

(1) In any primary, general or special election other than a presidential primary or presidential general election, each election precinct shall have one standard receiving board;

(2) In presidential primary and presidential general elections, each election precinct shall have one receiving board, as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board;

(B) For precincts of five hundred to seven hundred registered voters, one standard receiving board or, at the discretion of the county commission, one expanded receiving board; and

(C) For precincts of more than seven hundred registered voters, one expanded receiving board;

(3) In any election conducted using paper ballots, counting boards may be allowed, disallowed or required as follows:

(A) For any state, county or municipal special election, no counting board may be allowed;

(B) In a statewide primary or general election, one counting board shall be required for any precinct of more than four hundred registered voters, and one
counting board may be allowed, at the discretion of the county commission for any precinct of at least two hundred but no more than four hundred registered voters; and

(C) In a municipal primary or general election, one counting board may be allowed, at the discretion of the municipal governing body for any precinct of more than two hundred registered voters.

(c) For each primary and general election in the county, the county commission shall designate the number and type of election boards for the various precincts according to the provisions of this section. At least eighty-four days before such election, the county commission shall notify the county executive committees of the two major political parties in writing of the number of nominations which may be made for poll clerks and election commissioners.

(d) For each municipal election, the governing body of the municipality shall perform the duties of the county commission as provided in this section.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee may also nominate as many qualified persons as alternates as there are precincts in the county, which alternates may
be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chairman or secretary on their behalf, shall file in writing with the appointing body, no later than the fifty-sixth day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each such committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials; or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials shall be:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.
(d) The appropriate governing body shall appoint the election officials for each designated election board no later than the forty-ninth day before the election as follows:

1. Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner shall be appointed;

2. The governing body shall fill any positions for which no nominations were filed.

(e) At the same time as the appointment of election officials, or at a subsequent meeting, the governing body shall appoint persons as alternates: Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official, or is instructed to attend and actually attends training as an alternate and, if called to do so, also serves at the polls on election day. Alternates shall be appointed and serve as follows:

1. Those alternates nominated by the executive committees, shall be appointed;

2. The governing body may appoint additional alternates, who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

3. The governing body may determine the number of persons who may be instructed to attend training as alternates.

(f) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(g) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment, and include
with such notice a response notice form for the ap-
pointed person to return indicating whether or not he
or she agrees to serve in the specified capacity in the
election.

(h) The position of any person so notified of appoint-
ment who fails to return the response notice or otherwise
confirm to the clerk of the county commission his or her
agreement to serve within fourteen days following the
date of appointment shall be considered vacant and the
clerk shall proceed to fill the vacancies according to the
provisions of this section.

(i) If an appointed election official fails to appear at
the polling place by forty-five minutes past five o'clock
a.m. on election day, the election officials present shall
contact the office of the clerk of the county commission
for assistance in filling the vacancy and the clerk shall
proceed as follows:

(1) The clerk may attempt to contact the person
originally appointed, may assign an alternate of the
same political party as the person absent if one is
available or, if no alternate is available, may appoint
another eligible person of the same political party;

(2) If the election officials present are unable to
contact the clerk within a reasonable time, they shall
diligently attempt to fill the position with an eligible
person of the same political party as the person absent
until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in
section twenty-nine of this article, are present at the
polling place, the person appointed to fill a vacancy in
the position of the additional commissioner may be of
either political party.

(j) In a municipal election, the recorder or other
official designated by charter or ordinance to perform
election responsibilities shall perform the duties of the
clerk of the county commission as provided in this
section.

§3-1-30a. Oaths of election commissioners and poll clerks,
substitution of persons.
(a) Each commissioner of election and poll clerk, as defined in this article, before entering upon his or her duties, shall take orally and subscribe to the appropriate oath, as prescribed herein. Such oath may be taken before and administered by one of the election commissioners or poll clerks, who in turn may take the same before another election commissioner or poll clerk. For the purposes of this article, all election commissioners and poll clerks, having first been sworn, are authorized to administer oaths.

(1) The oath for members of the receiving board shall be as follows:

State of West Virginia

__________________________________________ County

I, ______________________, a qualified and registered voter of the county affiliated with the ________________ Party, do solemnly swear that I will faithfully and honestly discharge my duties as ________________ (poll clerk or election commissioner) of the receiving board according to the requirements of law in this election; that I will not knowingly permit any person to vote an unchallenged ballot who is not a resident of the precinct and a properly registered voter qualified to vote the ballot provided; that I will not challenge a ballot without just cause; that I will not cause any unnecessary delay in voting; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

__________________________________________

Subscribed and sworn to before me this ________ day of ______________________, 19 _______.
(2) The oath for the members of the counting board shall be as follows:

State of West Virginia

_______________ County

I, _________________, a qualified and registered voter of the county affiliated with the ______________ Party, do solemnly swear that I will faithfully and honestly discharge my duties as ________________ (poll clerk or election commissioner) of the counting board according to the requirements of law in this election; that I will carefully and accurately read and record the votes cast on each ballot voted in the election which contains the signatures of both poll clerks; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I will not disclose the votes cast for any candidate or any other information about the result of the election prior to the posting of the precinct returns on the door of the polling place; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

__________________________

Subscribed and sworn to before me this ______ day of ______________________, 19______.

__________________________

Signature and official title of person before whom sworn

(3) The secretary of state may prescribe the form of such oaths.

(b) When any election official is unable to perform the
duties for which he or she was appointed, a substitution may be made, as follows:

(1) An eligible person of the same political party shall assume the duties after taking the oath. One of the election commissioners shall make an entry in the space provided on the oath form, indicating the name of the official being replaced, the reason for the change, the name of the person assuming the duties, the time at which the change occurred and the poll slip number of the last voter who signed a poll slip before the change occurred;

(2) If it is necessary for a poll clerk of one political party to exchange duties with an election commissioner of the same political party, the change of duties for each person shall be recorded in the same manner;

(3) If an election commissioner or poll clerk is unable or fails to perform the duties of the office adequately and according to the requirements of law to the extent such failure interferes with the conduct of the election, the clerk of the county commission may order the exchange of duties with another official of the same party, or if necessary, remove the official. The fact of that order shall be entered on the record, along with the information required in subdivision (1) of this subsection.

(c) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission specified in this section.

§3-1-46. Training program for election officials.

(a) The secretary of state in conjunction with the state election commission shall produce one or more audio-visual programs which shall explain and illustrate the procedures for conducting elections, the duties of the various election officials and the methods of voting on each voting system in use in the state.

(b) One copy of the appropriate training program shall be distributed to and kept and preserved by the clerk of the county commission of each county. The
program shall be shown to all election officials before each election as part of their instructional program. The clerk of the county commission shall conduct an adequate number of sessions to train all election officials and shall schedule the regular sessions not less than seven days before each election and shall notify all election officials of the exact date, time and place such instructional program will be conducted.

(c) No person shall serve as an election commissioner or poll clerk in any election unless he or she has attended such instructional program. A person to replace any election official who fails to attend the instructional program shall be appointed in the same manner as persons are appointed under the provisions of section thirty of this article to replace election officials refusing to serve, and the clerk of the county commission shall conduct an additional instructional program within the seven days prior to the election for any such person or persons so appointed: Provided, That in cases of emergency when no person who has attended the instructional program for that election is available to fill a vacancy on the election board, the clerk of the county commission may appoint such person as a commissioner or poll clerk notwithstanding that such person has not received the instruction.

(d) The requirements of this section shall apply to all elections conducted by municipalities, except that the recorder or municipal clerk responsible for the election shall perform the duties of the clerk of the county commission defined herein. The clerk of the county commission may assist the recorder or municipal clerk in conducting the instructional program.

(e) While such program is not being used by the clerk for instructional purposes, it shall be available to any duly organized civic, religious, educational or charitable group without charge, except that the clerk shall require a cash deposit on such use in an amount to be determined by the secretary of state.

(f) The secretary of state shall cause such program to be amended, edited or reproduced whenever he or she
50 is of the opinion such revision is necessary in light of
51 changes in the election laws of this state.
52
(g) No elected official shall appear in such program
53 either in person or by visual image or by name.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-8. Investigators for the secretary of state.

1 An employee of the secretary of state, who has
2 attended a course of instruction at the state police
3 academy or its equivalent, has all the lawful powers
4 delegated to members of the department of public safety
5 to enforce the provisions of this chapter and the criminal
6 laws of the state in any county or municipality of this
7 state. An employee shall, before entering upon the
8 discharge of his or her duties, execute a bond with
9 security in the sum of three thousand five hundred
10 dollars, payable to the state of West Virginia, condi-
11 tioned for the faithful performance of his or her duties,
12 as such, and such bond shall be approved as to form by
13 the attorney general, and the bond shall be filed with
14 the secretary of state and preserved in his or her office.
15 The department of public safety, and any county sheriff
16 or deputy sheriff or any municipal police officer, upon
17 request by the secretary of state or his or her appointee,
18 is authorized to assist the secretary of state or his or her
19 appointee in enforcing the provisions of this chapter and
20 the criminal laws of the state.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-41. Registration and transfer of registration by
mail; form to be required and distribution
thereof; receipt by clerk thirty days prior to
election before applicant entitled to vote
therein; clerk to forward application if appli-
cant outside jurisdiction, but resident of state;
application forms to be made widely availa-
ble by clerk; form of application and informa-
tion required.

1 (a) In addition to any procedures which may be used
2 in effecting the biennial checkup as provided under
section twenty-one of this article, central registration
and transfer as provided under sections twenty-two and
twenty-seven of this article, and the provision with
respect to registration of absentee voters under section
twenty-three of this article, any qualified person may
register or transfer his or her registration by mail.

(b) Completed applications, when received by any
clerk of the county commission not later than thirty-five
days and by the appropriate clerk of the county
commission not later than thirty days before the
following primary, general or special election, entitle
the applicant to vote in such election if he or she is
otherwise qualified. Any clerk receiving an application
from a person who does not reside in his or her county
but who does reside elsewhere in the state shall
forthwith forward such application to the proper clerk.
Each clerk shall make an entry on such application of
the date it is received by such clerk, and the application
shall remain on file in the office of the clerk for at least
two years from the date it was received.

(c) Applications for use pursuant to this section shall
be made available by the clerk of the county commission
to every adult person of the county, not registered, and
to any registered voter of the county upon request. The
application for use pursuant to this section shall be a
uniform statewide application in a form to be prescribed
by the secretary of state and shall include the informa-
tion required under the form provisions of section
nineteen of this article. The form, which shall be self-
addressed, is to be as widely and freely distributed as
possible and shall be a bifold self-mailer which shall be
compatible with local systems of voter registration data
collection and storage.

(d) In addition to the information required under the
form provisions of section nineteen of this article, the
form shall contain such other information as the
secretary of state may reasonably require and shall also
include the following information:

(1) Notice that those currently registered do not need
to reregister unless they have moved or failed to vote
at least once during a period covering two statewide primary and two general elections as indicated by their registration records;

(2) Instructions on how to fill out and submit the form and that the form must be received by the appropriate county clerk at least thirty days prior to the election at which the applicant may vote;

(3) Notice that registration or transfer is not complete until the form is received by the appropriate clerk of the county commission;

(4) Notice of a voter's right to register centrally;

(5) A warning to the voter that it is a crime to procure a false registration and notice of the felony offenses provided for in section forty-two of this article;

(6) Notice that political party enrollment is optional but, in order to vote in a primary election of a political party, a voter must enroll in that political party;

(7) Notice that the applicant must be a citizen of the United States, at least seventeen years old and will be eighteen years old on or before the next general election, and a resident of the county to which application is made;

(8) Notice that a voter notification form will be mailed to those applicants whose complete form is received;

(9) A space for the applicant to indicate whether or not he or she has ever been registered before and, if so, his or her name and address at the time of prior registration;

(10) A space for the applicant to indicate his or her choice of party, if any, in which space the names of all parties are provided so that the applicant can check one with a clear alternative provided for an applicant to decline to affiliate with any party;

(11) A space for the applicant to indicate his or her social security number; and

(12) A place for the applicant to execute the application on a line which is clearly labeled "signature of
applicant” and contained in the following specific form of oath or affirmation:

“I do solemnly swear or affirm that the information provided in the preceding uniform statewide application is true to the best of my knowledge, information and belief, and I understand that if I willingly provide false information concerning a material matter or thing therein, I shall be deemed guilty of the felony offense of perjury and shall be subject to the penalties for perjury.

__________________________
Signature of Applicant

Subscribed and sworn (or affirmed) to before me, this ______ day of __________________________, 19____.

__________________________
which oath or affirmation shall be administered by a person authorized to perform notarial acts under the provisions of article one or one-a, chapter thirty-nine of this code. The person administering the oath or affirmation shall not charge a fee for such act and the uniform statewide application shall inform the person administering such oath or affirmation that no fee is to be charged.

(e) Any person who has registered or reregistered pursuant to this section shall be required to make his or her first vote in person at the poll or appear in person at the office of the clerk of the circuit court to vote an absentee ballot during a period covering two statewide primary elections and two general elections in order to make such registration valid: Provided, That any person who has registered or reregistered pursuant to this section and who has qualified for placement on the special absentee voting list pursuant to section two-b, article three of this chapter, who has qualified to vote an absentee ballot by mail pursuant to subdivision (1), paragraph (B) of subdivision (2), or subdivision (3), subsection (d), or subsection (e), section one, article three of this chapter, shall not have his or her ballot in that election challenged for failure to present identification.

Any such person required by this section to make his or her first vote in person in order to make the
registration valid shall present valid identification and 
proof of age to the clerks at the poll or the clerk in the 
office of the circuit clerk of the county in which he or 
she is registered before casting his or her first ballot. 

(f) The uniform statewide application prescribed in 
this section may refer to various public officials by title 
or official position (e.g., clerk of the county commission, 
secretary of state), but in no case may the actual name 
of the officeholder be printed or otherwise appear on 
such form: Provided, That nothing contained in this 
subsection shall prohibit a public official, otherwise 
qualified, from administering the oath or affirmation in 
accordance with the provisions of subdivision (12), 
subsection (d) of this section, and affixing his or her 
signature thereto. 

(g) It shall be the duty of the secretary of state to 
create and commence distribution of the forms for the 
uniform statewide application within six months 
following the effective date of this section. 

(h) Notwithstanding any other provision of this 
section, persons specified in subdivision (2), subsection 
(d), section one, article three of this chapter may register 
by mail using the federal postcard application issued 
pursuant to the authority of the Uniformed and Over-
seas Citizens Absentee Voting Act of 1986 (Public Law 

The oath of the applicant using the federal postcard 
application shall not be required to be administered by 
a person authorized to perform notarial acts. Any 
federal postcard application received by the county 
clerk or circuit clerk which has been designated by the 
applicant as both an application for registration and a 
request for an absentee ballot shall be accepted for both 
purposes if all legal requirements are met. 

ARTICLE 3. VOTING BY ABSENTEES. 

§3-3-1. Persons eligible to vote absentee ballots. 
§3-3-2. Authority to conduct absentee voting; absentee voting application; 
form. 
§3-3-2a. Voting booths within public view to be provided by clerk; 
prohibition against display of campaign material. 
§3-3-2b. Special absentee voting list.
§3-3. Persons eligible to vote absentee ballots.

(a) Duly registered and otherwise qualified voters of the county who for authorized reasons as provided in this article are unable to vote in person at the polling place on the day of a primary, general or special election may vote an absentee ballot according to the provisions of this article.

(b) Voters in the following circumstances shall be authorized to vote an absentee ballot and shall be required to vote that absentee ballot in person in the office of the clerk of the circuit court during the period of regular absentee voting in person:

(1) Any voter who is within the county and physically able to vote in person during regular business hours of the clerk's office during the prescribed period for absentee voting but is unable to vote in person on election day because of: (A) Anticipated or scheduled commitment to a hospital, institution or other confinement for medical reasons; (B) absence from the county during the entire time the polls are open; (C) appointment as an election official in a precinct other than the one in which the voter is registered; or (D) the inaccessibility of the polling place to the voter because of his or her physical disability; and

(2) Any voter who is a member of a religious denomination with an established history of observing Saturday as the Sabbath, when the election is scheduled to be held on Saturday.

(c) Voters in the following circumstances shall be authorized to vote an absentee ballot under special affidavit and shall be required to vote that absentee
Ch. 50] ELECTIONS 361

ballot in person in the office of the clerk of the circuit
court during the period of special absentee voting in
person:

(1) Any voter who will be absent from the county
throughout the regular period and available hours for
voting in person at the polls or at the clerk’s office
because of personal or business travel or employment,
who will be unable to receive an absentee ballot by mail
at an address outside the county during that absence,
and who will be present within the county between the
forty-second day before the election and the fifteenth
day before the election.

(d) Voters in the following circumstances shall be
authorized to vote an absentee ballot by mail:

(1) Any voter who is confined to a specific location and
prevented from voting in person throughout the period
of voting in person because of: (A) Illness, injury or other
medical reason; (B) physical disability or immobility due
to extreme advanced age; or (C) incarceration or home
detention when not under conviction of a felony, treason
or bribery in an election; and

(2) Any voter who is absent from the county through-
out the period and available hours for voting in person
because of: (A) Personal or business travel; (B) attend-
ance at a college, university or other place of education
or training; or (C) employment which because of hours
worked and distance from the county seat make voting
in person impossible; and

(3) Any voter absent from the county throughout the
period and available hours for voting in person and who
is an absent uniformed services voter or overseas voter,
as defined by the Uniformed and Overseas Citizens
Absentee Voting Act of 1986 (Public Law 99-410, 42
on active duty, members of the merchant marine,
spouses and dependents of those members on active
duty, and persons who reside outside the United States
and are qualified to vote in the last place in which the
person was domiciled before leaving the United States
are included in the above definition; and
(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of: (A) Serving as an elected or appointed federal or state officer; or (B) serving in any other documented employment assignment of specific duration of four years or less; and

(5) Any voter for whom both the office of the circuit clerk and the polling place are inaccessible to the voter because of his or her physical disability.

(e) Voters in the following circumstances shall be authorized to vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is admitted for emergency medical treatment on or after the seventh day next preceding the election and who anticipates continued confinement in a hospital or other duly licensed health care within the county of residence or other authorized area, as provided in this article; and

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized such services.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting shall be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) The clerk of the circuit court, for any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee
Ch. 50] ELECTIONS 363

voting, for any election held entirely within the munici-

pality, or in the case of annexation elections, within the

area affected. The terms "clerk" or "circuit clerk" used

elsewhere in this article shall be taken to refer to such

recorder or other officer in the case of municipal

elections.

(b) A person authorized and desiring to vote an

absentee ballot in any primary, general or special

election shall make application in writing in the proper

form to the proper official.

(1) The completed application shall be on a form

prescribed by the secretary of state, and shall contain

the name, date of birth and political affiliation of the

voter, his or her residence address within the county, the

address to which the ballot is to be mailed, the

authorized reason for which the absentee ballot is

requested, and, if the reason is illness or hospitalization,

the name and telephone number of the attending

physician, the signature of the voter to a declaration

made under the penalties for false swearing as provided

in section three, article nine of this chapter that the

statements and declarations contained in the application

are true, any additional information which the voter is

required to supply, any affidavit which may be re-

quired, and an indication as to whether it is an

application for voting in person or by mail; or

(2) For any person authorized to vote an absentee

ballot under the provisions of the Uniformed and

Overseas Citizens Absentee Voting Act of 1986 (Public


application may be on the federal postcard application

for absentee ballot form issued under authority of that

act; or

(3) For any person unable to obtain the official form

for absentee balloting at a reasonable time before the

deadline for an application for an absentee ballot by

mail to be received by the proper official, the completed

application may be in a form set out by the voter,

provided all information required to meet the provisions

of this article is set forth and the application is signed
by the voter requesting the ballot.

§3-3-2a. Voting booths within public view to be provided by clerk; prohibition against display of campaign material.

Throughout the period of absentee voting in person in the clerk's office as provided in this article, the circuit clerk shall make the following provisions for voting:

(a) The clerk shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices shall be in an area separate from but within clear view of the public entrance area of the clerk's office, and shall be arranged to ensure the voter complete privacy in casting the ballot.

(b) The clerk shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the clerk or deputy clerks or members of the board of ballot commissioners assigned to conduct absentee voting, shall enter the area or room set aside for voting.

(c) When the voting area of the office of the clerk is not fully accessible to voters with physical disabilities, the clerk shall request the county commission to designate an accessible room within the same building as a portion of the clerk's office for the purpose of absentee voting only by persons unable to use the regular area. The area shall be subject to the same requirements as the regular voting area.

(d) No person may do any electioneering, nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters or material of any kind which tends to influence the voting for or against any candidate or any public question within the whole area of the clerk's office or within three
hundred feet thereof during the entire period of absentee voting. The clerk is hereby authorized to remove such material and to direct the sheriff of the county to enforce the prohibition.

§3-3-2b. Special absentee voting list.

(a) Any person who is registered and otherwise qualified to vote and who is permanently and totally physically disabled and who is unable to vote in person at the polls in an election may apply to the clerk of the circuit court for placement on the special absentee voting list.

(b) The application shall be on a form prescribed by the secretary of state which shall include the voter's name and signature, residence address, a statement that the voter is permanently and totally physically disabled and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect.

(c) Upon receipt of a properly completed application, the circuit clerk shall enter the name on the special absentee voting list, which shall be maintained in a secure and permanent record. The person's name shall remain active on such list until: (1) The person requests in writing that his or her name be removed; (2) the person removes his or her residence from the county, is purged from the voter registration books or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United State postal service; or (4) the death of the person.

(d) The clerk shall mail an application for an absentee ballot by mail to each person active on the special absentee voting list not later than forty-two days before each election.

§3-3-3. Voting an absentee ballot in person.

(a) Regular absentee voting in person shall be conducted during regular business hours in the office of the clerk of the circuit court beginning on the fifteenth
day before the election and continuing through the
Saturday before the election for any election held on a
Tuesday, or continuing through the third day before the
election for any election held on another day.

(b) Special absentee voting in person for persons
eligible to vote an absentee ballot under the provisions
of subsection (c), section one of this article shall be
conducted during regular business hours in the office of
the clerk of the circuit court beginning on the forty-
second day before the election and continuing until the
first day when regular absentee voting in person begins.
Any person seeking to vote absentee under this subsec-
tion shall first give an affidavit, on a form prescribed
by the secretary of state, stating under oath the specific
circumstances which prevent voting absentee during the
period for regular absentee voting in person or by mail.

(c) Upon oral request, the clerk of the circuit court
shall provide the voter with the appropriate application
for voting absentee in person, as provided in this article.
The voter shall complete and sign the application in his
or her own handwriting or, if the voter is unable to
complete the application because of illiteracy or physical
disability, the person assisting the voter and witnessing
the mark of the voter shall sign his or her name in the
space provided. Upon completion, the application shall
be immediately returned to the clerk, who shall
determine:

(1) Whether the application has been completed as
required by law;

(2) Whether the applicant is duly registered to vote
in the precinct of his or her residence, and, in a primary
election, is qualified to vote the ballot of the political
party requested; and

(3) Whether the applicant is authorized for the
reasons given in the application to vote an absentee
ballot by personal appearance at the time of the
application.

If the clerk determines the above conditions have not
been met, or has evidence that any of the information
contained in the application is not true, the clerk shall
challenge the voter's absentee ballot as provided in this
article.

(d) The clerk shall provide each person voting an
absentee ballot in person the following: (1) One of each
type of official absentee ballot the voter is eligible to
vote, prepared according to law; (2) one envelope,
unsealed, which shall have no marks except the desig-
nation "Absent Voter's Ballot Envelope No. 1" and
printed instructions to the voter; and (3) one envelope,
unsealed, designated "Absent Voter's Ballot Envelope
No. 2" and printed as prescribed by the secretary of
state.

(e) The voter shall enter the voting booth alone and
there mark the ballot: Provided, That the voter may
have assistance in voting according to the provisions of
section four of this article. After the voter has voted the
ballot or ballots, the voter shall: (1) Place the ballot or
ballots in envelope No. 1 and seal that envelope; (2) place
the sealed envelope No. 1 in envelope No. 2 and seal that
envelope; (3) complete and sign the forms on envelope
No. 2; and (4) return that envelope to the circuit clerk.

(f) Upon receipt of the sealed envelope, the circuit
clerk shall: (1) Enter onto the envelope any other
required information; (2) enter the challenge, if any, to
the ballot; (3) enter the required information into the
permanent record of persons applying for and voting an
absentee ballot in person; and (4) place the sealed
envelope in a secure location in the clerk's office, to
remain until delivered to the polling place or, in the case
of a challenged ballot, to the board of canvassers.

§3-3-5. Voting an absentee ballot by mail; penalties.

(a) Upon oral or written request, the clerk of the
circuit court shall provide to any voter of the county, in
person or by mail, the appropriate application for voting
absentee by mail, as provided in this article. The voter
shall complete and sign the application in his or her own
handwriting or, if the voter is unable to complete the
application because of illiteracy or physical disability,
the person assisting the voter and witnessing the mark
of the voter shall sign his or her name in the space
provided.

(b) Completed applications for voting an absentee
ballot by mail shall be accepted when received by the
clerk within the following times:

(1) For persons eligible to vote an absentee ballot
under the provisions of subdivision (3), subsection (d),
section one of this article, relating to absent uniformed
services and overseas voters, not earlier than the first
day of January of an election year, or eighty-four days
preceding the election, whichever is earlier, and not
later than the sixth day preceding the election, which
application shall, upon the voter's request, be accepted
as an application for the ballots for all elections in the
calendar year;

(2) For all other persons eligible to vote an absentee
ballot by mail, not earlier than eighty-four days
preceding the election and not later than the sixth day
preceding the election.

(c) Upon acceptance of a completed application, the
circuit clerk shall determine whether the following
requirements have been met:

(1) The application has been completed as required by
law;

(2) The applicant is duly registered to vote in the
precinct of his or her residence and, in a primary
election, is qualified to vote the ballot of the political
party requested;

(3) The applicant is authorized for the reasons given
in the application to vote an absentee ballot by mail;

(4) The address to which the ballot is to be mailed is
an address outside the county if the voter is applying
to vote by mail under the provisions of subdivision (2),
(3) or (4), subsection (d), section one of this article;

(5) The applicant is not making his or her first vote
after having registered by postcard registration under
the provisions of section forty-one, article two of this
chapter or, if the applicant is making the first vote
under these provisions, the applicant is exempt from these requirements;

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

If the clerk determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article, and shall enter that challenge.

(d) Within one day after the clerk has both the completed application and the ballot, the clerk shall mail to the voter at the address given on the application the following: (1) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law; (2) one envelope, unsealed, which shall have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter; (3) one postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2" and printed as prescribed by the secretary of state; (4) instructions for voting absentee by mail; and (5) any other supplies required for voting in the particular voting system.

(e) The voter shall mark the ballot alone: Provided, that the voter may have assistance in voting according to the provisions of section six of this article. After the voter has voted the ballot or ballots, the voter shall: (1) Place the ballot or ballots in envelope No. 1 and seal that envelope; (2) place the sealed envelope No. 1 in envelope No. 2 and seal that envelope; (3) complete and sign the forms on envelope No. 2; and (4) return that envelope to the clerk.

(f) Absentee ballots returned by United States mail or other express shipping service shall be accepted if: (1) The ballot is received by the clerk no later than the close of the polls on election day; or (2) the ballot bears a postmark of the United States postal service dated no
Ballots received after the proper time which cannot be accepted shall be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they shall be destroyed without being opened.

(g) Absentee ballots which are hand delivered to the clerk shall be accepted if they are received by the circuit clerk no later than the day preceding the election: Provided, That no person may hand deliver more than two absentee ballots in any election, and any person hand delivering an absentee ballot shall be required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification shall be in violation of the penalty provisions of article nine of this chapter and subject to those provisions.

(h) Upon receipt of the sealed envelope, the clerk shall: (1) Enter onto the envelope any other required information; (2) enter the challenge, if any, to the ballot; (3) enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and (4) place the sealed envelope in a secure location in the clerk's office, to remain until delivered to the polling place or, in the case of a challenged ballot, to the board of canvassers.

§3-3-5a. Processing federal postcard applications.

(a) When a federal postcard registration and absentee ballot request (FPCA), as defined in subdivision (2), subsection (b), section two of this article, is received by the clerk of the circuit court, the clerk shall examine the application and take the following steps:

(1) The clerk shall first enter the name of the applicant in the permanent absentee voter's record for each election for which a ballot is requested, make a photocopy of the application for each such election and place the separate copies in secure files to be maintained for use in the various elections.
(2) The clerk shall then determine if the applicant is registered to vote at the residence address listed in the voting residence section of the application. If the applicant is properly registered, the clerk shall maintain the original application. If the applicant is not registered, or not registered at the address given, the clerk shall deliver the original FPCA to the clerk of the county commission for processing as an application for registration and, if such application is received after the close of voter registration for the next succeeding election, the clerk of the circuit court shall challenge the absentee ballot for that election.

(3) Except as provided herein, the federal application for an absentee ballot received from a person qualified to use the application as provided in section two of this article shall be processed as all other applications and the ballot or ballots for each election for which ballots are requested by the applicant shall be mailed to the voter on the first day on which both the application and the ballot are available.

(b) When a federal postcard registration and absentee ballot request (FPCA) is received by the clerk of the county commission, the clerk of the county commission shall examine the application and take the following steps:

(1) The clerk shall determine if the applicant is registered to vote at the residence address listed in the voting residence section of the application. If the applicant is properly registered, the clerk shall deliver the original FPCA to the clerk of the circuit court for processing as an application for absentee voting. If the applicant is not registered, or not registered at the address given, the clerk of the county commission shall make a photocopy of such application and deliver the photocopy to the clerk of the circuit court for processing as an application for absentee voting, and shall register the voter and maintain the original copy in the registration files. If the application for registration is received after the close of registration for the next succeeding election, the clerk of the county commission shall hold the application to be entered into the
registration records after that election and shall forward a copy of the application to the clerk of the circuit court, along with a notice that the absentee ballot for that election shall be challenged.

(2) Upon receiving the original or the photocopy of the application from the clerk of the county commission, the clerk of the circuit court shall process the application as prescribed in subsection (a) of this section.

§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

(a) Notwithstanding any other provisions of this chapter, a person qualified to vote an absentee ballot in accordance with subdivision (3), subsection (d), section one of this article may apply not earlier than the first day of January of an election year for a special write-in absentee ballot for a primary or general election, in conjunction with the application for a regular absentee ballot or ballots. If the application is received after the forty-ninth day preceding the election, the clerk of the circuit court shall honor only the application for the regular ballot. The special write-in ballot shall be for presidential preference or nomination of members of Congress in a primary election and for the election of presidential electors, United States senator and representative in Congress in a general election.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form.

(c) In order to qualify for a special write-in absentee ballot, the voter must state that he or she is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated areas or extremely remote areas of the world. This statement may be made on the federal postcard application or on a form prepared by the secretary of state and supplied and returned with the special write-in absentee ballot.

(d) Upon receipt of said application within the time required, the clerk shall issue the special write-in
absentee ballot which shall be the same ballot issued under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (Public Law 99-410, 42 U.S.C. 1973, et seq.). Such ballot shall permit the elector to vote in a primary election by indicating his or her political party affiliation and the names of the specific candidates for each office, and in a general election by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

(e) When a special federal write-in ballot is received by the clerk from a voter: (1) Who mailed the write-in ballot from any location within the United States; (2) who did not apply for a regular absentee ballot; (3) who did not apply for a regular absentee ballot by mail; or (4) whose application for a regular absentee ballot by mail was received less than thirty days before the election, the write-in ballot shall not be counted.

(f) Any write-in absentee ballot must be received by the clerk prior to the close of the polls on election day or it may not be counted.

§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an emergency absentee ballot, as provided in subsection (e), section one of this article may vote an emergency absentee ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to: (1) Hospitals or other duly licensed health care facilities within an adjacent county or within thirty-five miles of the county seat; or (2) nursing homes within the county: Provided, That the policy shall be adopted by the county commission at least ninety days prior to the election that will be affected and a copy of such policy shall be filed with the secretary of state.

(b) On or before the fifty-sixth day preceding the date on which any election is to be held, the clerk of the
circuit court of each county shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she deems necessary to perform the duties and functions hereinafter set forth.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons, appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of article one of this chapter. Emergency absentee ballot commissioners shall have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Such commissioners shall be compensated for services and expenses in the same manner as commissioners of election obtaining and delivering election supplies under the provisions of section forty-four, article one of this chapter.

(d) Upon request of the voter or a member of the voter's immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the clerk of the circuit court, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day, shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application shall be prescribed by the secretary of state and shall include the name, residence address and political party affiliation of the voter, the date, location and reason for confinement in the case of an emergency, and the name of the attending physician.

If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy, he or she shall make his or her mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.
A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confinement, and the particulars of the confinement.

(e) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which shall be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and then the ballot and return the same to the circuit clerk and, upon delivering the application and the voted ballot to the clerk of the court, sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot shall be returned to the clerk of the circuit court prior to the close of the polls on election day. Any ballots received by the clerk after the time that delivery may reasonably be made but before the closing of the polls shall be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of section ten of this article.

(f) Upon receiving the application and emergency absentee ballot, the clerk of the circuit court shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot shall be delivered to the precinct election commissioner pursuant to section seven of this article. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, then the ballot shall be challenged for the appropriate reason provided for in section ten of this article.

(g) If either or both of the emergency absentee ballot commissioners should refuse to sign any application for voting an emergency absentee ballot, then the voter shall be permitted to vote as an emergency absentee and any such ballot shall be challenged in accordance with
the provisions of section ten of this article, in addition

to those absentee ballots subject to challenge as enumer-
ated therein.

(h) Any voter who receives assistance in voting an
emergency absentee ballot shall comply with the
provisions of section six of this article. Any other
provisions of this chapter relating to absentee ballots not
altered by the provisions of this section shall govern the
treatment of emergency absentee ballots.

§3-3-7. Delivery of absentee ballots to polling places.

(a) Except as otherwise provided in this article, the
absentee ballots of each precinct, together with the
applications therefor, the affidavits made in connection
with assistance in voting, and such forms, lists and
records as may be designated by the secretary of state,
shall be delivered in a sealed carrier envelope to the
election commissioner of the precinct at the time he
picks up the official ballots and other election supplies
as provided in section twenty-four, article one of this
chapter.

(b) Absentee ballots received after the election
commissioner has picked up the official ballots and
other election supplies for the precinct shall be delivered
to the election commissioner of the precinct who has
been so designated pursuant to section twenty-four,
article one of this chapter, by the clerk in person, or by
messenger, before the closing of the polls, provided such
ballots are received by the clerk in time to make such
delivery. Any ballots received by the clerk after the time
that delivery may reasonably be made but within the
time required as provided in subsection (f), section five
of this article, shall be delivered to the board of
canvassers along with the challenged ballots.

§3-3-12. Rules, regulations, orders, instructions, forms,
lists and records pertaining to absentee voting.

The secretary of state shall make, amend and rescind
such rules, regulations, orders and instructions, and
prescribe such forms, lists and records, and consolida-
tion of such forms, lists and records as may be necessary
to carry out the policy of the Legislature as contained
in this article and as may be necessary to provide for
an effective, efficient and orderly administration of the
absentee voter law of this state. In the case of West
Virginia voters residing outside the continental United
States, the secretary of state shall promulgate rules and
regulations necessary to implement procedures relating
to absentee voters contained in the Uniformed and
Overseas Citizens Absentee Voting Act of 1986 (P.L. 99-
410, 42 U.S.C. 1973, et seq.) and shall forward a copy
of the act to all clerks of the circuit courts and clerks
of the county commissions before the first day of
January of each even-numbered year.

The secretary of state may establish special proce-
dures to allow absentee voting for those categories of
registered voters who, because of special circumstances,
would otherwise be unable to vote in the election.

It shall be the duty of all clerks of the circuit court,
other county officers, and all election commissioners and
poll clerks to abide by such rules, regulations, orders
and instructions and to use such forms, lists and records
which, without limiting the foregoing, may include or
relate to:

(a) The consolidation of the two application forms
provided for herein into one form;

(b) The size and form of Absent Voter’s Ballot
Envelope Nos. 1 and 2, and carrier envelopes;

(c) The information which shall be placed on Absent
Voter’s Ballot Envelope No. 1 and the forms and
information which shall be placed on Absent Voter’s
Ballot Envelope No. 2;

(d) The forms and manner of making the challenges
to absentee ballots authorized by this article;

(e) The forms of, information to be contained in, and
consolidation of lists and records pertaining to applica-
tions for, and voting of, absentee ballots and assistance
to persons voting absentee ballots;
(f) The supplying of application forms, envelopes, challenge forms, lists, records and other forms;

(g) The keeping and security of voted absentee ballots in the office of the clerk of the circuit court.

ARTICLE 4. VOTING MACHINES.

§3-4-13. Election boards where voting machines used.

One receiving board, as defined in article one of this chapter, shall conduct the election in each precinct in which voting machines are used. The provisions of article one of this chapter relating to the qualifications, appointment, substitution, training and compensation of election officers, and to the procedure for filling vacancies, shall apply.

§3-4-14. Instructions and help to voters; voting machine models; facsimile diagrams; sample ballots; legal ballot advertisements.

For the instruction of the voters on any election day there shall be provided for each polling place one instruction model for each voting machine. Each such instruction model shall be constructed so as to provide a replica of a portion of the face of the voting machine, and shall contain the arrangement of the ballot labels, party columns or rows, office columns or rows and questions. Fictitious names shall be inserted in the ballot labels of the models. Such models shall be located on the election officers' tables or in some other place in which the voter must pass to reach the voting machine. Each voter, upon request, before voting, shall be offered instruction by the election officers in the operation of the voting machine by use of the instruction model and each voter shall be given ample opportunity to operate the model himself.

The ballot commissioners shall also provide facsimile diagrams, at least two of which shall be posted on the
walls of each polling place. The facsimile diagrams shall be exact diagrams of the face of the voting machines to the end that the voter may become familiar with the location of the parties, offices, candidates and questions as they appear on the voting machine to be used in his precinct. Ballot labels may be affixed to the diagrams to ensure that the position of the names of the candidates in each office division shall appear accurately on the diagrams of each precinct.

The ballot commissioners may, with the consent of the county commission, or the county commission may prepare and mail to each qualified voter at his or her address as shown on the registration books a facsimile sample of the ballot for his or her precinct.

In counties where voting machines have been adopted, the legal ballot advertisements required by articles five and six of this chapter which specify the publication of a facsimile sample ballot shall consist of a facsimile of the face of the voting machine with the names of the candidates and the offices for which they are running shown in their proper positions.

§3-4-24. Closing polls; counting and reporting returns; duties and procedures.

(a) As soon as the polls are closed, and the last voter has voted, the election officers shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been entered on the voting machine, the election officers shall immediately lock and seal the operating lever or mechanism of the machine so that the voting and counting mechanism will be prevented from operation, and shall then compare the number of voters, as shown by the public counter of the machine, with the number of those who have voted, as shown by the protective or accumulative counter or device. The election officers of each precinct shall then sign a certificate stating: (1) That the machine has been locked against voting and sealed; (2) the number of voters, as shown by the public counters; (3) the number registered on the protective or accumulative counter or
device, if any; and (4) the number or other designation of the voting machine; and such certificate shall be returned by the precinct election officers to the ballot commissioners.

(b) Before proceeding, the election officers shall admit the following persons who may witness and check the recording of the votes shown on the counters:

(1) Any candidate, or any one person representing a candidate who presents a written authorization signed by the candidate for the purpose;

(2) Any one person representing a registered political committee formed for the purpose of advocating or opposing an issue on the ballot who presents a written authorization signed by the committee treasurer; and

(3) Any one member of the county executive committee of an established political party.

(c) The election officers shall then make visible the registering counters, and for that purpose shall unlock and open the doors or other covering concealing the same, giving full view to all witnesses of all the counter numbers.

(1) The election officers shall, under the scrutiny of such representatives, if any, and in the order of the offices as their titles are arranged on the machine, read and announce, in distinct tones, the results as shown by the counter numbers for each candidate and for and against each question voted on. The counters shall not be read consecutively along the party rows or columns but shall always be read along the office columns or rows, completing the canvass for each office or question before proceeding to the next.

(2) The election officers shall also open the doors covering the paper roll and shall proceed to read and record the votes entered thereon for any official write-in candidate for election to the office represented by the position on the paper roll, except delegate to national convention. Official write-in candidates are those who have filed a write-in candidate's certificate of announcement and have been certified according to the provisions
of section four-a, article six of this chapter. Write-in votes for nomination to any office or for any person other than an official write-in candidate shall be disregarded.

(3) The vote as registered shall be entered by the election officers, in ink, on triplicate return sheets, and also on a general return sheet and statement, all of which, after the count is completed, shall be signed by the election officers. The total vote cast for each candidate, and for and against each question, shall then be computed and entered on the general and triplicate return sheets and statement. There shall also be entered on the general return sheet and statement the number of voters who have voted, as shown by the poll books, and the number who have voted on each machine, as shown by the public counters, and also the number registered on the protective counter on each machine immediately prior to the opening of the polls and immediately after the closing thereof and sealing of the machine. The number or other designation of each machine used shall also be entered thereon. In the case of primary elections, triplicate return sheets shall be prepared for each party. The registering counters of the voting machine shall remain exposed to view until the returns and all other reports have been fully completed.

(d) The proclamation of the results of the votes cast shall be announced distinctly and audibly by one of the election officers, who shall read the name of and votes cast for each candidate, and the votes cast for and against each question submitted. During such proclamation, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine, and any necessary corrections shall then and there be made by election officers, after which the doors or other cover of the voting machine shall be closed and locked and the return sheets shall be signed by each of the election officers. If any election officer shall decline to sign such return, he or she shall state the reason in writing, and enclose the statement with the return. Each of the return sheets shall be enclosed in a separate envelope, which shall be securely sealed, and each of the election
officers shall write his or her name across the fold of the envelope. One of the sealed envelopes containing the returns shall be delivered to the clerk of the circuit court and two shall be delivered to the clerk of the county commission who shall within forty-eight hours mail one of the sealed returns for each precinct by certified mail to the secretary of state. The general return sheet and statement shall be directed and immediately delivered to the clerk of the county commission. The envelope shall have endorsed thereon a certificate of the election officers, stating the number of the machine, the precinct where it has been used, the number of the seal and the number registered on the protective counter at the close of the polls.

(e) As soon as possible after the completion of the count, the election officers shall return to the county commission and the ballot commissioners the keys to the voting machine received and receipted for by them, and the clerk of the county commission shall have the voting machine properly boxed or securely covered and removed from the polling place to a proper and secure place of storage.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

§3-4A-14. Election boards where electronic voting systems used.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

§3-4A-27. Proceedings at the central counting center.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

The ballot commissioners of any county in which an electronic voting system utilizing voting devices for registering the voter's choices is to be used in any election shall cause to be printed for use in such election the ballot cards and ballot labels, as appropriate, for the electronic voting system.

(a) The ballot labels shall be clearly printed in black
Elections

8 ink on clear white material of such size as will fit the vote recording devices. Arrows shall be printed on the ballot labels to indicate the place to punch the ballot card, which may be to the right or left of the name or proposition.

(b) The ballot labels shall contain the party emblem and shall clearly indicate the party designation of each candidate. The titles of offices may be arranged on the ballot labels in vertical columns or in a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. The names of candidates for each office shall be printed in vertical columns or on separate pages, grouped by the offices which they seek.

(c) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office shall conform as nearly as possible to the provisions of sections thirteen and thirteen-a, article five of this chapter.

(d) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office shall conform as nearly as possible to the provisions of section two, article six of this chapter, except as otherwise provided in this article. The secretary of state shall assign uniform numbers which shall be used by all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. After taking into account the numbers so assigned by the secretary of state, the clerk of the circuit court shall arrange the offices and the candidates within each office as prescribed by said section, and shall assign the appropriate number for each candidate. When one candidate is to be elected and only two parties are on the ballot, the ballot label and the arrangement of the ballot shall conform as nearly as practical to the following example:
When more than two parties are on the ballot for an office, the arrangement of the ballot shall be specified by the secretary of state, and may conform to the following example if practical:

For Governor
(Vote for One)

Democrat (candidate’s name) 10 →
(residence, county)

Republican (candidate’s name) 11 →
(residence, county)

People’s (candidate’s name) 12 →
(residence, county)

The ballot label and the arrangement of the ballot for multi-candidate offices shall conform as nearly as practical to the following example:

For House of Delegates
First Delegate District
76  
77  (Vote For Not More Than Two)  
78  [If you marked a straight  
79  ticket and you mark any  
80  candidate in a different  
81  party for this office, you  
82  must mark all your choices  
83  because your straight ticket  
84  vote will not be counted  
85  for this office.]  
86  (candidate's name)  
87  (residence, county)  
88  
89  (candidate's name)  
90  (residence, county)  
91  
92  (candidate's name)  
93  (residence, county)  
94  
95  (e) Any nonpartisan office such as board of education  
96  and any question to be voted on shall be placed on a  
97  separate page or otherwise separated from the partisan  
98  ballots, which separate page shall constitute a separate  
99  ballot where required.  
100  
101  (f) In elections in which voters are authorized to vote  
102  for official write-in candidates whose names do not  
103  appear on the ballot label, there shall be provided, as  
104  described herein, a write-in position on the ballot label  
105  for the voter to indicate his or her preference for a  
106  write-in candidate and a form on the inside of the  
107  secrecy envelope to permit a voter to enter the title of  
108  the office and the names of official write-in candidates  
109  for whom he or she wishes to vote.  
110  
111  For an office to be filled by election in a primary,
except delegate to national convention, and for each
office in a general election, the ballot label shall include,
following all candidates for the office, a single num-
bered position with an arrow indicating the location to
punch the ballot card to indicate a preference for a
write-in candidate. The following instructions shall be
printed beside the arrow in at least ten point type. “TO
WRITE-IN FOR THIS OFFICE: Punch here and put
name of office and candidate on inside of secrecy
envelope. DO NOT put name here.”

(g) In addition to all other equipment and supplies
required by the provisions of this article, the ballot
commissioners shall cause to be printed a supply of
instruction cards, sample ballots, facsimile diagrams of
the vote recording device ballot and official printed
ballots or ballot cards adequate for the orderly conduct
of the election in each precinct in their county. In
addition they shall provide all other materials and
equipment necessary to the conduct of the election,
including voting booths, appropriate facilities for the
reception and safekeeping of ballot cards, the ballots of
absentee and of challenged voters and of such “indep-
dendent” voters who shall, in primary elections, cast
their votes on nonpartisan candidates and public
questions submitted to the voters.

§3-4A-11a. Ballots tabulated electronically; arrange-
ment, quantity to be printed, ballot stub
numbers.

(a) The board of ballot commissioners in counties
using ballots upon which votes may be recorded by
means of marking with electronically sensible ink or
pencil and which marks are tabulated electronically
shall cause the ballots to be printed for use in elections.

(b) (1) The heading of the ballot, the arrangement of
offices in columns, the spaces for marking votes, the
printing of offices, instructions and candidates names
shall conform as nearly as possible to that prescribed in
this chapter for paper ballots, except that the secretary
of state may prescribe necessary modifications to
accommodate the tabulating system. Nonpartisan
elections for board of education and any question to be voted upon shall be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election, and such separate section shall constitute a separate ballot wherever a separate ballot is required under the provisions of this chapter.

(2) Both the face and the reverse side of the ballot may contain the names of candidates, only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(3) The arrangement of candidates within each office shall be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes shall be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" shall be printed directly under each line for write-ins. Such lines shall be opposite a position to mark the vote.

(c) The ballot shall be printed in black ink on paper suitable for automatic tabulation and in the color specified by the secretary of state, and shall contain a perforated stub at the top or bottom of the ballot which shall be numbered sequentially in the same manner as provided in this article for ballots upon which votes are recorded by means of perforating. The number of ballots printed and the packaging of ballots for the precincts shall conform to the requirements for paper ballots as provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.
§3-4A-14. Election boards where electronic voting systems used.

One receiving board, as defined in article one of this chapter, shall conduct the election in each precinct in which electronic voting systems are used. The provisions of article one of this chapter relating to the qualifications, appointment, substitution, training and compensation of election officers and to the procedure for filling vacancies shall apply.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election day in counties utilizing an electronic voting system where votes are to be recorded by means of perforating, there shall be provided for each polling place one instruction model for each vote recording device. Each such instruction model shall be constructed so as to provide a replica of a vote recording device, and shall contain the arrangement of the ballot labels, party columns or rows, office columns or rows, and questions. Fictitious names shall be inserted in the ballot labels of the models. Such models shall be located on the election officers' tables or in some other place in which the voter must pass to reach the vote recording device. Each voter, upon request, before voting, shall be offered instruction by the election officers in the operation of the vote recording device by use of the instruction model, and each voter shall be given ample opportunity to operate the model himself.

(b) The ballot commissioners shall also provide facsimile ballots or ballot labels, as may be appropriate, at least two of which, or complete sets of which, shall be posted on the walls of each polling place. The facsimile diagrams shall be exact diagrams of the ballots or ballot labels or paper ballots to the end that the voter may become familiar with the location of the parties, offices, candidates and questions as they appear on the ballot to be used in his or her precinct.
(c) The ballot commissioners may, with the consent of the county commission, or the county commission may, prepare and mail to each qualified voter at the address shown on the registration books a facsimile sample of the ballot or ballot labels for his or her precinct.

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by articles five and six of this chapter which specify the publication of a facsimile sample ballot, shall consist of a facsimile of the ballot or ballot labels with the names of the candidates and the offices for which they are running shown in their proper positions.

§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center shall be under the supervision of the clerk of the county commission, and shall be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit such observation. Those persons entitled to be present shall include all candidates whose names appear on the ballots being counted, or if such candidate be absent, a representative of such candidate who presents a written authorization signed by the candidate for the purpose, and two representatives of each political party on such ballot, who shall be chosen by the county executive committee chairperson. A reasonable number of the general public shall also be freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission shall, during the proceedings at the central counting center, be granted such admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose shall touch any ballot or ballot card or other official records and papers utilized in the election during such observation.
(b) All persons who are engaged in processing and counting of the ballots shall work in teams consisting of two persons of opposite political parties, and shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. Such deputies shall be issued an official badge or identification card which shall be assigned an identity control number, and such deputies shall prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies’ duties, the badges or identification cards shall be returned to the county clerk.

(c) Ballots shall be handled and tabulated and the write-in votes tallied according to procedures established by the secretary of state, subject to the following requirements:

(1) In systems using punch card ballots, the ballot cards and secrecy envelopes for a precinct shall be removed from the box and examined for write-in votes before being separated and stacked for delivery to the tabulator. Immediately after valid write-in votes are tallied, the ballot cards shall be delivered to the tabulator. No write-in vote shall be counted for an office unless the voter has punched the write-in voting position for that office and entered the name of that office and the name of an official write-in candidate for that office on the inside of the secrecy envelope, either by writing, affixing a sticker or label or placing an ink-stamped impression thereon;

(2) In systems using ballots marked with electronically sensible ink, ballots shall be removed from the boxes and stacked for the tabulator, which shall separate ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes shall be tallied. No write-in vote shall be counted for an office unless the voter has marked the write-in voting position for that office and entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;
(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, a single punch or mark, as appropriate for the voting system, in the write-in location for that office shall be sufficient for all write-in choices. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot shall be duplicated or hand counted, with all votes for that office rejected;

(4) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate shall be disregarded;

(5) When a voter casts a straight ticket vote and also punches or marks the location for a write-in vote for an office, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate; and

(6) Official write-in candidates are those who have filed a write-in candidate's certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

d) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the damaged ballot card. All duplicate ballot cards shall be clearly labeled "duplicate" and shall bear a serial number which shall be recorded on the damaged or defective ballot card and on the replacement ballot card.

e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, shall, when certified by the clerk of the county commission, constitute the official preliminary returns of each precinct or election district. Further, all such returns shall be printed on a precinct basis. Periodically
Throughout and upon completion of the count, the returns shall be open to the public by posting such returns as have been tabulated precinct by precinct at the central counting center. Upon completion of the canvass, the returns shall be posted in the same manner.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official primary ballot for each party, and, as the case may be, for the nonpartisan candidates to be voted for at the primary election, according to the provisions of articles four, four-a and five, chapter three, as appropriate to the voting system. If any ballot issue is to be voted on in the primary election, the ballot commissioners shall likewise prepare a sample official ballot for that issue according to the provisions of law authorizing such election.

(b) The facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than fourteen nor less than eight days preceding the primary election, the ballot commissioners shall publish each
sample official primary election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than fourteen nor less than eight days preceding the primary election, the ballot commissioners shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages, and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secretary of state, an official list of offices and candidates for each office which will appear on the primary election ballot for each party, and, as the case may be, for the nonpartisan candidates to be voted for at such primary election. All information which appears on the ballot, including instructions as to the number of
candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as residence, magisterial district or presidential preference and the ballot numbers of the candidates for punch card systems, shall be included in the list, in the same order in which it appears on the ballot. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the official list of candidates and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words "Official List of Candidates", the name of the county, the words "Primary Election", the date of the election, the name of the political party or the designation of
nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than fourteen point; (B) the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates shall be printed in all capital letters in bold type no smaller than ten point, and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than fourteen point. The text of the ballot issue shall appear in no smaller than ten point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

§3-5-15. Ascertaining and certifying primary election results.

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election, and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been
deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of challenged ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all challenged ballots, should equal the number of nonpartisan ballots deposited in the ballot box.

(3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

(b) The procedure for counting ballots, whether performed throughout the day by the counting board, as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is, and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;
(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots of each party and any nonpartisan ballot as they are removed, and whenever the number of ballots of a particular party shall equal the number of voters entered on the poll book for that party minus the number of challenged ballots of that party, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same, or allowing anyone to examine or know the contents thereof, and the number of excess ballots of each party shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office;

(5) When the votes have been read from a ballot, the ballot shall be immediately strung on a thread, with separate threads for each party's ballots and for nonpartisan ballots.

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign four certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the secretary of state, giving the complete returns of the election at the polling place, which form shall include the following oath:

"We, the undersigned commissioners and poll clerks of the primary election held at precinct No. _____ of _______ district of ________ County, W.Va., on the _______ day of ________, 19___, do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ____________________ party, and the same is as follows:"

The election officers shall enter the name of each
office and the full name of each candidate on the ballot, and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Three of such certificates of result of election, for each party, shall then be sealed in separately addressed envelopes, furnished for the purpose, and shall be disposed of by the precinct commissioners as follows: One of the sealed envelopes containing the returns of each party shall be delivered to the clerk of the circuit court and two shall be delivered to the clerk of the county commission, who shall within forty-eight hours mail one of the sealed returns for each precinct by certified mail to the secretary of state. The one not sealed up shall be posted on the outside of the front door of the polling place.

(d) All ballots voted for candidates of each party shall be sealed up in separate envelopes and the commissioners and clerks shall each sign across the seal.

§3-5-16. Return of supplies and certificates.

Immediately after completion of the count, tabulation and the posting of the certificate of result of the primary election in each precinct, one of the commissioners or poll clerks of each party at such precinct, designated for that purpose, shall return to the clerk of the county commission the ballot boxes, registration books and the several packages of ballots, poll books, tally sheets, certificates and all other election supplies and returns, except they shall deliver to the clerk of the circuit court, at the same time, packages containing one tally sheet and one certificate of result of each political party prepared and sealed as provided in the next preceding section.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.
§3-6-4a. Filing requirements for write-in candidates.
§3-6-5. Rules and procedures in election other than primaries.
§3-6-6. Ballot counting procedures in paper ballot systems.
§3-6-8. Precinct returns; certificates; procedures.
§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or independent nominees, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of articles four, four-a and six of this chapter, as appropriate to the voting system, and for any ballot issue, according to the provisions of law authorizing such election.

(b) The facsimile sample general election ballot shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than fourteen nor less than eight days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than fourteen nor less than eight days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages, and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts
within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secretary of state, an official list of offices and nominees for each office which will appear on the general election ballot for each political party, or as independent nominees, and, as the case may be, for the nonpartisan candidates to be voted for at the general election.

(1) All information which appears on the ballot, including the names of parties for which a straight ticket may be cast, instructions relating to straight ticket voting, instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as residence, magisterial district, or presidential preference, and the ballot numbers of the candidates for punch card systems, shall be included in the list, in the order specified in subdivision (2) of this subsection. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the straight ticket positions, offices and candidates for each office, and the manner of designating the parties, shall be as follows: (A) The straight ticket positions shall be designated “Straight (Party Name) Ticket”, with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be; (B) the offices shall be listed in the same order in which they appear on the ballot; (C) the candidates within each
office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be; and the candidate's political party affiliation or independent status shall be indicated by the one or two letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and (D) the candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot, and the candidate's affiliation shall be indicated as provided in part (C) of this subdivision.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words "Official List of Nominees and Issues", the name of the
county, the words “General Election” and the date of the
election shall be printed in all capital letters and in bold
type no smaller than fourteen point; (B) the designation
of the straight ticket party positions shall be printed in
all capital letters in bold type no smaller than twelve
point, and the title of the office shall be printed in bold
type no smaller than twelve point, and any voting
instructions or other language printed below the title
shall be printed in bold type no smaller than ten point;
and (C) the names of the candidates and the initial
within parenthesis designating the candidate’s affilia-
tion shall be printed in all capital letters in bold type
no smaller than ten point, and the residence information
shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot,
the title of that ballot shall be printed in all capital
letters in bold type no smaller than twelve point. The
text of the ballot issue shall appear in no smaller than
ten point type. The ballot commissioners may require
the publication of the ballot issue under this subsection
in the facsimile sample ballot format in lieu of the
alternate format.

§3-6-4a. Filing requirements for write-in candidates.

Any eligible person who seeks to be elected by write-
in votes to an office, except delegate to national
convention, which is to be filled in a primary, general
or special election held under the provisions of this
chapter shall file a write-in candidate’s certificate of
announcement and pay a filing fee as provided in this
section. No certificate of announcement may be accepted
and no person may be certified as a write-in candidate
for a political party nomination for any office or for
election as delegate to national convention.

(a) The write-in candidate’s certificate of announce-
ment shall be in a form prescribed by the secretary of
state on which the candidate shall make a sworn
statement before a notary public or other officer
authorized to give oaths, containing the following
information:

(1) The name of the office sought and the district and
(2) The legal name of the candidate, and the first and
last name by which the candidate may be identified in
seeking the office;

(3) The specific address designating the location at
which the candidate resides at the time of filing,
including number and street or rural route and box
number, and city, state and zip code;

(4) A statement that the person filing the certificate
of announcement is a candidate for the office in good
faith; and

(5) The words "subscribed and sworn to before me this
____________________ day of ____________________,
_______" and a space for the signature of the officer
giving the oath.

(b) Any person who seeks to become an official write-
in candidate shall pay a filing fee, which shall be the
fee prescribed for the office in section eight, article five
of this chapter, or other section of this code, as the case
may be.

The provisions of section eight-a, article five of this
chapter relating to the waiver of filing fees shall apply,
and the petition for waiver of the fee shall be due no
later than the time of filing the certificate of announce-
ment. The filing fees shall be distributed to the counties
as provided in section eight, article five of this chapter.

(c) The certificate of announcement shall be filed with
the filing officer for the political division of the office
as prescribed in section seven, article five of this
chapter.

(d) The certificate of announcement shall be filed with
and received by the proper filing officer as follows:

(1) Except as provided in subdivisions (2) and (3) of
this subsection, the certificate of announcement for any
office shall be received no later than the close of business
on the fourteenth day before the election at which the
office is to be filled;

(2) When a vacancy occurs in the nomination of
candidates for an office on the ballot resulting from the
death of the nominee or from the disqualification or
removal of a nominee from the ballot by a court of
competent jurisdiction not earlier than the twenty-first
day nor later than the fifth day before the general
election, the certificate shall be received no later than
the close of business on the fifth day before the election,
or the close of business on the day following the
occurrence of the vacancy, whichever is later;

(3) When a vacancy occurs in an elective office which
would not otherwise appear on the ballot in the election,
but which creates an unexpired term of one or more
years which, according to the provisions of this chapter,
is to be filled by election in the next ensuing election,
and such vacancy occurs no earlier than the twenty-first
day and no later than the fifth day before the general
election, the certificate shall be received no later than
the close of business on the fifth day before the election,
or the close of business on the day following the
occurrence of the vacancy, whichever is later.

(e) Any eligible person who files a completed write-
in candidate’s certificate of announcement and the
required filing fee with the proper filing officer within
the required time shall be certified by that filing officer
as an official write-in candidate:

(1) The secretary of state shall, immediately following
the filing deadline, post the names of all official write-
in candidates for offices on the ballot in more than one
county and certify the name of each official write-in
candidate to the clerks of the circuit court of the
appropriate counties.

(2) The clerk of the circuit court shall, immediately
following the filing deadline, post the names of all
official write-in candidates for offices on the ballot in
one county, and certify and deliver to the election
officials of the appropriate precincts the names of all
official write-in candidates and the office sought by each
for statewide, district and county offices on the ballot
in the precinct for which valid write-in votes will be
counted.
§3-6-5. Rules and procedures in election other than primaries.

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote a straight ticket, or in other words, for each and every candidate for one party for whatever office nominated, the voter shall either:

1. Mark the position designated for a straight ticket in the manner appropriate to the voting system; or
2. Mark the voting position for each and every candidate of the chosen party in the manner appropriate to the voting system.

(b) If the voter desires to vote a mixed ticket, or in other words, for candidates of different parties, the voter shall either:

1. Omit marking any straight ticket voting position and mark, in the manner appropriate to the voting system, the name of each candidate for whom he or she desires to vote on whatever ticket the name may be; or
2. Mark the position designated for a straight ticket for the party for some of whose candidates he or she desires to vote, and then mark the name of any candidate of any other party for whom he or she may desire to vote, in which case the cross mark in the circular space above the name of the party straight ticket mark will cast his vote for every candidate on the ticket of such party except for offices for which candidates are marked on other party tickets, and the marks for such candidates will cast a vote for them; or
3. Write with ink or other means or affix a sticker or label or place an ink-stamped impression of the name of an official write-in candidate for an office for whom he or she desires to vote in the space designated for write-in votes for the particular voting system and mark
that voting position as required in this chapter; or for paper ballot systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.

(c) If in marking either a straight or mixed ticket as above defined, a straight ticket voting position is marked, and also one or more marks are made for candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, such marks before the name of candidate on the ticket so marked shall be treated as surplusage and ignored.

(d) When a voter casts a straight ticket vote and also writes in any name for an office and, in electronic voting systems, punches or marks the voting position for that write-in, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate.

(e) The secretary of state may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the secretary of state shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.

(f) If the voter marks more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the voter's choice, for an office to be filled, the ballot shall not be counted for such office. The intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; and, if no two official write-in candidates for that office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter.

(g) Except as otherwise specifically provided in this
chapter, no ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election, and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total, which result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(b) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:
(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any person other than an official write-in candidate shall be disregarded. When a voter casts a straight ticket vote and also casts a write-in vote for an office, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed, and whenever the number shall equal the number of voters entered on the poll book minus the number of challenged ballots, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same, or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and

(5) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.

§3-6-8. Precinct returns; certificates; procedures.

As soon as the results are ascertained, the election officials shall make out and sign, under oath as provided in section fifteen, article five of this chapter, four certificates of result on a form prescribed by the
5 secretary of state, giving the complete returns of the
election at the polling place, including the name of each
office and the full name of every candidate on the ballot
and the full name of every official write-in candidate for
each office, and the number of votes, in words and
numbers, received by each, and the designation of each
issue on the ballot and the number of votes, in words
and numbers, for and against such issue.

13 The certificates shall be sealed up and disposed of as
provided in section fifteen, article five of this chapter
for certificates of result of a primary election.

16 Immediately after the completion of the tabulation
and the posting of the certificate of result of the general
election in each precinct, the ballots, registration books,
poll books, tally sheets and other election supplies shall
be sealed up and delivered to the clerks of the county
commission and the circuit court as provided in section
sixteen, article five of this chapter.

CHAPTER 51

(Com. Sub. for H. B. 2184—By Delegates Richards and Houvouras)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article three-c, relating to guidelines for elevator safety;
hiring, certification and suspension of elevator inspec-
tors; registration, annual inspections and certificates of
operation required; safety equipment required; promul-
gation of legislative rules; exemptions; and providing
criminal penalties.

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-c, to read as follows:
ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-1. Definitions.

§21-3C-2. Inspectors; certificates of competency; application; examination; reexamination.

§21-3C-3. Suspension or revocation of certificates.

§21-3C-4. Registration of elevators; notification to counties and municipalities.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required.

§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.

§21-3C-7. Safety equipment.

§21-3C-8. Certificate of operation; renewal.

§21-3C-9. Permits for removal or repairs.

§21-3C-10. Enforcement; notice of defective machinery.

§21-3C-11. Disposition of fees; legislative rules.

§21-3C-12. Penalties.

§21-3C-13. Mining and industrial elevators and general public elevators exempt.

§21-3C-1. Definitions.

(1) "Certificate of operation" means a certificate issued by the division of labor certifying that an elevator has been inspected and deemed safe for operation, thus authorizing its operation. The "certificate of operation" shall be conspicuously posted on the elevator at all times.

(2) "Division" means the division of labor.

(3) "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

(4) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

(5) "Inspector" means a person hired by the division, a county or municipality who has successfully completed
23 the required West Virginia state elevator inspector
24 examination and is thereby qualified to conduct safety
25 inspections on elevators.
26
27 (6) "Passenger elevator" means an elevator that is
28 designed to carry persons to its contract capacity.

§21-3C-2. Inspectors; certificates of competency; application; examination; reexamination.

1 No person may serve as an elevator inspector unless
2 he or she successfully completes the examination
3 required by this article and holds a certificate of
4 competency for elevator inspections issued by the
5 division.
6
7 Application for examination for elevator inspections
8 shall be in writing, accompanied by a fee of ten dollars,
9 upon a form designed and furnished by the division and
10 shall, at a minimum, state the level of education of the
11 applicant, list his or her employers, his or her period of
12 employment and the position held with each. The
13 applicant shall also submit a letter from one or more of
14 his or her previous employers concerning his or her
15 character and experience.
16
17 Applications which contain any willfully submitted
18 false or untrue information shall be rejected. After
19 review of the application by the division, the applicant,
20 if deemed appropriate by the division, shall be tested by
21 means of a written examination as prescribed by the
22 division dealing with the construction, installation,
23 operation, maintenance and repair of elevators and their
24 accessories.
25
26 The division shall issue a certificate of competency for
27 elevator inspections to any applicant who successfully
28 completes the examination, as determined by standards
29 set in legislative rules promulgated by the division, as
30 authorized by this article. An applicant who fails to
31 successfully complete an initial examination may submit
32 an application for a second examination ninety days or
33 more after the initial examination and upon payment of
34 the ten dollar examination fee. Should an applicant fail
35 to successfully complete the prescribed examination on
the second trial, he or she shall not be permitted to submit an application for another examination for a period of one year after the second failure.

Any person hired as an elevator inspector by a county or municipality shall possess a certificate of competency issued by the division.

The division may hire certified inspectors or enter into a contract to hire inspectors who are certified by the division. The division shall hire an inspector supervisor who shall supervise the inspection activities under this article.

§21-3C-3. Suspension or revocation of certificates.

A certificate of competency for elevator inspections may be suspended or revoked by the division if the inspector is found to be incompetent or untrustworthy. Any willfully submitted false statement contained in an inspection report shall constitute grounds for suspension of the certificate of competency.

§21-3C-4. Registration of elevators; notification to counties and municipalities.

The owner or operator of any elevator shall register with the division every elevator operated by him or her, giving the type, capacity and description, name of manufacturer, and purpose for which each is used. Such registration shall be made on a form designed and furnished by the division. The division shall forward a list of registered elevators to the county or municipality wherein said elevators are located.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required.

A county or municipality may hire its own elevator inspector or contract with any person who possesses a West Virginia elevator inspector's certificate of competency issued by the division. The county or municipality shall ensure that every elevator which has been in use for five years or more is inspected annually.

§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.
Every inspector shall forward to the division and to the county or municipality wherein the elevator is located a complete report of each inspection made of any passenger elevator, showing the exact condition of the elevator. The inspector shall leave a copy of the report at the elevator on the day the inspection is completed. The division shall promulgate legislative rules, as authorized by this article, prescribing inspection procedures. The owner or operator of the elevator shall be required to pay the fees for inspections levied pursuant to this article.

If any elevator requires changes or repairs to make it safe to operate, such recommendations shall be contained in the inspection report. A copy of the report as approved by the division shall be submitted to the owner or operator of such elevator. Unless the findings in the report are appealed, the owner or operator of the elevator shall make the required changes or repairs before a certificate of operation is issued.

The owner or operator, within twenty days from receipt of the copy of an inspection report, may make written application to the division, upon forms to be furnished by the division, for a hearing on the inspection report as to whether the elevator in question is reasonably safe. The division shall promptly consider such application and proceedings consistent with the provisions of this section.

If it appears from the evidence that the elevator will be reasonably safe to operate without such changes or repairs as shown in such report or by making only a part or all thereof, the division shall make its finding and order accordingly. If such finding and order requires changes or repairs to be made in the elevator, the division shall issue a certificate of operation when such order has been executed or issue its approval of the plans or specifications. If the finding and order of the division has been affirmed or modified by appeal, on the grounds of reasonable safety considered by the division, the division shall, upon compliance with such order, issue such certificate of operation, but if such finding and order of the division has been vacated, such
§21-3C-7. Safety equipment.

Every passenger elevator, whether or not such elevator has been in use for five years or longer, shall be equipped, maintained and operated in a safe manner in accordance with legislative rules promulgated by the division as authorized by this article.

§21-3C-8. Certificate of operation; renewal.

A certificate of operation for any elevator shall not be issued until the elevator has been inspected for safety and the inspection report thereof filed with the division: Provided, That only elevators which have been in use for five years or more shall be required to be inspected. The certificate of operation shall list the date of inspection and shall expire one year after the date of inspection. An expired certificate of operation shall be renewed in the manner that the prior certificate was obtained.

§21-3C-9. Permits for removal or repairs.

Before any existing elevator is removed to a different location, an application of specifications shall be submitted to the division listing such information concerning the installation and operation of the elevator as the division may require on forms designed and furnished by the division. Copies of the complete installation plans shall be submitted with the application.

In all cases where any changes or repairs proposed by the owner or operator which alter the elevator's construction or classification, grade or rated lifting capacity, except when made pursuant to a report of an inspector, the owner or operator of the elevator shall submit to the division an application containing such information as deemed appropriate by the division.

Upon approval of such application and installation...
plans, the division shall issue a permit for the installation or repair of such elevator. No elevator being removed and re-installed or repaired may be operated until its completion, in accordance with the approved plans and specifications: Provided, That the division may grant a temporary permit to such elevator, authorizing its operation.

§21-3C-10. Enforcement; notice of defective machinery.

If during an inspection the division or the inspector finds that a passenger elevator or a part thereof cannot be operated safely, the division or the inspector shall contact the owner or operator in writing stating the deficiencies and recommend changes or alterations and shall post a notice upon such elevator prohibiting further use of the elevator. The notice shall be in effect until the changes or alterations set forth in the notice have been made. The notice shall contain a statement that operators or passengers are subject to injury by its continued use, a description of the alteration or other change necessary to be made in order to secure its safe operation, date of such notice, and the name and signature of the inspector issuing the notice.

If any inspector finds a passenger elevator to be so unsafe that it represents imminent danger of death or physical injury, that unit shall be sealed out of service and a hazard notice as prescribed by the division posted thereon. The division shall be notified immediately as to the location and condition of the unit.

Any passenger elevator, once sealed, may not be operated except for the purpose of making repairs and in such a manner as prescribed by the division until all defects are corrected and the unit has been inspected and deemed safe by the division. The division shall promulgate legislative rules, as authorized by this article, to develop procedures for sealing and barricading an elevator once it has been declared inoperable.

No seal, notice or barricade placed on or around an elevator in accordance with the provisions of this article may be removed, obstructed or in any way altered without the written consent of the division.
§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose for promulgation legislative rules pursuant to article three, chapter twenty-nine-a of this code in order to implement the provisions of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: Provided, That in no event may the fees established for inspection exceed one hundred dollars for any one inspection: Provided, however, That in buildings with more than one elevator, the fee shall not exceed one hundred dollars for the first elevator inspected and twenty-five dollars for each additional elevator: Provided further, That in no event may the fees established for the issuance of permits exceed twenty-five dollars.

(c) All fees collected pursuant to the provisions of this article shall be deposited in an appropriated special revenue account hereby created in the state treasury known as the “Elevator Safety Fund” and expended for the implementation and enforcement of this article: Provided, That amounts collected which are found from time to time to exceed 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) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

§21-3C-12. Penalties.

Any person who violates any provision of this article or any directive or order issued pursuant thereto is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one thousand dollars per day. Each day the violation continues constitutes a separate offense.
§21-3C-13. Mining and industrial elevators and general public elevators exempt.

The provisions of this article shall not be applicable to elevators or similar devices used by mining or industrial operations, or to elevators located within any single family residential dwelling.

CHAPTER 52
(S. B. 474—By Senator Felton)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a, relating to authorizing the division of environmental protection to promulgate legislative rules relating to West Virginia surface mining and reclamation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-17a. Division of environmental protection.

The legislative rules filed in the state register on the seventh day of April, one thousand nine hundred ninety-three, incorporating and amending the legislative rules which were filed in the state register on the thirtieth day of October, one thousand nine hundred ninety-two, in accordance with subsection (b), section eleven-a, article three, chapter twenty-two-a of this code, relating to the division of environmental protection (West Virginia surface mining and reclamation), are authorized.
AN ACT to amend and reenact sections two and seven, article four, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to accounting by fiduciaries; clarifying and expanding the types of property to be accounted for annually to fiduciary commissioners; and updating archaic language.

Be it enacted by the Legislature of West Virginia:

That sections two and seven, article four, 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 4. ACCOUNTING BY FIDUCIARIES.

§44-4-2. Fiduciaries to exhibit accounts for settlement.

§44-4-7. Failure to account forfeits commissions unless allowed by circuit court of county commission.

§44-4-2. Fiduciaries to exhibit accounts for settlement.

1 A statement of all the money, and an inventory of all securities, stocks, bonds and all other property, including the value thereof, which any personal representative, guardian, curator or committee, has received, become chargeable with or disbursed, within one year from the date of the fiduciary's qualification, or within any succeeding year, together with the vouchers for such disbursements, shall, within two months after the end of every such period, be exhibited by the fiduciary to the fiduciary commissioner to whom the estate or trust has been referred. If any fiduciary fails to make an exhibit, the fiduciary commissioner to whom the fiduciary should make the exhibit shall proceed against the fiduciary in the appropriate circuit court, and the court shall impose the same penalties, unless the fiduciary is excused for sufficient reason, as are
provided in cases where fiduciaries fail to return appraisements.

§44-4-7. Failure to account forfeits commissions unless allowed by circuit court or county commission.

If any fiduciary fails to present to the fiduciary commissioner, to whom the estate or trust has been referred, a statement of receipts for any year, within two months after its expiration, in accordance with the provisions of section two of this article, or if a fiduciary is found chargeable for that year with any money or other property not included in such statement, the fiduciary may have no compensation for fiduciary services during such year, nor commission on such money or other property, unless otherwise allowed by the county commission or circuit court. This section shall not apply to a case in which, within two months after the end of any one year, the fiduciary gives to the parties entitled to the money or any other property received in such year, a statement of such money or other property, and actually settled therefor with them; nor to a case in which, within such two months after the end of any one year, a fiduciary presents a statement of receipts for the year to a fiduciary commissioner and who may, in a pending suit, have been ordered to settle the account.

CHAPTER 54

(H. B. 2251—By Delegates Williams, Carper, Phillips, H. White, Rutledge and Harrison)

[Passed April 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, 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 fourteen, relating to providing fiduciaries with specific statutory powers to respond to environmental problems.
Be it enacted by the Legislature of West Virginia:

That article five, 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 fourteen, to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.


(a) For purposes of this section:

(1) "Environmental law" means any federal, state or local law, rule, regulation or ordinance relating to the regulation of hazardous substances or hazardous wastes, air pollution, water pollution and underground storage tanks;

(2) "Hazardous substance" means any substance defined as hazardous in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") [42 U.S.C. 9601, et seq. (1980) as amended] and regulations promulgated thereunder;

(3) "Hazardous waste" means a waste characterized or listed as hazardous in the Resource, Conservation and Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as amended] and regulations promulgated thereunder;

(4) "Fiduciary" means a fiduciary as defined by section one-d, article four-d, chapter thirty-one of this code.

(b) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian, or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") has the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:

(1) To inspect property held by the fiduciary including interests in sole proprietorships, partnerships or
corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting such property and to take necessary or reasonable action, including reporting to the appropriate regulatory authority as may be otherwise required by law, with respect to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(2) To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

(3) To refuse to accept property in trust or estate if the fiduciary determines any property to be donated or conveyed to the trust or estate is contaminated by any hazardous substance or hazardous waste or is being used or has been used for any activity directly or indirectly involving any violation of an environmental law which is reasonably likely to result in liability to the fiduciary: Provided, That such refusal shall not be construed to limit the liability of the trust or estate or its income or principal, for any liability such trust or estate may otherwise have in connection with any environmental law, but only to limit the liability of the fiduciary. Property not accepted into a trust or estate by the fiduciary may revert to the grantor or its successors or pass by the laws of descent and distribution, as may otherwise be provided by law;

(4) To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

(5) To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it and its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of
the trust or estate because of the type or condition of assets held therein.

(c) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate.

(d) A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under such law.

(e) Neither the acceptance by the fiduciary of property nor the failure by the fiduciary to inspect property creates any inference as to whether or not there is or may be any liability under any environmental law with respect to such property.

CHAPTER 55
(H. B. 2095—By Delegates Burk and Rowe)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to the administration of estates and trusts; powers of fiduciaries; providing that certain enumerated powers may be incorporated by reference in trust instrument; definition; and restrictions on exercise of power.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. POWERS OF FIDUCIARIES.

§44-5A-1. Definition.
§44-5A-2. Incorporation by reference of enumerated powers; restriction on exercise of such powers.

§44-5A-3. Powers which may be incorporated by reference in trust instrument.

§44-5A-1. Definition.

1 As used in this article, the term "fiduciary" means the one or more executors of the estate of a decedent, or the one or more trustees of a testamentary or inter vivos trust estate, whichever in a particular case is appropriate.

§44-5A-2. Incorporation by reference of enumerated powers; restriction on exercise of such powers.

1 (a) By an express intention of the testator or settlor so to do contained in a will, or in an instrument in writing whereby a trust estate is created inter vivos, any or all of the powers or any portion thereof enumerated in section three of this article, as they exist at the time of the signing of the will by the testator or at the time of the signing by the first settlor who signs the trust instrument, may be, by appropriate reference made thereto, incorporated in such will or other written instrument, with the same effect as though such language were set forth verbatim in the instrument.

2 Incorporation of one or more of the powers contained in section three of this article by reference to that section shall be in addition to and not in limitation of the common law or statutory powers of the fiduciary.

3 (b) No power of authority conferred upon a fiduciary as provided in this article may be exercised by such fiduciary in such a manner as, in the aggregate, to deprive the trust or the estate involved of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, or operate to impose a tax upon a donor or testator or other person as owner of any portion of the trust or estate involved. "Tax" includes, but is not limited to, any federal, state, or local income, gift, estate or inheritance tax.

4 (c) Nothing herein shall be construed to prevent the incorporation of the powers enumerated in section three
of this article in any other kind of instrument or agreement.

§44-5A-3. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference as provided in section two of this article:

(a) Retain original property. — To retain for such time as the fiduciary considers advisable any property, real or personal, which the fiduciary may receive, even though the retention of such property by reason of its character, amount, proportion to the total estate or otherwise would not be appropriate for the fiduciary apart from this provision.

(b) Sell and exchange property. — To sell, exchange, give options upon, partition or otherwise dispose of any property or interest therein which the fiduciary may hold from time to time, with or without order of court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the fiduciary considers advisable, and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust; and the party dealing with the fiduciary is not under a duty to follow the proceeds or other consideration received by the fiduciary from such sale or exchange.

(c) Invest and reinvest. — To invest and reinvest, as the fiduciary considers advisable, in stocks (common or preferred), bonds, debentures, notes, mortgages or other securities, in or outside the United States; in insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest, or in annuity contracts for any beneficiary, in any real or personal property, in investment trusts; in participations in common trust funds, and generally in such property as the fiduciary considers advisable, even though such investment is not of the character approved by applicable law but for this provision.

(d) Invest without diversification. — To make invest-
ments which cause a greater proportion of the total
property held by the fiduciary to be invested in
investments of one type or of one company than would
be considered appropriate for the fiduciary apart from
this provision.

(e) Continue business. — To the extent and upon such
terms and conditions and for such periods of time as the
fiduciary considers necessary or advisable, to continue
or participate in the operation of any business or other
enterprise, whatever its form of organization, including,
but not limited to, the power:

(1) To effect incorporation, dissolution, or other
change in the form of the organization of the business
or enterprise;

(2) To dispose of any interest therein or acquire the
interest of others therein;

(3) To contribute thereto or invest therein additional
capital or to lend money thereto, in any such case upon
such terms and conditions as the fiduciary approves
from time to time;

(4) To determine whether the liabilities incurred in
the conduct of the business are to be chargeable solely
to the part of the estate or trust set aside for use in the
business or to the estate or trust as a whole; and

(5) In all cases in which the fiduciary is required to
file accounts in any court or in any other public office,
it is not necessary to itemize receipts and disbursements
and distributions of property but it is sufficient for the
fiduciary to show in the account a single figure or
consolidation of figures, and the fiduciary is permitted
to account for money and property received from the
business and any payments made to the business in
lump sum without itemization.

(f) Form corporation or other entity. — To form a
corporation or other entity and to transfer, assign, and
convey to such corporation or entity all or any part of
the estate or of any trust property in exchange for the
stock, securities or obligations of any such corporation
or entity, and to continue to hold such stock and
securities and obligations.

(g) Operate farm. — To continue any farming operation received by the fiduciary pursuant to the will or other instrument and to do any and all things considered advisable by the fiduciary in the management and maintenance of such farm and the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including, but not limited to, the following powers:

(1) To operate the farm with hired labor, tenants or sharecroppers;

(2) To lease or rent the farm for cash or for a share of the crops;

(3) To purchase or otherwise acquire farm machinery and equipment and livestock;

(4) To construct, repair and improve farm buildings of all kinds needed in the fiduciary's judgment, for the operation of the farm;

(5) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock;

(6) To employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil;

(7) To protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate;

(8) To ditch, dam and drain damp or wet fields and areas of the farm when and where needed;

(9) To engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such operations;

(10) To market the products of the farm; and
(11) In general, to employ good husbandry in the farming operation.

(h) Manage real property. — (1) To improve, manage, protect and subdivide any real property;
(2) To dedicate or withdraw from dedication parks, streets, highways or alleys;
(3) To terminate any subdivision or part thereof;
(4) To borrow money for the purposes authorized by this subdivision for such periods of time and upon such terms and conditions as to rates, maturities and renewals as the fiduciary considers advisable and to mortgage or otherwise encumber any such property or part thereof, whether in possession or reversion;
(5) To lease any such property or part thereof to commence at the present or in the future, upon such terms and conditions, including options to renew or purchase, and for such period or periods of time as the fiduciary considers advisable although such period or periods may extend beyond the duration of the trust or the administration of the estate involved;
(6) To make coal, gravel, sand, oil, gas and other mineral leases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which such property lies;
(7) To manage and improve timber and forests on such property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;
(8) To modify, renew or extend leases;
(9) To employ agents to rent and collect rents;
(10) To create easements and release, convey, or assign any right, title, or interest with respect to any easement on such property or part thereof;
(11) To erect, repair or renovate any building or other improvement on such property, and to remove or demolish any building or other improvement, in whole or in part; and
(12) To deal with any such property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with such property either in the same or in different ways from those specified elsewhere in this subdivision (h).

(i) Pay taxes and expenses. — To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust or estate.

(j) Receive additional property. — To receive additional property from any source and administer such additional property as a portion of the appropriate trust or estate under the management of the fiduciary but the fiduciary is not required to receive such property without his or her consent.

(k) Deal with other trusts. — In dealing with one or more fiduciaries:

(1) To sell property, real or personal, to, or to exchange property with, the trustee of any trust which the decedent or the settlor or his spouse or any child of his shall have created, for such estates and upon such terms and conditions as to sale price, terms of payment, and security as the fiduciary considers advisable; and

(2) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and securities as the fiduciary considers advisable from any trust created by the decedent, his spouse, or any child of his, for the purpose of paying debts of the decedent, taxes, the costs of the administration of the estate, and like charges against the estate, or any part thereof, or discharging the liability of any fiduciary thereof and to mortgage, pledge or otherwise encumber such portion of the estate or any trust as may be required to secure such loan or loans and to renew such loans.

(l) Borrow money. — To borrow money for such
periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary considers advisable, including the power of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes, or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber such portion of the estate or any trust as may be required to secure such loan or loans; and to renew existing loans either as maker or endorser.

(m) **Make advances.** — To advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances with any interest the fiduciary shall have a lien on the assets of the trust or estate as against a beneficiary.

(n) **Vote shares.** — To vote shares of stock owned by the estate or any trust at stockholders meetings in person or by special, limited, or general proxy, with or without power of substitution.

(o) **Register in name of nominee.** — To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship so that title to the security may pass by delivery, but the fiduciary is liable for any act of the nominee in connection with the stock so held.

(p) **Exercise options, rights and privileges.** — To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold such stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the estate or trust so long as the fiduciary considers advisable.

(q) **Participate in reorganizations.** — To unite with other owners of property similar to any which may be held at any time in the decedent's estate or in any trusts
in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease, or sale of the property, incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders or bondholders protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to any such plan; and to receive as investments of an estate or any trust any securities issued as a result of the execution of such plan.

(r) Reduce interest rates. — To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.

(s) Renew and extend obligations. — To continue any obligation, whether secured or unsecured, upon and after maturity with or without renewal or extension upon such terms as the fiduciary considers advisable, without regard to the value of the security, if any, at the time of such continuance.

(t) Foreclose and bid in. — To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(u) Insure. — To carry such insurance coverage, including public liability, for such hazards and in such amounts, either in stock companies or in mutual companies, as the fiduciary considers advisable.

(v) Collect. — To collect, receive and receipt for rents, issues, profits, and income of an estate or trust.
(w) Litigate, compromise or abandon. — To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary considers advisable, and the fiduciary's decision is conclusive between the fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud by such persons; and in the absence of fraud, bad faith or gross negligence of the fiduciary, is conclusive between the fiduciary and the beneficiaries of the estate or trust.

(x) Employ and compensate agents, etc. — To employ and compensate, out of income or principal or both and in such proportion as the fiduciary considers advisable, persons considered by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct, or default of such agent or representative provided he or she was selected and retained with due care on the part of the fiduciary.

(y) Acquire and hold property of two or more trusts undivided. — To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division becomes necessary in order to make distributions; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses: Provided, That the provisions of this subdivision do not defer the vesting in possession of any share or part of share of the estate or trust.

(z) Establish and maintain reserves. — To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs, improvements, and general maintenance of
buildings or other property out of rents, profits, or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries: Provided, That the provisions of this subdivision do not affect the ultimate interests of beneficiaries in such reserves.

(a) Distribute in cash or kind. — To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to determine the value of capital assets for the purpose of making distribution thereof if and when there be more than one distributee thereof, which determination shall be binding upon the distributees unless clearly capricious, erroneous and inequitable: Provided, That the fiduciary may not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof.

(bb) Pay to or for minors or incompetents. — To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

(1) Directly to such minor or incompetent;

(2) To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital, or other institutional care of such minor or incompetent;

(3) To the legal or natural guardian of such minor or incompetent;

(4) To any other person, whether or not appointed guardian of the person by any court, who does, in fact, have the care and custody of the person of such minor or incompetent.

The fiduciary is not under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom such
347 payments were made; and the receipt of such person is
348 full acquittance to the fiduciary.

(33) *Apportion and allocate receipts and expenses.* —
349 Where not otherwise provided by statute to determine:

350 (1) What is principal and what is income of any estate
351 or trust and to allocate or apportion receipts and
352 expenses as between principal and income in the
353 exercise of the fiduciary’s discretion, and, by way of
354 illustration and not limitation of the fiduciary’s discre-
355 tion, to charge premiums on securities purchased at a
356 premium against principal or income or partly against
357 each;

359 (2) Whether to apply stock dividends and other
360 noncash dividends to income or principal or apportion
361 them as the fiduciary considers advisable; and

362 (3) What expenses, costs, taxes (other than estate,
363 inheritance, and succession taxes and other governmen-
364 tal charges) shall be charged against principal or
365 income or apportioned between principal and income
366 and in what proportions.

(dd) *Make contracts and execute instruments.* — To
368 make contracts and to execute instruments, under seal
369 or otherwise, as may be necessary in the exercise of the
370 powers herein granted.

371 (ee) The foregoing powers are limited as follows for
372 any trust which shall be classified as a “private
373 foundation” as that term is defined by section 509 of the
374 Internal Revenue Code of 1954 or corresponding
375 provisions of any subsequent federal tax laws (including
376 each nonexempt charitable trust described in section
377 4947(a)(1) of the code which is treated as a private
378 foundation) or nonexempt split-interest trust described
379 in section 4947(a)(2) of the Internal Revenue Code of
380 1954 or corresponding provisions of any subsequent
381 federal tax laws (but only to the extent that section
382 508(e) of the code is applicable to such nonexempt split-
383 interest trust under section 4947(a)(2)):

384 (1) The fiduciary shall make distributions of such
385 amounts, for each taxable year, at such time and in such
manner as not to become subject to the tax imposed by
section 4942 of the Internal Revenue Code of 1954, or
corresponding provisions of any subsequent federal tax
laws;

(2) No fiduciary may engage in any act of self-dealing
as defined in section 4941(d) of the Internal Revenue
Code of 1954, or corresponding provisions of any
subsequent federal tax laws;

(3) No fiduciary may retain any excess business
holdings as defined in section 4943(c) of the Internal
Revenue Code of 1954, or corresponding provisions of
any subsequent federal tax laws;

(4) No fiduciary may make any investments in such
manner as to subject the trust to tax under section 4944
of the Internal Revenue Code of 1954, or corresponding
provisions of any subsequent federal tax laws;

(5) No fiduciary may make any taxable expenditures
as defined in section 4945(e) of the Internal Revenue
Code of 1954, or corresponding provisions of any
subsequent federal tax laws.

CHAPTER 56

(Com. Sub. for S. B. 358—By Senators Wooton, Anderson,
Dittmar, Felton, Grubb, Holliday, Humphreys, Macnaughtan,
Plymale, Wiedebusch and Yoder)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]
code; to amend and reenact section eight, article two of
said chapter; to amend and reenact article four of said
chapter; to amend article five of said chapter by adding
thereto three new sections, designated sections seven,
seven-a and nine; to amend and reenact sections one,
two, four and five, article six of said chapter; to amend
and reenact sections fifteen and sixteen-b, article five,
chapter forty-nine of said code; to amend and reenact
section four, article five-b of said chapter; to amend
and reenact section three, article two, chapter fifty of said
code; to further amend said article by adding thereto a
new section, designated section three-a; to amend and
reenact section two-a, article three of said chapter; to
further amend said article by adding thereto a new
section, designated section six-a; to amend and reenact
section thirteen, article five of said chapter; to amend
and reenact sections four, five, five-a, six, seven, seven-
a, eight, fifteen, sixteen, seventeen, eighteen and twenty,
article one, chapter fifty-two of said code; to amend and
reenact sections three and thirteen, article two of said
chapter; to amend article one, chapter fifty-nine of said
code by adding thereto a new section, designated section
twelve; to amend and reenact section one, article two of
said chapter; to amend article four, chapter sixty-two of
said code by adding thereto a new section, designated
section seventeen; to amend and reenact sections five,
nine and fifteen, article twelve of said chapter; and to
amend and reenact section two, article thirteen of said
chapter, all relating to promoting the cost-efficient
administration of courts; suspension of licenses for
failure to pay fines imposed by municipal courts;
suspending vehicle operating licenses for failure to pay
fines; hearing; guardian for infants, incompetents and
insane parties; temporary relief in divorce annulment or
separate maintenance; relief upon granting final order
of divorce, annulment or separate maintenance; discol-
sure of assets; recodifying the laws relating to family
law masters; misrepresentation of delinquent support
payments; providing equitable remedy for establish-
ment of paternity and support; child welfare, juvenile
proceedings; transferring appointment of juvenile
probation officers from the division of health and human services to circuit courts with approval of the supreme court of appeals; salaries and all expenses of said officer to be paid by the supreme court of appeals; county commissions to provide office facilities for said officers; authority of the juvenile review facilities review panel; sunset provisions for said panel; magistrate courts granted jurisdiction to conduct preliminary examinations on probation violations; authorizing magistrates to suspend sentences and impose unsupervised probation; exception; conditions of probation; revocation of probation; suspension of driver’s license and hunting and fishing license for failure to pay fines and penalties imposed; suspension of driver’s license for failure to appear to answer criminal charges; failure to pay fines and penalties constitutes a lien against property of defendant; notice to defendant of consequences of failure to pay fines and penalties effect of financial inability to pay; deposits of moneys collected by magistrates to be in interest-bearing accounts; payment of interest into general revenue fund of state treasury; appeals from magistrate court in criminal cases; exception as to traffic offenses; jury selection; eliminating jury commissions; petit jurors to be selected by clerks of the circuit courts; reimbursement of expenses of jurors; assessment of jury costs; amount; waiver of assessment of jury costs by order of circuit court; jury costs remitted to sheriff by court clerk; surety liable for remission of costs on clerk’s official bond; jury costs to be paid into state treasury; grand juries; selection of grand jurors by clerk of circuit court; reimbursement of expenses of grand jurors; suits by poor persons financially unable to pay; procedures; appeals; eligibility of civil litigants to proceed in forma pauperis; factors to be considered for eligibility; probationer to pay for costs of supervision; fees collected to be deposited in the state general revenue fund; and commissioner of corrections to supervise all persons released on parole and probationers released from other states residing in this state pursuant to any interstate compact.

Be it enacted by the Legislature of West Virginia:
That section twenty-two, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nineteen, article one, chapter fifty-one of said code be repealed; that article ten, chapter eight of said code be amended by adding thereto a new section, designated section two-b; that article three, chapter seventeen-b of said code be amended by adding thereto a new section, designated section three-c; that sections eleven, thirteen, fifteen and thirty-three, article two, chapter forty-eight of said code be amended and reenacted; that section eight, article two of said chapter be amended and reenacted; that article four of said chapter be amended and reenacted; that article five of said chapter be amended by adding thereto three new sections, designated section seven, seven-a and nine; that sections one, two, four and five, article six of said chapter be amended and reenacted; that sections fifteen and sixteen-b, article five, chapter forty-nine of said code be amended and reenacted; that section four, article five-b of said chapter be amended and reenacted; that section three, article two, chapter fifty of said code be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section three-a; that section two-a, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-a; that section thirteen, article five of said chapter be amended and reenacted; that sections four, five, five-a, six, seven, seven-a, eight, fifteen, sixteen, seventeen, eighteen and twenty, article one, chapter fifty-two of said code be amended and reenacted; that sections three and thirteen, article two of said chapter be amended and reenacted; that article one, chapter fifty-nine of said code be amended by adding thereto a new section, designated section twelve; that section one, article two of said chapter be amended and reenacted; that article four, chapter sixty-two of said code be amended by adding thereto a new section, designated section seventeen; that sections five, nine and fifteen, article twelve of said chapter be amended and reenacted; and that section two, article thirteen of said chapter be amended and reenacted, all to read as follows:
Chapter
17B. Motor Vehicle Driver's Licenses.
48. Domestic Relations.
48A. Enforcement of Family Obligations.
50. Magistrate Courts.
52. Juries.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2b. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in section three-c, article three, chapter seventeen-b of this code are not paid in full within ninety days of the judgment, the municipal court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the division of motor vehicles of such failure to pay: Provided, That at the time the judgment is imposed, the judge shall provide the person with written notice that failure to pay the same as ordered shall result in the suspension of such person's license or privilege to operate a motor vehicle in this state and that such suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for such person or such person's family: Provided, however, That the failure of the judge to provide such notice shall not affect the validity of any suspension of such person's license or privilege to operate a motor vehicle in this state. For purposes of this section, payment shall be stayed during any period an appeal from the conviction which resulted in the imposition of such costs, fines, forfeitures or penalties is pending.

Upon such notice, the division of motor vehicles shall suspend the person's driver's license or privilege to
operate a motor vehicle in this state until such time that
the costs, fines, forfeitures or penalties are paid.

(b) Notwithstanding the provisions of this section to
the contrary, the notice of the failure to pay such costs,
fines, forfeitures or penalties shall not be given where
the municipal court, upon application of the person upon
whom the same were imposed filed prior to the expira-
tion of the period within which the same are required
to be paid, enters an order finding that such person is
financially unable to pay all or a portion of the same:
Provided, That where the municipal court, upon finding
that the person is financially unable to pay a portion
thereof, requires the person to pay the remaining
portion thereof, the municipal court shall notify the
division of motor vehicles of such person's failure to pay
the same if the same is not paid within the period of
time ordered by such court.

(c) If a person charged with a criminal offense fails
to appear or otherwise respond in court, the municipal
court shall notify 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 judge. Upon such
notice, the division of motor vehicles shall suspend the
person's driver's license or privilege to operate a motor
vehicle in this state until such time that the person
appears as required.

CHAPTER 17B. MOTOR VEHICLE
DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.

§17B-3-3c. Suspending license for failure to pay fines or
penalties imposed as the result of criminal
conviction or for failure to appear in court.

(a) 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 circuit court, magistrate court or munic-
ipal court of this state, pursuant to section two-b, article
three, chapter fifty, or section two-b, article ten, chapter
eight, or section seventeen, article four, chapter sixty-
two of this code, that such person has defaulted on the
payment of costs, fines, forfeitures, penalties or restitu-
tion imposed on the person by the circuit court,
magistrate court or municipal court upon conviction for
any criminal offense by the date such court had required
such person to pay the same, or that such person has
failed to appear in court when charged with such an
offense. For the purposes of this section, section two-b,
article three, chapter fifty; section two-b, article ten,
chapter eight; and section seventeen, article four,
chapter sixty-two of this code, "criminal offense" shall
be defined as any violation of the provisions of this code,
or the violation of any municipal ordinance, for which
the violation thereof may result in a fine, confinement
in jail or imprisonment in the penitentiary of this state:
Provided, That any parking violation or other violation
for which a citation may be issued to an unattended
vehicle shall not be considered a criminal offense for the
purposes of this section; section two-b, article ten,
chapter eight; section two-b, article three, chapter fifty;
or section seventeen, article four, chapter sixty-two of
this code.

(b) A copy of the order of suspension shall be
forwarded to such person by certified mail, return
receipt requested. No order of suspension becomes
effective until ten days after receipt of a copy of such
order. The order of suspension shall advise the person
that because of the receipt of notice of the failure to pay
costs, fines, forfeitures or penalties, or the failure to
appear, a presumption exists that the person named in
the order of suspension is the same person named in the
notice. The commissioner may grant an administrative
hearing which substantially complies with the require-
ments of the provisions of section two, article five-a,
chapter seventeen-c of this code upon a preliminary
showing that a possibility exists that the person named
in the notice of conviction is not the same person whose
license is being suspended. Such request for hearing
shall be made within ten days after receipt of a copy
of the order of suspension. The sole purpose of this
hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.


(a) In any action for divorce or annulment, an infant party shall sue, answer and plead by a next friend, and an incompetent or insane party shall sue, answer and plead by his committee, and no guardian ad litem shall be required unless specifically ordered by the court or judge hearing said action.

(b) If, in an action for divorce or annulment, either party shall allege that a person, other than the husband, is the father of a child born during the marriage of the parties, the court shall appoint a competent attorney to act as guardian ad litem on behalf of the child. The attorney shall be appointed without motion and prior to an entry of any order requiring blood testing.

§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) In every action where visitation is awarded, the court shall specify a schedule for visitation by the noncustodial parent: Provided, That with respect to any existing order of temporary relief which provides for visitation but which does not provide a schedule for visitation by the noncustodial parent, upon motion of any party, notice of hearing and hearing, the court shall issue an order which provides a specific schedule for visitation by the noncustodial parent.

(4) When the action involves a minor child or children, the court shall require either party to pay temporary child support in the form of periodic installments for the maintenance of the minor children of the parties in accordance with section eight, article two, chapter forty-eight-a of this code.

(5) When the action involves a minor child or children, the court shall provide for medical support for any minor children in accordance with section fifteen-a of this article.

(6) (A) 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 is not 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.

(B) When it appears to the court that a party has
incurred attorney fees and costs unnecessarily because
the opposing party has asserted unfounded claims or
defenses for vexatious, wanton or oppressive purposes,
thereby delaying or diverting attention from valid
claims or defenses asserted in good faith, the court may
order the offending party, or his or her attorney, or both,
to pay reasonable attorney fees and costs to the other
party.

(7) As an incident to requiring the payment of
temporary alimony, 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. If there is no such existing policy or policies, the
court may order that such health care insurance
coverage be paid for by a party if the court determines
that such health care coverage is available to that party
at a reasonable cost. Payments made to an insurer
pursuant to this subdivision, either directly or by a
deduction from wages, may be deemed to be temporary
alimony.

(8) 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 furnish-
ings, 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 and
insurance coverage. When such third party payments
are ordered, the court shall specify whether such
payments or portions of payments are temporary
alimony, temporary child support, a partial distribution
of marital property or an allocation of marital debt:
Provided, That if the court does not set forth in the order
that a portion of such payments is to be deemed
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 denom­
inating 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 tempor­
ary child support or not so denominated under the
provisions of this subdivision. If the payments are not
designated in an order and the parties have waived any
right to receive alimony, the court may designate the
payments upon motion by any party. Nothing contained
in this subdivision shall abrogate an existing contract
between either of the parties and a third party, or affect
the rights and liabilities of either party or a third party
under the terms of such contract.

(9) 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 denoting 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.

(10) When 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. 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.

(11) Unless a contrary disposition is ordered pursuant to other provisions of this section, then upon the motion
of a party, the court may compel a party to deliver to the moving party any of his or her separate estate which may be in the possession or control of the respondent party and may make any further order that is necessary to prevent either party from interfering with the separate estate of the other party.

(12) The court may 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. This 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. 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 income 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 income 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: Provided, That child support shall be established in accordance with support guidelines promulgated pursuant to section eight, article two, chapter forty-eight-a of this code.

(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 files a waiver of notice of further proceedings, signed by the 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 the parties to comply with the disclosure requirements set forth in section thirty-three of this article prior to the hearing for temporary relief. The form for this disclosure shall substantially comply with the form promulgated by the supreme court of appeals, pursuant to said section. If either party fails to timely file a complete disclosure as required by this section or as ordered by the court, the court may accept the statement of the other party as accurate.

(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. The potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following
list of conditions is not 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; and

(2) The moving party or his or her attorney certifies in writing any effort that has been made to give the notice and the reasons supporting his or her 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 moving 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 expeditiously as the ends of justice require.

(g) No order granting temporary relief may be the subject of an appeal or a petition for review.

(h) (1) Unless the best interests of the child require otherwise, every temporary order which provides for the custody of a minor child of the parties shall also provide for the following:

(A) The custodial parent shall be required to authorize school authorities in the school in which the child is enrolled to release to the noncustodial parent copies of any and all information concerning the child which would otherwise be properly released to the custodial parent;

(B) The custodial parent shall be required, promptly after receipt, to transmit to the noncustodial parent a copy of the child's grades or report card and copies of any other reports reflecting the status or progress of the child;

(C) The custodial parent shall be required, when practicable, to arrange appointments for parent-teacher conferences at a time when the noncustodial parent can be present;

(D) The custodial parent shall be required to authorize medical providers to release to the noncustodial parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to the custodial parent;

(E) The custodial parent shall be required to promptly inform the noncustodial parent of any illness of the child.
which requires medical attention; or, if the child is in
the actual physical custody of the noncustodial parent
during a period of visitation, the noncustodial parent
shall be required to promptly inform the custodial
parent of any illness of the child which requires medical
attention;

(F) The custodial parent shall be required to consult
with the noncustodial parent prior to any elective
surgery being performed on the child; and in the event
emergency medical procedures are undertaken for the
child which requires the parental consent of either
parent, if time permits, the other parent shall be
consulted, or if time does not permit such consultation,
the other parent shall be promptly informed of such
emergency medical procedures: \textit{Provided}, That the same
duty to inform the custodial parent applies to the
noncustodial parent in the event that the emergency
medical procedures are required while the child is in the
physical custody of the noncustodial parent during a
period of visitation: \textit{Provided, however}, That nothing
contained herein shall be deemed to alter or amend the
law of this state as it otherwise pertains to physicians
or health care facilities obtaining parental consent prior
to providing medical care or performing medical
procedures.

(2) In the event a custodial parent shall fail or refuse
to authorize the release of school or medical records as
provided for by subdivision (1) of this subsection, then
upon the ex parte application of the noncustodial parent,
the family law master shall prepare an order for entry
by the circuit court which appoints the family law
master as a special commissioner authorized to execute
a consent for the release of such records, and direct it
to the appropriate school authorities or medical pro-
viders.

\textbf{§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 instal-
Elements, or a lump sum, or both, for the maintenance of
the other party. Payments of alimony are to be ordinar-
ily made from a party’s income, but when the income
is not sufficient to adequately provide for those pay-
ments, the court may, upon specific findings set forth
in the order, order the party required to make those
payments to make them from the corpus of his or her
separate estate. An award of alimony shall not be
disproportionate to a party’s ability to pay as disclosed
by the evidence before the court.

(b) Upon ordering the annulment of a marriage or a
divorce or granting of decree of separate maintenance,
the court may further order all or any part of the
following relief:

(1) The court may provide for the custody of minor
children of the parties, subject to such rights of
visitation, both in and out of the residence of the
custodial parent or other person or persons having
custody, as may be appropriate under the circumstan-
ces. In every action where visitation is awarded, the
court shall specify a schedule for visitation by the
noncustodial parent: Provided, That with respect to any
existing order which provided for visitation but which
does not provide a specific schedule for visitation by the
noncustodial parent, upon motion of any party, notice of
hearing and hearing, the court shall issue an order
which provides a specific schedule of visitation by the
noncustodial parent.

(2) When the action involves a minor child or children,
the court shall require either party to pay child support
in the form of periodic installments for the maintenance
of the minor children of the parties in accordance with
support guidelines promulgated pursuant to section
eight, article two, chapter forty-eight-a of this code.
Payments of child support are to be ordinarily made
from a party’s income, but in cases when the income is
not sufficient to adequately provide for those payments,
the court may, upon specific findings set forth in the
order, order the party required to make those payments
to make them from the corpus of his or her separate
estate.
(3) When the action involves a minor child or children, the court shall provide for medical support for any minor children in accordance with section fifteen-a of this article.

(4) As an incident to requiring the payment of alimony or child support, the court may order either party to continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party: Provided, That if the other party is no longer eligible to be covered by such insurance because of the granting of an annulment or divorce, the court may require a party to substitute such insurance with a new policy to cover the other party or may consider the prospective cost of such insurance in awarding alimony to be paid in periodic installments. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be alimony or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, however, That if the court does not set forth in the order that a portion of such payments is to be deemed 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.

(5) The court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations when
such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, property taxes and insurance coverage if the amount of such coverage is reduced to a fixed monetary amount set forth in the court's order. When such third party payments are ordered, the court shall specify whether such payments or portions of payments are alimony, child support, a partial distribution of marital property or an allocation of marital debt: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. When such third party payments are ordered, the court shall specify whether such payments or portions of payments are alimony, child support, a partial distribution of marital property or an allocation of marital debt. If the payments are not designated in an order and the parties have waived any right to receive alimony, the court may designate the payments upon motion by any party. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of such contract.

(6) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties. The court may require payments to third parties in the form of automobile loan installments or insurance coverage if available at reasonable rates, and any such payments made pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony or installment payments for the distribution of marital property, as the court may direct. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of such contract.
(7) When the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property as defined in section one of this article, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein.

(8) Unless a contrary disposition is ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the moving party any of his or her separate estate which may be in the possession or control of the respondent party and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(9) When allegations of abuse have been proven, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. Such order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other in a public place.

(10) The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

(c) When an annulment or divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.
(d) When a divorce or annulment is granted in this state upon constructive service of process and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(e) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon motion of either party, revise or alter the 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, upon motion of either of the parties and upon proper service, revise or alter such order to grant relief pursuant to subdivision (9), 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, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the custody and support of the children, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require: Provided, That all orders modifying child support shall be in conformance with the requirements of support guidelines promulgated pursuant to section eight, article two, chapter forty-eight-a of this code: Provided, however, That an order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the child support guidelines promulgated pursuant to the provisions of
said section.

In granting relief under this subsection, the court may, when other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if such property is still held by the parties, and if necessary to give effect to a modification of alimony, child support or child custody or necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.

(f) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the death of the payor party or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the death of the payor party or is to cease, or when 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) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the remarriage of the payee party or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the remarriage of the payee party or is to cease, or where when 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 disclosure requirements set forth
in section thirty-three of this article, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated or any other time in assisting the court in the determination and equitable division of property.

(i) In determining whether alimony is to be awarded, or in determining the amount of alimony, if any, to be awarded under the provisions of this section, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of such fault or misconduct as a contributing factor to the deterioration of the marital relationship. However, alimony shall not be awarded when both parties prove grounds for divorce and are denied a divorce, nor shall an award of alimony under the provisions of this section be ordered which directs the payment of alimony to a party determined to be at fault, when, as a grounds granting the divorce, such party is determined by the court:

(1) To have committed adultery; or

(2) To have been convicted for the commission of a crime which is a felony, subsequent to the marriage if such conviction has become final; or

(3) To have actually abandoned or deserted his or her spouse for six months.

(j) Whenever under the terms of this section or section thirteen of this article a court enters an order requiring the payment of alimony or child support, if the court anticipates the payment of such alimony or child support or any portion thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.
Any order which provides for the custody or support of a minor child shall include:

1. The name of the custodian;
2. The amount of the support payments;
3. The date the first payment is due;
4. The frequency of the support payments;
5. The event or events which trigger termination of the support obligation;
6. A provision regarding wage withholding;
7. The address where payments shall be sent;
8. A provision for medical support;
9. When child support guidelines are not followed, a specific written finding pursuant to section eight, article two, chapter forty-eight-a of this code.

(1) Unless the best interests of the child require otherwise, every final order and every modification order which provides for the custody of a minor child of the parties shall also provide for the following:

A. The custodial parent shall be required to authorize school authorities in the school in which the child is enrolled to release to the noncustodial parent copies of any and all information concerning the child which would otherwise be properly released to the custodial parent;

B. The custodial parent shall be required, promptly after receipt, to transmit to the noncustodial parent a copy of the child's grades or report card and copies of any other reports reflecting the status or progress of the child;

C. The custodial parent shall be required, when practicable, to arrange appointments for parent-teacher conferences at a time when the noncustodial parent can be present;

D. The custodial parent shall be required to authorize medical providers to release to the noncustodial...
parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to the custodial parent;

(E) The custodial parent shall be required to promptly inform the noncustodial parent of any illness of the child which requires medical attention; or, if the child is in the actual physical custody of the noncustodial parent during a period of visitation, the noncustodial parent shall be required to promptly inform the custodial parent of any illness of the child which requires medical attention;

(F) The custodial parent shall be required to consult with the noncustodial parent prior to any elective surgery being performed on the child; and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of such emergency medical procedures: Provided, That the same duty to inform the custodial parent applies to the noncustodial parent in the event that the emergency medical procedures are required while the child is in the physical custody of the noncustodial parent during a period of visitation: Provided, however, That nothing contained herein shall be deemed to alter or amend the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(2) In the event a custodial parent shall fail or refuse to authorize the release of school or medical records as provided for by subdivision (1) of this subsection, then upon the ex parte application of the noncustodial parent, the family law master shall prepare an order for entry by the circuit court which appoints the family law master as a special commissioner authorized to execute a consent for the release of such records and direct it to the appropriate school authorities or medical providers.
§48-2-33. Disclosure of assets required.

(a) In all divorce actions and in any other action involving child support, all parties shall fully disclose their assets and liabilities within forty days after the service of summons or at such earlier time as ordered by the court. The information contained on these forms shall be updated on the record to the date of the hearing.

(b) The disclosure required by this section 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 non-vested and any other financial interest or source.

(c) The supreme court of appeals shall make available to the circuit courts a standard form for the disclosure of assets and liabilities required by this section. The clerk of the circuit court shall make these forms available to all parties in any divorce action or action involving child support. All disclosure required by this section shall be on a form that substantially complies with the form promulgated by the supreme court of appeals. The form used shall contain a statement in conspicuous print that complete disclosure of assets and liabilities is required by law and deliberate failure to provide complete disclosure as ordered by the court constitutes false swearing.

(d) Nothing contained in this section shall be construed to prohibit the court from ordering discovery pursuant to rule eighty-one of the rules of civil procedure. Additionally, 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.

(e) 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.

(f) Any failure to timely or accurately disclose
financial information required by this section may be
considered as follows:

(1) Upon the failure by either party timely to file a
complete disclosure statement as required by this
section or as ordered by the court, the court may accept
the statement of the other party as accurate.

(2) If any party deliberately or negligently fails to
disclose information which is 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.

(3) 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
debts 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 when
such assets are otherwise identified in the statement of
net worth.

(4) A person who knowingly provides incorrect
information or who deliberately fails to disclose infor-
mation 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.
4. Proceedings Before a Master.
5. Remedies for the Enforcement of Support Obligations and
   Visitation.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.


(a) The director of the child advocate office shall, by
legislative rule, establish guidelines for child support
award amounts so as to ensure greater uniformity by
those persons who make child support recommendations
and enter child support orders and to increase predic-
tability for parents, children and other persons who are
directly affected by child support orders. There shall be
a rebuttable presumption, in any proceeding before a
family law master or circuit court judge for the award
of child support, that the amount of the award which
would result from the application of such guidelines is
the correct amount of child support to be awarded. A
written finding or specific finding on the record that the
application of the guidelines would be unjust or
inappropriate in a particular case shall be sufficient to
rebut the presumption in that case. The guidelines shall
not be followed:

(1) When the child support award proposed to be
made pursuant to the guidelines has been disclosed to
the parties and each party has made a knowing and
intelligent waiver of said amount, and the support
obligors have entered into an agreement which provides
for the custody and support of the child or children of
the parties; or

(2) When the child support award proposed to be
made pursuant to the guidelines would be contrary to
the best interests of the child or children, or contrary
to the best interests of the parties.

(b) The Legislature, by the enactment of this article,
recognizes that children have a right to share in their
natural parents' level of living. Accordingly, guidelines
promulgated under the provisions of this section shall
not be based upon any schedule of minimum costs for
rearing children based upon subsistence level amounts
set forth by various agencies of government. The
Legislature recognizes that expenditures in families are
not made in accordance with subsistence level stand-
ards, but are rather made in proportion to household
income, and as parental incomes increase or decrease,
the actual dollar expenditures for children also increase
or decrease correspondingly. In order to ensure that
children properly share in their parents' resources,
regardless of family structure, the guidelines shall be
structured so as to provide that after a consideration of
respective parental incomes, that child support will be
related, to the extent practicable, to the level of living
which such children would enjoy if they were living in
a household with both parents present.

(c) The guidelines promulgated under the provisions
of this section shall take into consideration the financial
contributions of both parents. The Legislature recog-
nizes that expenditures in households are made in
aggregate form and that total family income is pooled
to determine the level at which the family can live. The
guidelines shall provide for examining the financial
contributions of both parents in relationship to total
income, so as to establish and equitably apportion the
child support obligation. Under the guidelines, the child
support obligation of each parent will vary proportion-
ately according to their individual incomes.
(d) The guidelines shall be structured so as to take into consideration any preexisting support orders which impose additional duties of support upon an obligor outside of the instant case and shall provide direction in cases involving split or shared custody.

(e) The guidelines shall have application to cases of divorce, paternity, actions for support and modifications thereof.

(f) In promulgating the legislative rule provided for under the provisions of this section, the director shall be directed by the following legislative findings:

(1) That amounts to be fixed as child support should not include awards for alimony, notwithstanding the fact that any amount fixed as child support will impact upon the living conditions of custodial parents;

(2) That parental expenditures on children represent a relatively constant percentage of family consumption as family consumption increases, so that as family income increases, the family's level of consumption increases, and the children should share in and benefit from this increase;

(3) That parental expenditures on children represent a declining proportion of family income as the gross income of the family increases, so that while total dollar outlays for children have a positive relationship to the family's gross income, the proportion of gross family income allotted for the children has a negative relationship to gross income;

(4) That expenditures on children vary according to the number of children in the family, and as the number of children in the family increases, the expenditures for the children as a group increase and the expenditures on each individual child decrease; so that due to increasing economies of scale and the increased sharing of resources among family members, spending will not increase in direct proportion to the number of children;

(5) That as children grow older, expenditures on children increase, particularly during the teenage years.
The director of the child advocate office shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support awards. Such four-year period shall begin on the first day of July, one thousand nine hundred eighty-nine. Upon completion of the four-year review period ending on the thirtieth day of June, one thousand nine hundred ninety-three, after consulting with the supreme court of appeals, circuit judges and family law masters, the director shall propose for promulgation a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code which amends and updates the guidelines required by this section. Such proposed amended rule, shall include, but not be limited to, provisions regarding the following subject matters:

(1) In determining the child support obligation of a parent whose employment income consists, in part, of compensation for overtime hours worked, the guidelines shall provide for a child support order which includes a consideration of such overtime compensation, balancing the interest of children to share in the resources of such parent with the interest of the parent in not being penalized for accepting overtime work. Any formula which is used to compute anticipated overtime compensation shall allow for the irregular nature of such compensation.

(2) In determining the child support obligation of a parent whose employment income consists of compensation for seasonal employment, the guidelines shall provide for discretionary use of alternative payment schedules which may vary the periodic amounts required to be paid.

(3) In determining the child support obligation of a parent whose support obligation extends to the children of more than one family, the guidelines shall be structured so as to equitably provide for all children to whom the obligor owes a duty of support.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.
§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

§48A-4-2. Qualifications of family law masters.

§48A-4-3. Compensation and expenses of family law masters and their staffs.

§48A-4-4. Assignment of family law masters by geographical regions.

§48A-4-5. Rules.

§48A-4-6. Matters to be heard by a family law master.

§48A-4-7. Fees for the services of a family law master.

§48A-4-8. Hearings before a master.

§48A-4-9. Hearing procedures.

§48A-4-10. Acts or failures to act in the physical presence of family law masters.

§48A-4-11. Family law master's docket.

§48A-4-12. Default orders; temporary orders.

§48A-4-13. Recommended orders.

§48A-4-14. Form of notice of recommended order.

§48A-4-15. Orders to be entered by circuit court exclusively.

§48A-4-16. Circuit court review of master's action or recommended order.

§48A-4-17. Procedure for review by circuit court.

§48A-4-18. Form of petition for review.

§48A-4-19. Answer in opposition to a petition for review.

§48A-4-20. Circuit court review of master's recommended order.

§48A-4-21. County commissions required to furnish offices for the family law master.

§48A-4-22. Budget of the family law master system.

§48A-4-23. Family law masters fund.

§48A-4-24. Continuation of family law masters system.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

1 (a) The family law masters holding office on the effective date of this section by virtue of appointments made under the prior enactments of this article shall continue their service for a term of office ending on the thirtieth day of June, one thousand nine hundred ninety-four. Before the first day of July, one thousand nine hundred ninety-four, 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, with terms commencing on the first day of July, one thousand nine hundred ninety-four, and on a like date in every fourth year thereafter, and ending on the thirtieth day of June, one thousand nine hundred ninety-eight, and on a like date in every fourth year thereafter. Upon the expiration of his or her term, a family law master may continue to perform the duties of the office
until the governor makes the appointment, or for sixty
days after the date of the expiration of the master's
term, whichever is earlier. If a vacancy occurs in the
office of family law master, the governor shall, within
thirty days after such vacancy occurs, fill the vacancy
by appointment for the unexpired term: Provided, That
if the remaining portion of the unexpired term to be
filled is less than one year, the governor may, in his or
her discretion, simultaneously appoint an individual to
the unexpired term and to the next succeeding full four-
year term.

(b) An individual may be reappointed to succeeding
terms as a family law master to serve in the same or
a different region of the state.

(c) Removal of a master during the term for which
he or she is appointed shall be as follows:

(1) Upon a recommendation by the judicial hearing
board created pursuant to the rules of procedure for the
handling of complaints against justices, judges, magis-
trates and family law masters, if the supreme court of
appeals shall find that a family law master has violated
the judicial code of ethics or that the master, because
of advancing years and attendant physical or mental
incapacity, should not continue to serve, the supreme
court of appeals may, in lieu of or in addition to any
disposition authorized by such rules, remove the family
law master from office.

(2) The supreme court of appeals may remove a
master when conduct of the family law master evidences
incompetence, unsatisfactory performance, misconduct,
neglect of duty or physical or mental disability.

§48A-4-2. Qualifications of family law masters.

(a) 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.

(b) No person may assume the duties of family law
master unless he or she has first attended and completed
a course of instruction in principles of family law and
procedure which is given in accordance with the
supervisory rules of the supreme court of appeals. All family law masters shall attend all 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 constitute a neglect of duty. These 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.

(c) A family law master may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. A full-time family law master shall not engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer. Part-time family law masters who do not engage in the practice of criminal law shall be exempt from the appointments in indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(d) All family law masters and all necessary clerical and secretarial assistants employed in the offices of family law masters are officers or employees of the judicial branch of state government.

§48A-4-3. Compensation and expenses of family law masters and their staffs.

(a) Prior to the first day of July, one thousand nine hundred ninety-four, a family law master shall receive as full compensation for his or her services an annual salary of thirty-five thousand dollars.

(b) After the first day of July, one thousand nine hundred ninety-four, a full-time family law master shall receive as full compensation for his or her services an annual salary of fifty thousand dollars and a part-time family law master shall receive as full compensation for his or her services an annual salary of thirty-seven thousand five hundred dollars.
(c) The secretary-clerk of the family law master shall be appointed by the family law master and serve at his or her will and pleasure and shall receive an annual salary of seventeen thousand five hundred dollars: Provided, That subsequent to the first day of July, one thousand nine hundred ninety-three, the secretary-clerk may receive such percentage or proportional salary increases as may be provided for by general law for other public employees and shall receive the annual incremental salary increase as provided for in article five, chapter five of this code.

(d) A temporary or special family law master shall be compensated by the supreme court of appeals at an hourly rate not to exceed the hourly rate paid to panel attorneys for performing work in court pursuant to the provisions of section thirteen-a, article twenty-one, chapter twenty-nine of this code.

(e) Disbursement of salaries for family law masters and members of their staffs shall be made by or pursuant to the order of the director of the administrative office of the supreme court of appeals.

(f) Family law masters, members of their staffs and temporary family law masters shall be allowed their actual and necessary expenses incurred in the performance of their duties. Such expenses and compensation shall be determined and paid by the director of the administrative office of the supreme court of appeals under such guidelines as he or she may prescribe as approved by the supreme court of appeals.

§48A-4-4. Assignment of family law masters by geographical regions.

(a) Prior to the first day of July, one thousand nine hundred ninety-four, 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.

There shall be a total of twenty-two family law masters serving throughout the state. Two masters shall be assigned to the office of the family law master for the region of Kanawha county. In each of the other regions defined by this subsection, one individual shall be assigned as family law master for each such region.

(b) On and after the first day of July, one thousand nine hundred ninety-four, there shall be a total of
twenty-six family law masters, not more than fourteen
of whom shall be full-time masters, to serve throughout
the state. During the year immediately preceding the
appointment of law masters as provided for in section
one of this article, the supreme court of appeals shall
apportion the state into geographical regions which may
be single-master regions or multi-master regions, or a
combination of both. County boundaries shall be strictly
observed and no county may be divided among two or
more regions. Otherwise, in making such apportion-
ment, the supreme court of appeals shall construct
regions which provide, as nearly as is practicable, for
the case load of each master to be equal to that of other
masters. Mathematical exactness as to case load is not
required and deviations from an absolute standard may
be based upon concerns, other than case load, including,
but not limited to, deviations dictated by the following
considerations:

(1) Judicial circuits;

(2) Geographical features which affect the time and
expense of travel;

(3) Traditional patterns of practice by members of the
bar; and

(4) Population variances between regions.

(c) In the region which includes Kanawha county, of
the masters appointed, not less than two shall be part-
time masters.

(d) Nothing contained herein shall prohibit the chief
justice of the supreme court of appeals from temporarily
assigning a family law master from one geographical
region to another geographical region, as case load,
disqualification, recusal, vacation or illness may dictate.

(e) The administrative office of the supreme court
shall promulgate any procedural rule necessary to
delineate the duties of the part-time and full-time law
masters consistent with this article.

§48A-4-5. Rules.

(a) Pleading, practice and procedure in matters before
a family law master shall be governed by rules of
practice and procedure for family law made and
promulgated by the supreme court of appeals pursuant
to the provisions of section four, article one, chapter
fifty-one of this code.

(b) The West Virginia rules of evidence shall apply
to proceedings before a family law master.

(c) The judge of a circuit court, or the chief judge
thereof, may promulgate local administrative rules
governing the conduct and administration of family law
master offices serving the court, which rules shall be
subordinate and subject to the rules of the supreme
court of appeals or the orders of the chief justice thereof.
Rules promulgated by the judge of a circuit court, or
the chief judge thereof, shall be made by order entered
upon the order book of the circuit court, as hereinafter
provided, and shall be effective when filed with the
clerk of the supreme court of appeals.

§48A-4-6. Matters to be heard by a family law master.

(a) A circuit court or the chief judge thereof shall
refer to the master the following matters for hearing to
be conducted pursuant to sections eight and nine of this
article:

(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 brought under
the provisions of article six of this chapter and any
dependent claims related to such action regarding child
support, custody and visitation;

(3) All petitions for writs of habeas corpus wherein
the issue contested is child custody;

(4) All motions for temporary relief affecting child
custody, visitation, child support, spousal support or
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 family law master
determines, in his or her discretion, that the pleadings
raise substantial issues concerning the identification of separate property or the division of marital property which may have a bearing on an award of support, the family law master shall notify the court of this fact and the circuit court shall refer the case to a temporary or special law master or commissioner of the court designated by the chief justice of the supreme court;

(5) All petitions for modification of an order involving child custody, child visitation, child support or spousal support;

(6) All actions for divorce, annulment or separate maintenance brought pursuant to article two, chapter forty-eight of this code: Provided, That an action for divorce, annulment or separate maintenance which does not involve child custody or child support shall be heard by 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;

(7) All actions wherein an obligor is contesting the enforcement of an order of support through the withholding from income of amounts payable as support or is contesting an affidavit of accrued support, filed with a circuit clerk, which seeks to collect arrearages;

(8) 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;

(9) Proceedings for the enforcement of support, custody or visitation orders: Provided, That contempt actions shall be heard by a circuit judge; and

(10) All actions to establish custody of a minor child or visitation with a minor child, including actions brought pursuant to the uniform child custody jurisdiction act and actions brought to establish grandparent visitation: Provided, That any action instituted under article six, chapter forty-nine shall be heard by a circuit judge.

(b) On its own motion or upon motion of a party, the circuit court 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.

§48A-4-7. Fees for the services of a family law master.

(a) 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.

(b) 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 recom-
mended 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 temporary 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, annulment or separate maintenance action, fifty dollars;

(6) For a proceeding for the enforcement of an order, fifty dollars: Provided, That if the matter is contested, the fee shall be fifty dollars for the first hour or any portion thereof, and thirty dollars per hour for each subsequent hour or any portion thereof;

(7) For a contested divorce, annulment or separate maintenance 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;

(8) For an action to establish custody of a minor child, including habeas corpus proceedings, 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

(9) For an action to establish visitation with a minor child, including grandparent visitation, 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.

§48A-4-8. Hearings before a master.

(a) 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.

(b) The master shall give all interested parties opportunity for the submission and consideration of
9 facts, arguments, offers of settlement or proposals of
10 adjustment when time, the nature of the proceedings
11 and the public interest permit. To the extent that the
12 parties are unable to settle or compromise a controversy
13 by consent, the master shall provide the parties a
14 hearing and make a recommended order in accordance
15 with the provisions of sections nine and thirteen of this
16 article.

17 (c) The master who presides at the reception of
18 evidence pursuant to section nine of this article shall
19 prepare the default order or make and enter the
temporary order provided for in section twelve of this
20 article, or make the recommended order required by
21 section thirteen of this article, as the case may be.
22 Except to the extent required for disposition of ex parte
23 matters as authorized by this chapter, a master may not
24 consult a person or party on a fact in issue, unless on
25 notice and opportunity for all parties to participate; nor
26 shall the master attempt to supervise or direct an
27 employee or agent engaged in the performance of
28 investigative or prosecuting functions for a prosecuting
29 attorney, the division of human services or any other
30 agency or political subdivision of this state.

§48A-4-9. Hearing procedures.

1 (a) This section applies, according to the provisions
2 thereof, to hearings required by section six of this article
3 to be conducted in accordance with this section.

4 (b) A master to whom a matter is referred pursuant
5 to the provisions of section six of this article shall
6 preside at the taking of evidence.

7 (c) A master presiding at a hearing under the
8 provisions of this chapter may:

9 (1) Administer oaths and affirmations, compel the
10 attendance of witnesses and the production of docu-
11 ments, examine witnesses and parties and otherwise
12 take testimony, receive relevant evidence and establish
13 a record;

14 (2) Rule on motions for discovery and offers of proof;
(3) Take depositions or have depositions taken when the ends of justice may be served;

(4) Regulate the course of the hearing;

(5) Hold pre-trial conferences for the settlement or simplification of issues and enter time frame orders which shall include, but not be limited to, discovery cut-offs, exchange of witness lists and agreements on stipulations, contested issues, and hearing schedules;

(6) Make and enter temporary orders on procedural matters, including, but not limited to, substitution of counsel, amendment of pleadings, requests for hearings and other similar matters;

(7) Accept voluntary acknowledgements of support liability or paternity;

(8) Accept stipulated agreements;

(9) Prepare default orders for entry if the person against whom an action is brought does not respond to notice or process within the time required;

(10) Recommend orders in accordance with the provisions of section thirteen of this article;

(11) Require the issuance of subpoenas and subpoenas duces tecum, issue writs of attachment, hold hearings in aid of execution and propound interrogatories in aid of execution and fix bond or other security in connection with an action for enforcement in a child or spousal support matter; and

(12) Take other action authorized by general order of the circuit court or the chief judge thereof consistent with the provisions of this chapter.

(d) Except as otherwise provided by law, a moving party has the burden of proof on a particular question presented. Any oral or documentary evidence may be received, but the master shall exclude irrelevant, immaterial or unduly repetitious evidence. A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required
for a full and true disclosure of the facts. In determining claims for money due or the amount of payments to be made, when a party will not be prejudiced thereby, the master may adopt procedures for the submission of all or part of the evidence in written form.

(e) Hearings before a master shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family law master and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family law master, such magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a master shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. The party requesting the copy shall pay to the master an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater. Unless otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript.

(f) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for recommending an order in accordance with section thirteen of this article, and on payment of lawfully prescribed costs, shall be made available to the parties. When a master's final recommended order rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show
§48A-4-10. Acts or failures to act in the physical presence of family law masters.

(a) If in the master's presence a party, witness or other person conducts himself in a manner which would constitute direct contempt if committed in the presence of a circuit judge, the master shall halt any proceeding which may be in progress and inform the person that their conduct constitutes direct contempt and give notice of the procedures and possible dispositions which may result.

(b) (1) If a circuit judge is sitting in the same county in which the conduct occurred, or is otherwise available, the alleged contemnor shall be immediately taken before the circuit judge. Disposition of these matters shall be given priority over any other matters, with the exception of a criminal trial in progress.

(2) If a circuit judge is unavailable, then the master shall schedule a hearing before the circuit court and the alleged contemnor shall be advised, on the record, of the time and place of the hearing. The master may elect, in his or her discretion, to obtain a warrant for the arrest of the alleged contemnor from the magistrate court on the charge of contempt with the matter to be heard by the circuit court.

(c) At the hearing, the circuit court shall be advised of the charges, receive the evidence and rule in the same manner as would be appropriate if the conduct complained of occurred in the physical presence of a circuit judge. In addition to other sanctions the court may award attorney's fees and costs.

(d) Prior to or during any hearing before a master, if the master determines that a situation exists which warrants the presence of security during such hearing, the master shall inform the sheriff of the need for such security and the time and place of the hearing, and the sheriff shall assign a deputy to act as bailiff during such hearing.

§48A-4-11. Family law master's docket.
(a) Every family law master shall establish a regular docket or other means for hearing urgent motions regarding child support, child custody or visitation, protection from family violence or abuse, possession of the home or other urgent matter. The family law master shall make all decisions and rulings before him or her within thirty days, or sooner after the close of the evidence in the proceeding before the master. If the master's recommended decision is not so timely made, the master shall, in writing, notify the administrator of the West Virginia supreme court as to why he or she has not so ruled; and the administrator of the West Virginia supreme court may take appropriate action against said master including pay suspensions, or reprimand or dismissal without pay for up to six months.

(b) Upon the request of the family law master, the clerk of the circuit court shall, under the general direction of the master, maintain the master's docket, schedule trials and hearings and deliver case files to the master.

*§48A-4-12. Default orders; temporary orders.

(a) In any proceeding in which the amount of support is to be established, if the obligor has been served with notice of a hearing before a master and does not enter an appearance, the family law master shall prepare a default order for entry by the circuit judge, which order fixes support in an amount at least equal to the amount paid as public assistance under section four, article three, chapter nine of this code, if the obligee or custodian receives public assistance, or in an amount at least equal to the amount that would be paid as public assistance if the obligee or custodian were eligible to receive public assistance, unless the family law master has sufficient information in the record so as to determine the amount to be fixed in accordance with the child support guidelines.

*Clerk's Note: This section was also amended by S. B. 20 (Chapter 155), which passed prior to this act.
(b) A master who presides at a hearing under the provisions of section nine of this article is authorized to make and enter temporary support and custody orders which, when entered, shall be enforceable and have the same force and effect under law as temporary support orders made and entered by a judge of the circuit court, unless and until such support orders are modified, vacated or superseded by an order of the circuit court.

(c) All orders prepared by a master shall provide for automatic withholding from income of the obligor if arrearages in support occur, if no such provision already exists in prior orders or if the existing order as it relates to withholding is not in compliance with applicable law.

§48A-4-13. Recommended orders.

(a) This section applies, according to the provisions thereof, when a hearing has been conducted in accordance with section nine of this article.

(b) A master who has presided at the hearing pursuant to section nine of this article shall recommend an order and findings of fact and conclusions of law to the circuit court within ten days following the close of the evidence. Before the recommended order is made, the master may, in his discretion, require the parties to submit proposed findings and conclusions and the supporting reasons therefor.

(c) The master shall sign and send the recommended order, any separate document containing the findings of fact and conclusions of law and the notice of recommended order as set forth in section fourteen of this article to the attorney for each party, or if a party is unrepresented, directly to the party, in the same manner as pleadings subsequent to an original complaint are served in accordance with rule five of the rules of civil procedure for trial courts of record. The master shall file the recommended order and the record in the office of the circuit clerk prior to the expiration of the ten-day period during which exceptions can be filed.

(d) A copy of any supporting documents or a summary of supporting documents, prepared or used by the
26 children's advocate or an employee of the child advocate
27 office, and all documents introduced into evidence
28 before the master, shall be made available to the
29 attorney for each party and to each of the parties before
30 the circuit court takes any action on the
31 recommendation.
32 (e) All recommended orders of the master shall
33 include the statement of findings of fact and conclusions
34 of law, and the reasons or basis therefor, on all the
35 material issues of fact, law, or discretion presented on
36 the record; and the appropriate sanction, relief or denial
37 thereof. In every action where visitation is recom-
38 mended, the master shall specify a schedule for visit-
39 ation by the noncustodial parent: Provided, That with
40 respect to any existing order which provided for
41 visitation but which does not provide a specific schedule
42 for visitation by the noncustodial parent, upon motion
43 of any party, notice of hearing and hearing, the master
44 shall recommend an order which provides a specific
45 schedule of visitation by the noncustodial parent.

§48A-4-14. Form of notice of recommended order.

1 IN THE CIRCUIT COURT OF _____________ COUNTY,
2 WEST VIRGINIA,
3
4 ______________________________
5 Plaintiff,
6 vs. CIVIL ACTION NO. ________
7
8 ______________________________
9 Defendant.

10 NOTICE OF RECOMMENDED ORDER

11 The undersigned family law master hereby recom-
12 mends the enclosed order to the circuit court
13 of ______________________________ county. If you wish
14 to file objections to this decision, you must file a written
15 petition in accordance with the provisions of chapter
16 48A-4-18 of the West Virginia Code within a period of
17 ten days ending on ________________________, 19_____,
18 with the circuit clerk of ______________________ county
19 and send a copy to counsel for the opposing party or if
20 the party is unrepresented to the party, and to the office
of the family law master located at ________________.

If no written petition for review is filed by __________, 19____, then the recommended order will be sent to the circuit judge assigned to this case. A recommended order which is not signed by a party, or counsel for a party who is represented, by the end of the ten-day period will still be sent to the circuit judge for entry.

YOUR FAILURE TO SIGN THE ORDER AS HAVING BEEN INSPECTED OR APPROVED WILL NOT DELAY THE ENTRY THEREOF.

Family Law Master

§48A-4-15. Orders to be entered by circuit court exclusively.

With the exception of temporary support and custody orders entered by a master in accordance with the provisions of section twelve of this article and section twenty-two, article two, chapter forty-eight of this code, and procedural orders entered pursuant to the provisions of section nine of this article, an order imposing sanctions or granting or denying relief may not be made and entered except as authorized by law. Upon entry of a final order in any action for divorce, separate maintenance or annulment, the clerk of the circuit court shall deliver an attested copy of such order to the parties who have appeared in such action or their counsel of record by personal delivery or by first class mail.

§48A-4-16. Circuit court review of master’s action or recommended order.

(a) A person who alleges that he or she will be adversely affected or aggrieved by a recommended order of a master is entitled to review of the proceedings. The recommended order of the master is the subject of review by the circuit court and a procedural action or ruling not otherwise directly reviewable is subject to review only upon the review of the recommended order by the circuit court.

(b) When a master’s action or recommended order is
presented to the circuit court for review upon the
petition of any party and such action or recommended
order is subject to review, the family law master or
circuit court shall enter a temporary support and
custody order or otherwise provide for relief during the
pendency of the review proceedings upon any party's
request therefor or on the master's or court's own motion
if the family law master or court deems such order or
other relief to be fair and equitable.

§48A-4-17. Procedure for review by circuit court.

(a) Within ten days after the master's recommended
order, any separate document with findings of fact and
conclusions of law and the notice of recommended order
is served on the parties as set forth in section thirteen
of this article, any party may file exceptions thereto in
a petition requesting that the action by the master be
reviewed by the circuit court. Failure to timely file the
petition shall constitute a waiver of exceptions, unless
the petitioner, prior to the expiration of the ten-day
period, moves for and is granted an extension of time
from the circuit court. At the time of filing the petition,
a copy of the petition for review shall be served on all
parties to the proceeding, in the same manner as
pleadings subsequent to an original complaint are
served under rule five of the rules of civil procedure for
trial courts of record.

(b) Not more than ten days after the filing of the
petition for review, a responding party wishing to file
a cross-petition that would otherwise be untimely may
file, with proof of service on all parties, a cross-petition
for review.

§48A-4-18. Form of petition for review.

(a) The petition for review shall contain a list of
exceptions in the form of questions presented for review,
expressed in the terms and circumstances of the case,
designating and pointing out the errors complained of
with reasonable certainty, so as to direct the attention
of the circuit court specifically to them, but without
unnecessary detail. The statement of questions should be
short and concise and should not be argumentative or
9 repetitious. The statement of a question presented will
10 be deemed to comprise every subsidiary question fairly
11 included therein. Only the questions set forth in the
12 petition or fairly included therein will be considered by
13 the court. Parts of the master's report not excepted to
14 are admitted to be correct, not only as regards the
15 principles, but as to the evidence, upon which they are
16 founded.
17
18 (b) The circuit court may require, or a party may
19 choose to submit with the petition for review, a brief in
20 support thereof, which should include a direct and
21 concise argument amplifying the reasons relied upon for
22 modification of the master's recommended order and
23 citing the constitutional provisions, statutes and regula-
24 tions which are applicable.

§48A-4-19. Answer in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing
2 of a petition within which to file an answer disclosing
3 any matter or ground why the recommended order of
4 the master should not be modified by the court in the
5 manner sought by the petition. The judge may require,
6 or a party may choose to submit with the answer, a brief
7 in opposition to the petition, which should include a
8 direct and concise argument in support of the master's
9 recommended order and citing the constitutional
10 provisions, statutes and regulations which are
11 applicable.
12
13 (b) No motion by a respondent to dismiss a petition
14 for review will be received.
15
16 (c) Any party may file a supplemental brief at any
17 time while a petition for review is pending, calling
18 attention to new cases or legislation or other intervening
19 matter not available at the time of the party's last filing.

§48A-4-20. Circuit court review of master's recom-
1 mended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the master when:
3
4 (1) No petition has been filed within the time allowed,
or the parties have expressly waived the right to file a petition;

(2) A petition and an answer in opposition have been filed, or the time for filing an answer in opposition has expired, or the parties have expressly waived the right to file an answer in opposition, as the case may be.

(b) To the extent necessary for decision and when presented, the circuit court shall decide all relevant questions of law, interpret constitutional and statutory provisions and determine the appropriateness of the terms of the recommended order of the master.

(c) The circuit court shall examine the recommended order of the master, along with the findings and conclusions of the master, and may enter the recommended order, may recommit the case, with instructions, for further hearing before the master or may, in its discretion, enter an order upon different terms, as the ends of justice may require. The circuit court shall not follow the recommendation, findings and conclusions of a master found to be:

(1) Arbitrary, capricious, an abuse of discretion or otherwise not in conformity with the law;

(2) Contrary to constitutional right, power, privilege or immunity;

(3) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(4) Without observance of procedure required by law;

(5) Unsupported by substantial evidence; or

(6) Unwarranted by the facts.

(d) In making its determinations under this section, the circuit court shall review the whole record or those parts of it cited by a party. If the circuit court finds that a master's recommended order is deficient as to matters which might be affected by evidence not considered or inadequately developed in the master's recommended order, the court may recommit the recommended order to the master, with instructions indicating the court's
opinion, or the circuit court may proceed to take such
evidence without recommitting the matter.

(e) The order of the circuit court entered pursuant to
the provisions of subsection (d) of this section shall be
entered not later than ten days after the time for filing
pleadings or briefs has expired or after the filing of a
notice or notices waiving the right to file such pleading
or brief.

(f) If a case is recommitted by the circuit court, the
master shall retry the matter within twenty days.

(g) At the time a case is recommitted, the circuit court
shall enter appropriate temporary orders awarding
custody, visitation, child support, spousal support or
such other temporary relief as the circumstances of the
parties may require.

§48A-4-21. County commissions required to furnish
offices for the family law master.

Each county commission of this state has a duty to
provide premises for the family law master which are
adequate for the conduct of the duties required of such
master under the provisions of this chapter and which
conform to standards established by rules promulgated
by the supreme court of appeals. The administrative
office of the supreme court of appeals shall pay to the
county commission a reasonable amount as rent for the
premises furnished by the county commission to the
family law master and his or her staff pursuant to the
provisions of this section.

§48A-4-22. Budget of the family law master system.

The budget for the payment of the salaries and
benefits of the family law masters and clerical and
secretarial assistants shall be included in the appropri-
ation for the supreme court of appeals. The family law
master administration fund is hereby created and shall
be a special account in the state treasury. The fund shall
operate as a special fund administered by the state
auditor which shall be appropriated by line item by the
Legislature for payment of administrative expenses of
the family law master system. All agencies or entities
receiving federal matching funds for the services of
family law masters and their staff, including, but not
limited to, the administrator of the child advocate office
and the secretary of the department of health and
human resources, shall enter into an agreement with the
administrative office of the supreme court of appeals
whereby all federal matching funds paid to and received
by said agencies or entities for the activities by family
law masters and staff of the program shall be paid into
the family law master administration fund. Said
agreement shall provide for advance payments into the
fund by such agencies, from available federal funds
pursuant to Title IV-D of the Social Security Act and
in accordance with federal regulations.

§48A-4-23. Family law masters fund.

The office and the clerks of the circuit courts shall,
on or before the tenth day of each month, transmit all
fees and costs received for the services of the office or
the family law master under this chapter to the state
treasurer for deposit in the state treasury to the credit
of a special revenue fund to be known as the “family law
masters fund”, which is hereby created. All moneys
collected and received under this chapter and paid into
the state treasury and credited to the “family law
masters fund” shall be used by the administrative office
of the supreme court of appeals solely for paying the
costs associated with the duties imposed upon the family
law masters under the provisions of this chapter which
require activities by the masters which are not subject
to being matched with federal funds or subject to
reimbursement by the federal government. Such
moneys shall not be treated by the auditor and treasurer
as part of the general revenue of the state.

§48A-4-24. Continuation of family law masters system.

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, notwithstand-
ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-7. Visitation enforcement; contempt; penalties.
§48A-5-7a. Pilot custody and visitation mediation project.

§48A-5-7. Visitation enforcement; contempt; penalties.

(a) Except as provided in subsection (b) of this section, the family law master may do either of the following in a dispute concerning visitation of a minor child:

(1) Apply a visitation adjustment policy established in accordance with the provisions of subsection (c) of this section, or

(2) Recommend to the circuit court that the matter be treated as a contempt proceeding under the provisions of this section.

(b) The family law master shall not invoke either option under subsection (a) of this section if the parties resolve their dispute through an informal joint meeting with a mediator designated in accordance with the provisions of section seven-a of this article.

(c) Each family law master may formulate a visitation adjustment policy which may be implemented by the family law master after it is approved by the chief judge of the circuit. Such policy shall be applied to the following visitation violations:

(1) Where a noncustodial parent has been wrongfully denied visitation; or

(2) Where a custodial parent has had his or her right to custody infringed upon by the actions of a noncustodial parent who has abused or exceeded his or her right of visitation.
(d) A visitation adjustment policy formulated and approved under the provisions of this section shall include all of the following:

(1) An adjustment of visitation shall be applied of the same type and duration as the visitation that was denied by the custodial parent or exceeded by the noncustodial parent, including, but not limited to, weekend visitation for weekend visitation, holiday visitation for holiday visitation, weekday visitation for weekday visitation and summer visitation for summer visitation.

(2) An adjustment of visitation shall be scheduled to occur within thirteen months after the visitation violation occurred.

(3) The time of the visitation adjustment shall be chosen by the parent whose right of visitation or custody was violated.

(e) If a visitation adjustment policy is formulated and approved under this section, the family law master shall direct his or her secretary-clerk to thereafter keep an accurate record of alleged visitation violations reported to the office of the family law master. A parent who is subject to a visitation adjustment policy and who thereafter makes a claim of a visitation violation shall give to the family law master a written claim of such alleged visitation violation within seven days after the actions complained of are alleged to have occurred.

(f) If a visitation violation is alleged in a county in which a visitation adjustment policy has been formulated and approved under this section and if the alleged violation appears to support a pattern of violations or a single alleged violation appears to constitute a substantial violation, the following shall apply:

(1) Within five days after receipt of the claim of a visitation violation, the office of the family law master shall mail to the parent who is alleged to have committed the violation a notice by first class mail, directed to such person’s last known address. The notice shall inform the parent of the following:
(A) When the visitation violation is alleged to have occurred;

(B) That it is proposed that a visitation adjustment be granted to the complaining parent;

(C) That if the parent alleged to have committed the visitation violation wishes to agree to a visitation adjustment, he or she must notify the family law master, in writing, within fourteen days from the date of the notice; and

(D) That if he or she desires to contest the application of the visitation adjustment policy on the grounds that the claim of a visitation violation is incorrect or that a visitation adjustment is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice, inform the family law master in writing of the reasons why the proposed adjustment is contested and must request a hearing with the family law master.

(2) After a final determination as to whether visitation was wrongfully denied by the custodial parent or the right of visitation was exceeded or abused by the noncustodial parent, the office of the family law master shall adjust the records of visitation violations accordingly.

(3) The parent found to be entitled to a visitation adjustment shall give to the office of the family law master and the other parent a written notice of the time the visitation adjustment will occur. Such notice shall be given at least ten days before a makeup weekday or weekend visitation or at least thirty days before a makeup holiday or makeup summer visitation.

(g) (1) Except as provided in subsection (b) of this section, the office of the family law master may refer the written complaint of a visitation violation to the circuit court, to be treated as a civil or criminal contempt proceeding in accordance with the provisions of section twenty-two, article two, chapter forty-eight of this code to resolve the dispute concerning visitation of a minor child. In the discretion of the court, the court may remand the matter to the master for a consider-
ation of visitation adjustment, or may treat the written
complaint as a petition for an order to show cause why
the parent alleged to have committed the visitation
violation should not be held in contempt, and direct such
order to show cause to be served upon the alleged
violator.

(2) If the court finds that the parent committed the
violation, the court shall find the parent in
contempt and may do one or more of the following:

(A) Require additional terms and conditions consist-
ent with the court's visitation order.

(B) After notice to both parties and a hearing, if
requested by a party, on any proposed modification of
visitation, modify the visitation order to meet the best
interests of the child. A modification sought by a parent
charged with a visitation violation, if otherwise justified,
shall not be denied solely because the parent is found
to be in contempt.

(C) Order that a visitation adjustment be made.

(D) If appropriate under the provisions of section
twenty-two, article two, chapter forty-eight of this code:

(i) Commit the contemnor to the county jail; or

(ii) Commit the contemnor to the county jail with the
privilege of leaving the jail, during such hours as the
court determines and under such supervision as the
court considers necessary, for the purpose of allowing
the contemnor to go to and return from his or her place
of employment.

(3) A commitment under paragraph (D), subdivision
(2) of this subsection shall not exceed forty-five days for
the first adjudication of contempt or ninety days for any
subsequent adjudication of contempt.

(4) A parent committed under paragraph (D), subdi-
vision (2) of this subsection shall be released if the court
has reasonable cause to believe that the parent will
comply with the visitation order.

(5) If a parent is committed to jail under the
provisions of subparagraph (ii), paragraph (D), subdivision (2) of this subsection and violates the conditions of the court, the court may commit the person to the county jail without the privilege provided under said subparagraph for the balance of the period of commitment imposed by the court.

(6) If a person is committed to jail under the provisions of subparagraph (ii), paragraph (D), subdivision (2) of this subsection and willfully fails to return to the place of confinement within the time prescribed, such person shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year.

§48A-5-7a. Pilot custody and visitation mediation project.

(a) The administrative office of the supreme court of appeals may, within current funds available to the court, establish a pilot custody and visitation mediation project in designated regions comprised of one or more counties of the state.

(b) Mediation will be provided in the designated county or counties or regions only, in all cases in which the issues of custody and/or visitation are contested, when a hearing before a family law master or judge is required to resolve the contested issue, pursuant to guidelines established by the administrative office of the supreme court. All parties to such contested cases must attend at least one mediation session and attempt to resolve the issues of custody and/or visitation through this process. No final hearing on the issues of custody or visitation can be held before a family law master or judge unless the parties have attempted mediation.

(c) This pilot mediation project is established to encourage parties to resolve disputes over custody and visitation through a voluntary process in which an impartial mediator actively assists parties in identifying and clarifying issues regarding custody and visitation and in designing and agreeing to solutions for those issues. All of the information that is provided by the parties during mediation shall remain confidential and mediators cannot be called as witnesses to provide
testimony in unresolved cases that proceed to contested hearings.

(d) The parties in each case shall be entitled to participate in six hours of mediation per year free of cost. Any additional time spent in mediation during the year, over and above the first six-hours, shall be assessed by the court at the conclusion of the case at a rate of thirty-five dollars per hour. These fees shall be paid into the state treasury and credited to a fund to be used by the administrative office solely to pay for the costs of the pilot mediation project.

(e) The administrative office of the supreme court shall hire one qualified mediator for each of the regions designated in subsection (a) of this section, or may establish and train panels of volunteer mediators, from which panels individual mediators may then be assigned to specific cases by a circuit court or a family law master.

(f) The administrative office of the supreme court of appeals shall carefully monitor the case statistics and case results and no later than eighteen months after the initiation of the project shall submit a report to the Legislature which evaluates the efficacy of using mediation as a method of resolving custody and visitation disputes. The Legislature shall review this report and determine whether the project should be continued or expanded to other counties in the state.


1 If any person knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, thus misrepresenting the amount of child support actually due and owing, and if such statement, representation, writing or document causes a children's advocate in reliance thereon to institute an action or proceeding or otherwise commence to enforce a support obligation under this article or under section twenty-two, article two, chapter forty-
eight of this code, such person shall be guilty of false
swearing, and, upon conviction thereof, shall be pun-
ished as provided by law for such offense.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.
§48A-6-2. Statute of limitations; prior statute of limitations not a bar to
action under this article; effect of prior adjudication between
husband and wife.
§48A-6-4. Establishment of paternity and duty of support.
§48A-6-5. Representation of parties.

§48A-6-1. Paternity proceedings.

(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 child resides: Provided, That if
such venue creates a hardship for the parties, or either
of them, or if judicial economy requires, the court may
transfer the action to the county where either of the
parties resides.

(b) A “paternity proceeding” is a summary proceed-
ing, equitable in nature and within the domestic
relations jurisdiction of the courts, wherein a circuit
court upon the petition of the state or another proper
party may intervene to determine and protect the
respective personal rights of a child for whom paternity
has not been lawfully established, of the mother of such
child and of the putative father of such child.

(c) The sufficiency of the statement of the material
allegations in the complaint set forth as grounds for
relief and the grant or denial of the relief prayed for
in a particular case shall rest in the sound discretion of
the court, to be exercised by the court according to the
circumstances and exigencies of the case, having due
regard for precedent and the provisions of the statutory
law of this state.

(d) A decree or order made and entered by a court
in a paternity proceeding shall include a determination
of the filial relationship, if any, which exists between a
child and his or her putative father, and, if such
relationship is established, shall resolve dependent
30 claims arising from family rights and obligations
31 attendant to such filial relationship.
32 (e) A paternity proceeding may be brought by any of
33 the following persons:
34 (1) An unmarried woman with physical or legal
35 custody of a child to whom she gave birth;
36 (2) A married woman with physical or legal custody
37 of a child to whom she gave birth, if the complaint
38 alleges that:
39 (A) Such married woman lived separate and apart
40 from her husband preceding the birth of the child;
41 (B) Such married woman did not cohabit with her
42 husband at any time during such separation and that
43 such separation has continued without interruption; and
44 (C) The defendant, rather than her husband, is the
45 father of the child;
46 (3) The state of West Virginia or the department of
47 health and human resources, or the child advocate office
48 on its behalf, when such proceeding is deemed necessary
49 to prevent such child from being or becoming a public
50 charge;
51 (4) Any person who is not the mother of the child, but
52 who has physical or legal custody of such child;
53 (5) The guardian or committee of such child;
54 (6) The next friend of such child when the child is a
55 minor;
56 (7) By such child in his own right at any time after
57 the child's eighteenth birthday but prior to the child's
58 twenty-first birthday; or
59 (8) A man purporting to be the father of a child born
60 out of wedlock, when there has been no prior judicial
61 determination of paternity.
62 (f) Blood or tissue samples taken pursuant to the
63 provisions of this article may be ordered to be taken in
64 such locations as may be convenient for the parties so
long as the integrity of the chain of custody of such samples can be preserved.

(g) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding 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.

(h) If the person against whom the proceeding 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-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

(a) Except for a proceeding brought by a child in his or her own right under the provisions of subdivision (7), subsection (e), section one of this article, a proceeding for the establishment of the paternity of a child shall be brought prior to such child’s eighteenth birthday.

(b) A proceeding to establish paternity under the provisions of this article may be brought by or on behalf of a child notwithstanding the fact that, prior to the effective date of this section, an action to establish paternity may have been barred by a prior statute of limitations set forth in this code or otherwise provided for by law.

(c) A proceeding to establish paternity under the provisions of this article may be brought for any child who was not yet eighteen years of age on the sixteenth day of August, one thousand nine hundred eighty-four, regardless of the current age.

(d) A proceeding to establish paternity under the provisions of this article may be brought for any child who was not yet eighteen years of age on the sixteenth day of August, one thousand nine hundred eighty-four, and for whom a paternity action was brought but
23 dismissed because a statute of limitations of less than
24 eighteen years was then in effect.
25 (e) Any other provision of law to the contrary
26 notwithstanding, when a husband and wife or former
27 husband and wife, in an action for divorce or an action
28 to obtain a support order, have litigated the issue of the
29 paternity of a child conceived during their marriage to
30 the end that the husband has been adjudged not to be
31 the father of such child, such prior adjudication of the
32 issue of paternity between the husband and the wife
33 shall not preclude the mother of such child from
34 bringing a proceeding against another person to
35 establish paternity under the provisions of this article.

§48A-6-4. Establishment of paternity and duty of
support.

1 If the defendant, by verified responsive pleading,
2 shall admit that the man is the father of the child and
3 owes a duty of support, or if after a trial on the merits,
4 the court shall find, by clear and convincing evidence
5 that the man is the father of the child, the court shall
6 order support in accordance with the provisions of this
7 chapter.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 proceeding under this section is brought shall represent
3 the state of West Virginia and shall litigate the action
4 in the best interests of the child although the action is
5 commenced in the name of a plaintiff listed in section
6 one of this article.

7 (b) The defendant shall be advised of his right to
8 counsel. In the event he files an affidavit that he is a
9 poor person within the meaning of section one, article
10 two, chapter fifty-nine of this code, counsel shall be
11 appointed to represent him. The service and expenses of
12 counsel shall be paid in accordance with the provisions
13 of article twenty-one, chapter twenty-nine of this code:
14 Provided, That the court shall make a finding of
15 eligibility for appointed counsel in accordance with the
16 requirements of said article and, if the person qualifies,
any blood or tissue tests ordered to be taken shall be paid as part of the costs of the proceeding. If paternity is established, appointed counsel shall also represent the defendant with regard to dependent claims arising from family rights and obligations attendant to the filial relationship, including the establishment and enforcement of a child support order and the determination of custody and visitation.

(c) The children’s advocate shall litigate the issue of paternity and, if paternity is established, shall also litigate all dependent claims arising from family rights and obligations attendant to the filial relationship, including the establishment and enforcement of a child support order and the determination of custody and visitation.

(d) If the proceeding is brought by a married woman pursuant to the provisions of subdivision (2), subsection (e), section one of this article, the court shall appoint a competent attorney to act as guardian ad litem on behalf of the child. This attorney shall be appointed without motion and prior to the entry of any order requiring blood testing.

CHAPTER 49. CHILD WELFARE.


ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-15. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

(a) Each circuit court, subject to the approval of the supreme court of appeals and in accordance with the rules of the supreme court of appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant shall not be related by consanguinity or affinity to any judge of the appointing court.

The salary for juvenile probation officers and clerical
assistants shall be determined and fixed by the supreme court of appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the supreme court of appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the supreme court of appeals.

A juvenile probation officer shall not be considered a law-enforcement official under any provision of this chapter.

(b) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a child is brought before the court or judge. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or one of his or her assistants shall:

(1) Make investigation of the case;

(2) Furnish such information and assistance as the court or judge may require; and

(3) Take charge of the child before and after the trial, as may be directed by the court or judge.

§49-5-16b. Juvenile facilities review panel; compensation; expenses.

The supreme court of appeals shall appoint and maintain a five-member panel, consisting of five persons who are willing to serve in such capacity, to visit, inspect and interview residents of all juvenile institutions, detention facilities and places in or out of the state wherein West Virginia juveniles may be held involuntarily, to make public reports of such reviews: Provided, That the panel shall not visit, inspect or interview adult inmates of county jails, regional jails or facilities under the direction of the commissioner of corrections used for the incarceration of adult offenders or detainees: Provided, however, That the panel shall have no authority to enforce jail and prison standards for county jails and regional jails as they pertain to adults confined
therein. In visiting and inspecting any facility pursuant to the provisions of this section, the panel shall have prompt and direct access to the head of the facility for any purpose pertaining to the performance of functions and responsibilities under this section. The members so appointed shall serve without compensation for their time, however, each member may be reimbursed for reasonable and necessary expenses in the performance of their duties under this article.

Copies of the panel's report shall be submitted annually to the president of the Senate and the speaker of the House of Delegates.

Pursuant to the provisions of article ten, chapter four of this code, the juvenile facilities review panel shall continue to exist until the first day of July, one thousand nine hundred ninety-four, to allow for the completion of a performance audit by the joint committee on government operations.

ARTICLE 58. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-4. Responsibilities of the department of health and human resources.

(a) The department of health and human resources is empowered to establish, and shall establish, subject to the limits of funds available or otherwise appropriated therefor, programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, day treatment and any other designated community-based diagnostic,
treatment or rehabilitative service;

(2) Community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;

(3) Youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;

(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting rights of youth impacted by the juvenile justice system;

(5) Educational programs or supportive services designed to keep delinquents, and to encourage other youth to remain, in elementary and secondary schools or in alternative learning situations;

(6) Expanded use of professional and paraprofessional personnel and volunteers to work effectively with youth;

(7) Youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(8) A statewide program designed to reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the state juvenile population, to increase the use of nonsecure community-based facilities as a percentage of total commitments to juvenile facilities and to discourage the use of secure incarceration and detention.

(b) The department of health and human resources shall establish, within the funds available, an individualized program of rehabilitation for each accused juvenile offender referred to the department after being allowed an improvement period by the juvenile court, and for each adjudicated juvenile offender who, after adjudication, is referred to the department for investigation or treatment or whose custody is vested in the
department. Such individualized program of rehabilitation shall take into account the programs and services to be provided by other public or private agencies or personnel which are available in the community to deal with the circumstances of the particular child. Such individualized program of rehabilitation shall be furnished to the juvenile court and shall be available to counsel for the child; it may be modified from time to time at the direction of the department or by order of the juvenile court. The department may develop an individualized program of rehabilitation for any child referred for noncustodial counseling under section five, article three of this chapter, for any child receiving counsel and advice under section three-a, article five of this chapter, or for any other child upon the request of a public or private agency.

(c) The department of health and human resources is authorized to enter into cooperative arrangements and agreements with private agencies or with agencies of the state and its political subdivisions to effectuate the purpose of this article.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-3a. Sentencing; probation.


1 In addition to jurisdiction granted elsewhere to magistrate courts, magistrate courts shall have jurisdiction of all misdemeanor offenses committed in the county and to conduct preliminary examinations on warrants charging felonies committed within the county and, upon order of referral from the circuit courts, to conduct preliminary examinations on probation violations, which examinations shall be conducted without delay and in all events not later than thirty days from the date any probation violation petition or motion has
been filed in circuit court. A magistrate shall have the
authority to issue arrest warrants in all criminal
matters, to issue warrants for search and seizure and,
except in cases involving capital offenses, to set and
admit to bail: Provided, That in cases punishable only
by the fine, such bail or recognizance shall not exceed
the maximum amount of the fine and applicable court
costs permitted or authorized by statute to be imposed
in the event of conviction.

§50-2-3a. Sentencing; probation.
(a) In addition to sentencing authority granted
elsewhere to magistrate courts, magistrate courts have
authority to suspend sentences and impose periods of
unsupervised probation for a period not to exceed two
years, except for offenses for which the penalty includes
mandatory incarceration and offenses defined in sec-
tions eight and nine, article eight-b, chapter sixty-one
of this code and subsection (c), section five, article eight-
d of said chapter.

(b) 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 state, any
other state of the United States or the United States;

(2) That he or she shall not, during the term of his
or her probation, leave the state without the consent of
the court which placed him or her on probation;

(3) That he or she shall comply with the rules or terms
prescribed by the court;

(4) That he or she shall make reasonable restitution
if financially able to do so, in whole or in any part,
immediately or within the period of probation; and

(5) That he or she shall pay any fine and the costs
assessed as the court may direct.

(c) On motion by the prosecuting attorney, and upon
a hearing and a finding that reasonable cause exists to
believe that a violation of any condition of probation has
occurred, the magistrate may revoke probation and
order execution of the sentence originally imposed.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines or appear or respond.

§50-3-6a. Deposits in interest-bearing accounts; payment of interest to general revenue fund of state treasury.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines or appear or respond.

(a) A magistrate court may accept credit cards in payment of all costs, fines, forfeitures or penalties. The supreme court of appeals shall adopt rules regarding the use of credit cards to pay fines, and the rules 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 portion of any costs, fines, forfeitures or penalties at the time the amount is imposed by the court so long as the court requires the balance to be paid in accordance with a payment plan which specifies: (1) The number of payments to be made; (2) the dates on which such payments and amounts shall be made; and (3) amounts due on such dates.

(b) If any costs, fines, forfeitures, restitution or penalties imposed or ordered by the magistrate court for hunting or fishing violations as described in chapter twenty of this code are not paid in full as directed by the magistrate court, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk, shall notify the director of the division of natural resources, of such failure to pay. If any costs, fines, forfeitures, restitution or penalties imposed by the magistrate court in a criminal case are not paid as directed by the magistrate court, the magistrate court clerk or, upon judgment rendered on appeal, the circuit clerk, shall notify the director of the division of motor vehicles of the failure to pay. Upon 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, restitution or penalties are paid.

(c) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the director of the division of motor vehicles thereof within fifteen days of the scheduled date to appear, unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon such notice, the division of motor vehicles shall suspend the operator's or commercial driver's license of the person failing to appear or otherwise respond in accordance with the provisions of section six, article three, chapter seventeen-b of this code.

(d) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

(e) If all costs, fines, forfeitures, restitution or penalties imposed by a magistrate court and ordered to be paid are not paid as ordered by the judgment of the magistrate court, the clerk of the magistrate court shall notify the prosecuting attorney of the county of such nonpayment and provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index the abstracts of judgment without charge or fee to the prosecuting attorney, and when so recorded, the amount stated to be owing in the abstract shall constitute a lien against all property of the defendant.

§50-3-6a. Deposits in interest-bearing accounts; payment of interest to general revenue fund of state treasury.

Magistrate court clerks or circuit clerks acting in that capacity, subject to the rules and regulations of the supreme court of appeals, may establish and maintain interest-bearing checking accounts in secure and
properly insured financial institutions for the deposit and disbursement of all moneys collected by the magistrate court. In addition to making other remittances as required by law, the clerk of each magistrate court shall, on a monthly basis, remit all interest earned on such accounts to the state treasurer for deposit in the state general revenue fund.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.


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: Provided, That any person charged with a traffic offense which does not subject a person to a period of incarceration who wishes a jury trial shall elect prior to trial to receive said trial by jury in either the magistrate court or circuit court. Any person charged with such a traffic offense who elects to receive a trial by jury in the magistrate court shall receive a trial to the court on appeal. 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, however, 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.
CHAPTER 52. JURIES.

Article
1. Petit Juries.
2. Grand Juries.

ARTICLE 1. PETIT JURIES.

§52-1-5. Master list; method of compilation; additional freeholder list; lists to be available to public.
§52-1-5a. Jury qualification form; contents; procedure for use; penalties.
§52-1-6. Jury wheel or jury box; random selection of names from master list for jury wheel or jury box.
§52-1-7. Drawings from the jury wheel or jury box; notice of jury duty; penalties.
§52-1-7a. Alternate procedure for selection of jury by electronic data processing methods.
§52-1-8. Disqualification from jury service.
§52-1-16. Preservation of records.
§52-1-17. Reimbursement of jurors.
§52-1-18. When juror not entitled to reimbursement.
§52-1-20. Payment of reimbursement.


1 Potential petit jurors shall be selected by the clerk of the circuit court pursuant to the provisions of this article and under the supervision of the circuit court, or in circuits with more than one circuit judge, the chief judge of the circuit.

§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.

1 (a) In each county, the clerk shall compile 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 division of motor vehicles.
The clerk 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 clerk 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 clerk 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.

§52-1-5a. 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 qualification 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 prospective 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 accommodation 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 reimbursed for his or her expenses 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 clerk 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 disqualification. 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.

§52-1-6. Jury wheel or jury box; random selection of names from master list for jury wheel or jury box.

(a) At the direction of the circuit court, the clerk for each county shall maintain a jury wheel or jury box, into which shall be placed the names or identifying numbers of prospective jurors taken from the master list. The choice of employing a jury wheel or jury box shall be at the discretion of the circuit court or the chief judge thereof.

(b) In counties having a population of less than fifteen thousand persons according to the last available census, the jury wheel or jury box shall include at least two hundred names; in counties having a population of at least fifteen thousand but less than fifty thousand, at least four hundred names; a population of at least fifty thousand but less than ninety thousand, at least eight hundred names; and a population of ninety thousand or more, at least one thousand six hundred names. From time to time a larger or additional number may be ordered by the circuit court to be placed in the jury wheel or jury box. The clerk shall take measures to ensure that a sufficient number of additional jurors are drawn from time to time so that the jury wheel or jury box is refilled and additional jurors may be drawn therefrom. In October of each even-numbered year, or at such other time as the court may direct, the clerk shall remove from the jury box or jury wheel the names of all persons who have, within the preceding two years, been summoned to serve as petit jurors, grand jurors or magistrate court jurors, and who have actually attended sessions of the magistrate or circuit court and been reimbursed for their expenses as jurors pursuant to the provisions of section twenty-one of this article, section thirteen, article two of this chapter, or under any 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.

(c) The names or identifying numbers of prospective jurors to be placed in the jury wheel or jury box shall be selected by the clerk at random from the master list in the following manner: The total number of names on the master list shall be divided by the number of names to be placed in or added to the jury wheel or jury box and the whole number next greater than the quotient shall be the "key number", except that the key number shall never be less than two. A "starting number" for making the selection shall then be determined by a random method from the numbers from one to the key number, both inclusive. The required number of names shall then be selected from the master list by taking in order the first name on the master list corresponding to the starting number and then successively the names appearing in the master list at intervals equal to the key number, recommencing if necessary at the start of the list until the required number of names has been selected. Upon recommencing at the start of the list, or if additional names are subsequently to be selected for the jury wheel or jury box, names previously selected from the master list shall be disregarded in selecting the additional names. The clerk is not required to, but may, use an electronic or mechanical system or device in carrying out its duties. (For example, assume a county with a master list of eight thousand nine hundred eighty names, a population of less than fifteen thousand and a desired jury box or wheel containing two hundred names. Eight thousand nine hundred eighty names divided by two hundred is forty-four and nine-tenths percent. The next whole number is forty-five. The clerk would take every forty-fifth name on the list, using a random starting number between one and forty-five.)

§52-1-7. Drawings from the jury wheel or jury box; notice of jury duty; penalties.

(a) The chief judge of the circuit, or the judge in a single judge circuit, shall provide by order rules relating to the random drawing by the clerk of panels from the jury wheel or jury box for juries in the circuit
and magistrate courts. The rules may allow for the
drawing of panels at any time. Upon receipt of the
direction and in the manner prescribed by the court, the
clerk shall publicly draw at random from the jury wheel
or jury box the number of jurors specified.

(b) If a jury is ordered to be drawn, the clerk
thereafter shall cause each person drawn for jury
service to be notified not less than twenty days before
the date for which the persons are to report for jury duty
with a summons and juror qualification form, if such
form has not already been completed, by personal
service or first class mail addressed to the person at his
or her usual residence, business or post-office address,
requiring him or her to report for jury service at a
specified time and place.

(c) A prospective juror who fails to appear as directed
by the summons issued pursuant to subsection (b) of this
section shall be ordered by the court to appear and show
cause for failure to appear as directed. If the prospective
juror fails to appear pursuant to the court's order or
fails to show good cause for failure to appear as directed
by the summons, he or she is guilty of civil contempt
and shall be fined not more than one thousand dollars.

§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 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 autho-

(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.

§52-1-8. Disqualification from jury service.

(a) The court, upon request of 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 magistrate court juror, and has actually attended sessions of the magistrate or circuit court and been reimbursed for his or her expenses 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 affirmation 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 peremptory strikes in civil or criminal actions.


(a) Within seven days after the moving party discovers, or by the exercise of due diligence could have discovered, the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings, quash the indictment or move for other relief as may be appropriate under the circumstances or the nature of the case. The motion shall set forth the facts which support the party's contention that there has been a substantial failure to comply with this article in selecting the jury.

(b) Upon motion filed under subsection (a) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this article, the moving party is entitled to present, in support of the motion, the testimony of the clerk, any relevant records and papers not public or otherwise
available used by the clerk, and any other relevant evidence. The clerk may identify the lists utilized in compiling the master list, but may not be required to divulge the contents of such lists. If the court determines that in selecting a jury there has been a substantial failure to comply with this article, the court shall stay the proceedings pending the selection of the jury in conformity with this article, quash an indictment or grant such other relief as the court may deem appropriate.

(c) In the absence of fraud, the procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state or a party in a civil case, may challenge a jury on the ground that the jury was not selected in conformity with this article.

§52-1-16. Preservation of records.

All records and papers compiled and maintained by the clerk in connection with selection and service of jurors from the master list, the jury box or the jury wheel shall be preserved by the clerk for at least four years after such jurors were selected, or for any longer period ordered by the court.

The clerk shall make an annual report no later than the first day of March of each year to the supreme court of appeals setting forth the following information: Whether the clerk employed a jury box or jury wheel for the year reported, and the age, race and gender of each person for whom a juror qualification form has been received. The supreme court of appeals shall provide this information to the president of the Senate and the speaker of the House of Delegates on an annual basis, no later than the first day of April of each year.

§52-1-17. Reimbursement of jurors.

(a) A juror shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses from the juror's residence to the place of holding court and return and shall be reimbursed for other expenses incurred as a result of required attendance at sessions of the court at a rate of
between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance. Such reimbursement shall be based on vouchers submitted to the sheriff. Such mileage and reimbursement shall be paid out of the state treasury.

(b) When a jury in any case is placed in the custody of the sheriff, he or she shall provide for and furnish the jury necessary meals and lodging while they are in the sheriff's custody at a reasonable cost to be determined by an order of the court; and the meals and lodging shall be paid for out of the state treasury.

(c) Anytime a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court order, assess a jury cost. In circuit court cases the jury cost shall be the actual cost of the jurors' service, and in magistrate court cases, the jury cost assessed shall be two hundred dollars. Such costs shall be assessed against the parties as follows:

(1) In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;

(2) In every civil case, against either party or prorated against both parties, at the court's discretion, if the parties settle the case or trial is to the bench; and

(3) In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego assessment of the jury fee, but shall set out the reasons therefor in a written order: Provided, That a waiver of the assessment of a jury fee in a case tried before a jury in magistrate court may only be permitted after the circuit court, or the chief judge thereof, has reviewed the reasons set forth in the order by the magistrate and has approved such waiver.

(d) The circuit or magistrate court clerk shall by the tenth day of the month following the month of collection remit to the sheriff all jury costs collected, and the clerk and the clerk's surety are liable therefor on the clerk's
official bond as for other money coming into the clerk’s
hands by virtue of the clerk’s office.

(e) The sheriff shall pay into the state treasury all jury
costs received from the court clerks, and the sheriff shall
be held to account in the sheriff’s annual settlement for
all such moneys.

§52-1-18. When juror not entitled to reimbursement.

No juror who departs without leave of the court or
who, being summoned as a witness for the state, charges
for attendance as such, may be entitled to receive any
reimbursement for services as a juror.

§52-1-20. Payment of reimbursement.

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 provi-
sions 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.

ARTICLE 2. GRAND JURIES.


The clerk of any circuit court requiring a grand jury
shall, at least thirty days before the term of court, draw
and assign persons for the grand jury, but the court, or
judge thereof, may require the clerk at any specified
time to draw and assign grand jurors for either a
regular, special or adjourned term of court. When required by the circuit court or the chief judge thereof, the clerk shall draw the names of sixteen persons from the jury wheel or jury box, and the persons so drawn shall constitute the grand jury. At the same time, the clerk shall draw the names of such additional numbers of persons from the jury wheel or jury box as the chief judge of the circuit, or the judge in a single judge circuit shall by prior order direct, and the persons so drawn shall constitute alternate jurors for the grand jury. The judge may replace any absent members of the grand jury from among the alternate grand jurors, in the order in which the alternate jurors were drawn. The clerk shall enter the names of all persons so drawn in a book kept for that purpose and shall issue summonses to the persons so drawn in the same manner as that provided for petit jurors in subsection (b), section seven, article one of this chapter.


A grand juror shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses incurred in traveling from the grand juror's residence to the place of the holding of the grand jury and return, and shall be reimbursed for other expenses incurred as a result of required attendance at sessions of the grand jury at a rate of between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

Article
1. Fees and Allowances.
2. Costs Generally.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-12. Payment of fines by credit card or payment plan.

A circuit court may accept credit cards in payment of all fines, costs, forfeitures, restitution or penalties.
3 The supreme court of appeals shall adopt rules regarding the use of credit cards to pay fines, and the rules shall state that any charges made by the credit company shall be paid by the person responsible for paying the fine, cost, forfeiture, restitution or penalty.

ARTICLE 2. COSTS GENERALLY.

§59-2-1. Suits by persons financially unable to pay.

(a) A natural person who is financially unable to pay the fees or costs attendant to the commencement, prosecution or defense of any civil action or proceeding, or an appeal therein, is permitted to proceed without prepayment in any court of this state, after filing with the court an affidavit that he or she is financially unable to pay the fees or costs or give security therefor.

(1) The clerk of the court and all other officers of the court shall issue and serve all process and perform all duties in such cases.

(2) Judgment may be rendered for costs at the conclusion of the action, where otherwise authorized by law, and be taxable against a losing party who has not been determined to be financially unable to pay.

(3) Upon the filing of an affidavit in accordance with this subsection, seeking an appeal in a civil case from a circuit court to the supreme court of appeals, the supreme court of appeals may direct payment by the administrative office of the supreme court of appeals of the expenses of duplicating the record on appeal after it is transmitted by the clerk of the circuit court. The transcript of proceedings before the circuit court, if the petition for appeal is to be filed with the transcript, shall be provided by the court reporter without cost: Provided, That actual expenses of the court reporter for supplies used in preparing the transcript may be paid when authorized by the director of the administrative office of the supreme court of appeals.

(b) The supreme court of appeals or the chief justice thereof shall establish and periodically review and update financial guidelines for determining the eligibility of civil litigants to proceed in forma pauperis.
(c) The supreme court of appeals shall adopt a financial affidavit form for use by persons seeking a waiver of fees, costs or security pursuant to the provisions of this section. Copies of the form shall be available to the public in the offices of the clerk of any court of this state. The affidavit shall state the nature of the action, defense or appeal and the affiant's belief that he or she is entitled to redress. The form shall elicit information from the affiant which will enable the court in which it is filed to consider the following factors in determining whether the affiant is financially unable to pay fees, costs or security:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds and other assets which may be liquidated to provide funds to pay fees, costs or security;

(3) Fixed debts and obligations, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person has paid or will pay counsel fees, or whether counsel will be provided by a private attorney on a contingent fee basis, an attorney pro bono, a legal services attorney, a children's advocate or some other attorney at no cost or a reduced cost to the affiant; and

(7) The consequences for the individual if a waiver of fees, costs or security is denied.

(d) If the information set forth in the affidavit or the evidence submitted in the action reveals that the person filing the affidavit is financially able to pay the fees and costs, the court or the family law master may order the person to pay the fees and costs in the action.

(e) No other party in any proceeding may initiate an inquiry by motion or other pleading or participate in
any proceeding relevant to the issues raised pursuant to this section.

(f) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this section. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.

CHAPTER 62. CRIMINAL PROCEDURE.

Article
13. Corrections Management.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-17. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) If costs, fines, forfeitures, penalties or restitution imposed by the circuit court upon conviction of a person for any criminal offense under this code are not paid in full when ordered to do so by the court, the circuit clerk shall notify the division of motor vehicles of such failure to pay: Provided, That at the time the judgment is imposed, the court shall provide the person with written notice that failure to pay the same when ordered to do so shall result in the suspension of such person's license or privilege to operate a motor vehicle in this state and that such suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for such person or such person's family: Provided, however, That the failure of the court to provide such notice shall not affect the validity of any suspension of such person's license or privilege to operate a motor vehicle in this state. For purposes of this section, such period of time within which the person is required to pay shall be stayed during any period an appeal from the conviction which resulted in the imposition of such costs, fines, forfeitures or penalties is pending.
Upon such notice, the division of motor vehicles shall suspend the person’s driver’s license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid.

(b) Notwithstanding the provisions of this section to the contrary, the notice of the failure to pay such costs, fines, forfeitures or penalties shall not be given where the circuit court, upon application of the person upon whom the same were imposed filed prior to the expiration of the period within which the same are required to be paid, enters an order finding that such person is financially unable to pay all or a portion of the same: Provided, That where the circuit court, upon finding that the person is financially unable to pay the full amount thereof, requires the person to pay the remaining portion thereof, the circuit clerk shall notify the division of motor vehicles of such person’s failure to pay the same if the same is not paid within the period of time ordered by such court.

(c) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify 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 court. Upon such notice, the division of motor vehicles shall suspend the person’s driver’s license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.


§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the supreme court of appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical
assistants shall be in writing and entered on the order
book of the court by the judge making such appointment
and a copy of said order of appointment shall be
delivered to the administrative director of the supreme
court of appeals. The order of appointment shall state
the monthly salary fixed by the judge and approved by
the supreme court of appeals to be paid the probation
officer or clerical assistants so appointed.

(c) The salary of probation officers and clerical
assistants shall be paid monthly or semimonthly, as the
supreme court of appeals by rule may direct and they
shall be reimbursed for all reasonable and necessary
expenses actually incurred in the line of duty in the
field. The salary and expenses shall be paid by the state
from the judicial accounts thereof. The county commis-
sion shall provide adequate office space for the proba-
tion officer and his or her assistants to be approved by
the appointing court. The equipment and supplies as
may be needed by the probation officer and his or her
assistants shall be provided by the state and the cost
thereof shall be charged against the judicial accounts of
the state.

(d) No judge may appoint any probation officer,
assistant probation officer or clerical assistant who is
related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the supreme court of
appeals and in accordance with its rules, a judge of a
circuit court whose circuit comprises more than one
county may appoint a probation officer and a clerical
assistant in each county of the circuit or may appoint
the same persons to serve in these respective positions
in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies,
affects or supersedes the appointment or tenure of any
probation officer, medical assistant or psychiatric
assistant appointed by any court under any special act
of the Legislature heretofore enacted, and the salary or
compensation of those persons shall remain as specified
in the most recent amendment of any special act until
changed by the court, with approval of the supreme
court of appeals, by order entered of record, and any
such salary or compensation shall be paid out of the
state treasury.


(a) Release on probation shall be upon the following
conditions:

(1) That the probationer shall not, during the term of
his probation, violate any criminal law of this or any
other state or of the United States.

(2) That he shall not, during the term of his probation,
leave the state without the consent of the court which
placed him on probation.

(3) That he shall comply with the rules and regula-
tions 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 of this code and articles
eight-b and eight-d of said chapter, 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.

(5) That the probationer be required to pay a fee,
based upon his or her ability to pay, not to exceed twenty
dollars per month to defray costs of supervision. All
moneys collected as fees from probationers shall be
deposited with the circuit clerk who shall, on a monthly
basis, remit said moneys collected to the state treasurer
for deposit in the state general revenue fund.

(b) In addition to the terms of probation set forth in
subsection (a) of this section, the court may impose,
subject to modification at any time, any other conditions
which it may deem advisable, including, but not limited
to, any of the following:

(1) That he shall make restitution or reparation, in
whole or in part, immediately or within the period of
probation, to any party injured by the crime for which
he has been convicted.

(2) That he shall pay any fine assessed and the costs
of the proceeding in such installments as the court may
direct.

(3) That he shall make contribution from his earnings,
in such sums as the court may direct, for the support
of his dependents.

(4) That he shall, in the discretion of the court, be
required to serve a period of confinement in the county
jail of the county in which he was convicted for a period
not to exceed one third of the minimum sentence
established by law or one third of the least possible
period of confinement in an indeterminate sentence, but
in no case shall such period of confinement exceed six
consecutive months. The court shall have authority to
sentence the defendant within such six-month period to
intermittent periods of confinement including, but not
limited to, weekends or holidays and may grant unto the
defendant intermittent periods of release in order that
he may work at his employment or for such other
reasons or purposes as the court may deem appropriate:
Provided, That the provisions of article eleven-a of this
chapter shall not apply to such intermittent periods of
confinement and release except to the extent that the
court may direct. If a period of confinement is required
as a condition of probation, the court shall make special
findings that other conditions of probation are inade-
quate and that a period of confinement is necessary.


Each state parole officer shall investigate all cases
referred to him or her for investigation by the commis-
sioner of corrections and shall report in writing thereon.
He or she shall furnish to each person released on parole
under his or her supervision a written statement of the
conditions of his or her parole together with a copy of
the rules prescribed by the board, as the case may be,
for the supervision of parolees. He or she shall keep
informed concerning the conduct and condition of each
person under his or her supervision and shall report
thereon in writing as often as the commissioner of
corrections may require. He or she shall use all
practicable and suitable methods to aid and encourage
persons on parole and to bring about improvement in
their conduct and condition. He or she shall keep
detailed records of his or her work, shall keep accurate
and complete accounts of and give receipts for all money
collected from persons under his or her supervision and
shall pay over the money to those persons a circuit court
or the commissioner of corrections may designate. He or
she shall give bond with good security, to be approved
by the commissioner of corrections, in a penalty of not
less than one thousand dollars nor more than three
thousand dollars, as the commissioner of corrections
may determine, and also perform any other duties the
commissioner may require. He or she has authority,
with or without an order or warrant, to arrest any
parolee. He or she has all the powers of a notary public,
with authority to act anywhere within the state.

ARTICLE 13. CORRECTIONS MANAGEMENT.

*§62-13-2. Supervision of probationers and parolees; final
determinations remaining with board of
probation and parole.

(a) The supreme court of appeals shall take charge of
and cause to be supervised all persons placed on
probation and shall prescribe rules for the supervision
of probationers under their supervision and control.

(b) The commissioner of corrections shall supervise all
persons released on parole and placed in the charge of
a state parole officer and all persons released on parole
under any law of this state. He or she shall also
supervise all probationers and parolees whose supervi-

* Clerk's Note: This section was also amended by S. B. 577 (Chapter 37), which passed prior to this act.
sion may have been undertaken by this state by reason
of any interstate compact entered into pursuant to the
uniform act for out-of-state probation and parole
supervision. The commissioner shall prescribe rules for
the supervision of probationers and parolees under his
or her supervision and control and shall succeed to all
administrative and supervisory powers of the board of
probation and parole and the authority of the board of
probation and parole in those matters only.

The commissioner of corrections shall administer all
other laws affecting the custody, control, treatment and
employment of persons sentenced or committed to
institutions under the supervision of the department or
affecting the operation and administration of institu-
tions or functions of the department.

The final determination regarding the release of
inmates from penal institutions and the final determi-
nation regarding revocation of parolees from those
institutions pursuant to the provisions of article twelve
of this chapter shall remain within the exclusive
jurisdiction of the board of probation and parole.

CHAPTER 57
(Com. Sub. for H. B. 2270—By Delegates Vest, Faircloth,
Huffman and Compton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nine, article seventeen, chapter
nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and
reenact section eight of said article, relating to abolishing
the requirement that disputes between adjoining
landowners concerning partition fences be settled by
arbitration; permitting adjoining landowners to bring
civil action to settle disputes between them concerning
partition fences; and limiting liability of adjoining
landowners for the cost of construction, repair or
maintenance of a particular type of partition fence.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. FENCES.

§19-17-8. Disputes relating to partition fences.

1 If a dispute arises between the owners of adjoining lands concerning the proportion or particular part of a fence to be built or maintained by either of them, or the amount to be paid by one party to the other for any fence already built or maintained, either party may proceed by civil action in a magistrate or circuit court, as shall have jurisdiction of the amount or value in controversy, within the county in which any portion of the partition built or to be built, is or is to be located, to determine the amount to be paid by one party to the other for the just proportion of the costs of any construction, repair or maintenance of the partition fence. The person who is required to share in the cost of the construction, repair or maintenance of the partition fence shall not be liable for more than one half of the cost of the construction, repair or maintenance of a fence which meets the standards of subdivision (e), section one of this article.

CHAPTER 58

(H. B. 2106—By Delegates Love, Doyle, Warner, Kiss, L. White, Tribett and McKinley)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fire prevention and control act; establishing certain fees; and specifying fees for fire safety review of new and existing construction plans and specifications.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.

(a) The state fire marshal may establish fees in accordance with the following:

(1) For blasting. — Any person storing, selling or using explosives shall first obtain a permit from the state fire marshal. Such permit shall be valid from the first day of July through the thirtieth day of June of the succeeding year beginning on the first day of July, one thousand nine hundred eighty-nine. The state fire marshal may charge a fee not to exceed fifty dollars for such permit.

(2) For inspections of schools or day care facilities. — The state fire marshal may charge a fee of up to twenty-five dollars per annual inspection for inspection of schools or day care facilities: Provided, That only one such fee may be charged per year for any building in which a school and a day care facility are co-located: Provided, however, That any school or day care facility may not be charged for an inspection more than one time per twelve-month period.

(3) For inspections of hospitals or nursing homes. — The state fire marshal may charge an inspection fee of up to one hundred dollars per annual inspection of hospitals or nursing homes: Provided, That any hospital or nursing home may not be charged for an inspection more than one time per twelve-month period.

(4) For inspections of personal care homes or board and care facilities. — The state fire marshal may charge an inspection fee of up to fifty dollars per annual inspection for inspections of personal care homes or board and care facilities: Provided, That any personal care home or board and care facility may not be charged for an inspection more than one time per twelve-month period.
(5) For inspections of residential occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for each inspection of a residential occupancy. For purposes of this subdivision, "residential occupancies" are those buildings in which sleeping accommodations are provided for normal residential purposes.

(6) For inspections of mercantile occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of mercantile occupancies: Provided, That if such inspection is in response to a complaint made by a member of the public, the state fire marshal shall obtain from the complainant an advance inspection fee of twenty-five dollars. This fee shall be returned to the complainant if, after the state fire marshal has made the inspection, he or she finds that the complaint was accurate and justified, and he or she shall thereafter collect an inspection fee of up to one hundred dollars from the mercantile occupancy. If, after the inspection has been performed, it appears to the state fire marshal that such complaint was not accurate or justified, the state fire marshal shall keep the twenty-five dollar advance inspection fee obtained from the complainant and may not collect any fees from the mercantile occupant. For purposes of this section, "mercantile occupancy" includes stores, markets and other rooms, buildings or structures for the display and sale of merchandise.

(7) For business occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of business occupancies: Provided, That the provisions in subdivision (6) of this section shall apply regarding complaints by members of the public. For purposes of this section, "business occupancies" are those buildings used for the transaction of business, other than mercantile occupancies, for the keeping of accounts and records, and similar purposes.

(8) For inspections of assembly occupancies. — The state fire marshal may charge an inspection fee not
more than one time per twelve-month period for the
inspection of assembly occupancies. The inspection fee
shall be assessed as follows: For Class C assembly
facilities, an inspection fee not to exceed fifty dollars; for
Class B assembly facilities, an inspection fee not to exceed seventy-five dollars; and for Class A facilities, an
inspection fee not to exceed one hundred dollars.

For purposes of this subdivision, an "assembly
occupancy" includes, but is not limited to, all buildings
or portions of buildings used for gathering together fifty
or more persons for such purposes as deliberation,
worship, entertainment, eating, drinking, amusement or
awaiting transportation. For purposes of this section, a
"Class C assembly facility" is one that accommodates
fifty to three hundred persons; a "Class B facility" is one
which accommodates more than three hundred persons
but less than one thousand persons; and a "Class A
facility" is one which accommodates more than one
dozen persons.

(b) The state fire marshal may collect the following
fees for the fire safety review of plans and specifications
for new and existing construction. Such fees shall be
paid by such party or parties receiving the review.

(1) Structural barriers and fire safety plans review. —
The fee is one dollar for each one thousand dollars of
construction cost up to the first one million dollars.
Thereafter, the fee is forty cents for each one thousand
dollars of construction cost.

(2) Sprinkler system review. — The fee charged for
the review of an individual sprinkler system is as
follows: Number of heads: One to two hundred — eighty-
five dollars; two hundred one to three hundred — one
hundred dollars; three hundred one to seven hundred
fifty — one hundred twenty dollars; over seven hundred
fifty — one hundred twenty dollars plus ten cents per
head over seven hundred fifty.

(3) Fire alarm systems review. — The fee charged for
the review of a fire alarm system is fifty dollars for each
ten thousand square feet of space with a fifty dollar
minimum charge.
(4) **Range hood extinguishment system review.** — The fee is twenty-five dollars per individual system reviewed.

(5) **Carpet specifications.** — The fee for carpet review and approval is twenty dollars per installation.

(c) All fees authorized and collected pursuant to this article and article three-b of this chapter shall be paid to the state fire marshal and thereafter deposited into a special account for the operation of the state fire commission in administering this article and article three-b of this chapter. The Legislature shall appropriate the moneys in said account by a specific numbered account in the budget bill. Beginning on the first day of July, one thousand nine hundred ninety-two, and every fiscal year thereafter, at the end of each fiscal year there shall be transferred from the special account, to the general revenue fund of the state, ten percent of all money collected by the fire marshal during the year: 

*Provided, That any balance remaining in the special account at the end of any fiscal year, after the transfer of the ten percent, shall be reappropriated to the next fiscal year: Provided, however, That in addition to said ten percent, amounts collected which are found from time to time to exceed the funds needed for purposes for which the fees are collected may be transferred to other accounts or redesignated for other purposes by appropriation of the Legislature.*

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the state fire marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least forty-eight hours prior to the scheduled inspection the owner or occupant requests the state fire marshal to reschedule such inspection. In the event a second inspection is required by the state fire marshal as a result of the owner or occupant failing to be ready for the inspection when the state fire marshal arrives, the state fire marshal shall charge the owner or occupant of such occupancy the inspection fees set forth above for each inspection trip required.
CHAPTER 59
(Com. Sub. for H. B. 2028—By Delegates Douglas, Faircloth and Manuel)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-aa, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county hazardous materials response teams; allowing county commissions to bill carriers, owners and generators of hazardous materials for the cost of services provided to carriers, owners and generators of hazardous materials involved in a hazardous materials incident and providing that any carrier, owner or generator of hazardous materials failing to pay a bill for cost of services provided is liable for treble the cost of services.

Be it enacted by the Legislature of West Virginia:

That section three-aa, article one, 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 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3aa. Authority of county commissions to create and fund a hazardous material accident response program.

1 In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered to create a hazardous material accident response program.
2 The program may include the establishment of a hazardous materials response team. The hazardous materials response team shall include members of the fire departments, recognized and approved by the West Virginia fire commission in the county, who are designated by the county commission. The team shall also include members of emergency medical services certified pursuant to article four-c, chapter sixteen of this code who are acting in their official capacity by providing ambulance or emergency medical services within the county and who are designated as members...
of the hazardous materials response team by the county commission. The team may also include other people in the community who are recognized as having expertise with hazardous materials or hazardous material incidents and who are designated by the county commission to serve on the team. The purpose of the team is to respond to hazardous material incidents. The hazardous materials response team shall function and the members shall serve at the will and pleasure of the county commission. The team shall operate in cooperation with the county office of emergency services and other approved fire departments. The commission is authorized to receive donated funds and to expend those funds and to expend its own funds for the acquisition of equipment and materials for use by and training of the members of the team. The county commission is hereby authorized to enter into agreements with other counties to combine or coordinate hazardous material response team training and for the purchase or lease and use of equipment or materials.

Any carrier, owner or generator of hazardous materials who receives the services of a county hazardous materials response team is liable for the cost of necessary services provided by a county hazardous materials response team. County commissions may bill a carrier, owner or generator of hazardous materials for any costs incurred by the team in responding to a hazardous materials incident in which the carrier, owner or generator is involved: Provided, That the carrier, owner or generator may, within thirty days of receipt of the bill, appeal in writing to the county commission to request a hearing to address any costs which may be considered extraordinary for the services of the hazardous materials response team. The carrier, owner or generator will hold payment of the costs in abeyance pending the final written decision of the county commission. Any funds received by the county commission as a result of billing carrier, owners and generators of hazardous materials shall be used by the county commission to implement the provisions of this section and to reimburse the response teams participants for response costs.
Any carrier, owner or generator involved in a hazardous materials incident who fails to pay a bill for services provided by a county hazardous materials incident team within ninety days shall be liable for treble the cost of the services.

For purposes of this section, the term "generator" means any person, corporation, partnership, association or other legal entity, by site location, whose act or process produces hazardous materials as identified or listed by the director of the division of natural resources in regulations promulgated pursuant to section six, article five-g, chapter twenty of this code, in an amount greater than twelve thousand kilograms per year.

For purposes of this section, the term "carrier" means any person engaged in the off-site transportation of hazardous materials by air, rail, highway or water.

For purposes of this section, "owner" means any person, corporation, partnership, association or other legal entity whose hazardous materials are being transported by the entity or by a carrier.

For the purposes of this section, the term "hazardous materials" means those materials which are designated as such pursuant to federal laws and regulations, the designations of which are adopted by reference as of the effective date of this section.

CHAPTER 60

(Com. Sub. for S. B. 423—By Senators Jones, Plymale, Holliday and Anderson)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four-a; and to amend and reenact sections, one, two, three and eight, article three-c, chapter sixteen of said code, all relating to serological testing generally; providing for the notification of
Be it enacted by the Legislature of West Virginia:

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

Chapter
  15. Public Safety.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.


(a) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted felons shall be established in the division of public safety under the direction, control and supervision of the division of public safety criminal identification bureau forensic laboratory. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.

(b) The purpose of the centralized DNA database is to assist federal, state and local criminal justice and law-enforcement agencies within and outside the state in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes or other crimes and the identification and location of missing and unidentified persons.

(c) In any trial conducted in this state after the first day of July, one thousand nine hundred ninety-three, when the defendant is convicted and when evidence of the DNA of the defendant is introduced, the prosecuting
attorney shall forward the results of the test to the
division of public safety for entry in the database.

(d) Records produced from the samples shall be used
only for law-enforcement purposes.

(e) A person whose DNA profile has been included in
the data bank pursuant to this section may request
expungement on the grounds that the felony conviction
on which the authority for including the DNA profile
was based has been reversed and the case dismissed.
The division of public safety shall expunge all identifiable
information in the data bank pertaining to the
person and destroy all samples from the person upon
receipt of:

(1) A written request for expungement pursuant to
this section; and

(2) A certified copy of the court order reversing and
dismissing the conviction or providing for expungement.

(f) The superintendent of the division of public safety
shall promulgate administrative rules necessary to
carry out the provisions of the DNA database identifi-
cation system to include procedures for the database
system usage and integrity.

(g) Any person who disseminates, receives or other-
wise uses or attempts to use information in the database,
knowing that such dissemination, receipt or use is for
a purpose other than authorized by law, is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than fifty dollars nor more than five
hundred dollars, or imprisoned in the county jail not
more than one year, or both fined and imprisoned.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RE-
CORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.
§16-3C-2. Testing.
§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.
§16-3C-8. Administrative implementation.

§16-3C-1. Definitions.
When used in this article:

(a) "AIDS" means acquired immunodeficiency syndrome.

(b) "ARC" means AIDS-related complex.

(c) "Bureau" means the bureau of public health.

(d) "Commissioner" means the commissioner of the bureau of public health.

(e) "Department" means the state department of health and human resources.

(f) "Funeral director" shall have the same meaning ascribed to such term in section four, article six, chapter thirty of this code.

(g) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial or a trial to a court, and an adjudicated juvenile offender as defined in section three, article five-b, chapter forty-nine of this code.

(h) "Funeral establishment" shall have the same meaning ascribed to such term in section four, article six, chapter thirty of this code.

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

(j) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test approved by the bureau, the federal drug administration or the centers for disease control.

(k) "Health facility" means a hospital, nursing home, clinic, blood bank, blood center, sperm bank, laboratory or other health care institution.

(l) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(m) "Infant" means a person under six years of age.
(n) "Patient" means the person receiving the HIV-related testing.

(o) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation or health facility.

(p) "Release of test results" means a written authorization for disclosure of HIV-related test results that is signed, dated and specifies to whom disclosure is authorized and the time period the release is to be effective.

(q) "Victim" means the person or persons to whom transmission of bodily fluids from the perpetrator of the crimes of sexual abuse, sexual assault, incest or sexual molestation occurred or was likely to have occurred in the commission of such crimes.

§16-3C-2. Testing.

(a) HIV-related testing may be requested by a physician, dentist or the commissioner for any of the following:

1. When there is cause to believe that the test could be positive;
2. When there is cause to believe that the test could provide information important in the care of the patient; or
3. When any person voluntarily consents to the test.

(b) The requesting physician, dentist or the commissioner shall provide the patient with written information in the form of a booklet or pamphlet prepared or approved by the bureau or, in the case of persons who are unable to read, shall either show a video or film prepared or approved by the bureau to the patient, or read or cause to be read to the patient the information prepared or approved by the bureau which contains the following information:

1. An explanation of the test, including its purpose, potential uses, limitations, the meaning of its results and any special relevance to pregnancy and prenatal care;
(2) An explanation of the procedures to be followed;

(3) An explanation that the test is voluntary and may be obtained anonymously;

(4) An explanation that the consent for the test may be withdrawn at any time prior to drawing the sample for the test and that such withdrawal of consent may be given orally if the consent was given orally, or shall be in writing if the consent was given in writing;

(5) An explanation of the nature and current knowledge of asymptomatic HIV infection, ARC and AIDS and the relationship between the test result and those diseases; and

(6) Information about behaviors known to pose risks for transmission of HIV infection.

(c) A person seeking an HIV-related test who wishes to remain anonymous has the right to do so, and to provide written, informed consent through use of a coded system with no linking or individual identity to the test requests or results. A health care provider who does not provide HIV-related tests on an anonymous basis shall refer such a person to a test site which does provide anonymous testing, or to any local or county health department which shall provide for performance of an HIV-related test and counseling.

(d) At the time of learning of any test result, the patient shall be provided with counseling or referral for counseling for coping with the emotional consequences of learning any test result. This may be done by brochure or personally, or both.

(e) No consent for testing is required and the provisions of subsection (b) of this section do not apply for:

(1) A health care provider or health facility performing an HIV-related test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part (including tissue and blood or blood products) donated for a purpose specified under the uniform anatomical
gift act, or for transplant recipients, or semen provided for the purpose of artificial insemination and such test is necessary to assure medical acceptability of a recipient or such gift or semen for the purposes intended;

(2) The performance of an HIV-related test in documented bona fide medical emergencies when the subject of the test is unable to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that post-test counseling or referral for counseling shall nonetheless be required. Necessary treatment may not be withheld pending HIV test results; or

(3) The performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(f) Mandated testing:

(1) The performance of any HIV-related testing that is or becomes mandatory shall not require consent of the subject but will include counseling.

(2) The court having jurisdiction of the criminal prosecution shall order that an HIV-related test be performed on any persons convicted of any of the following crimes or offenses:

(i) Prostitution; or

(ii) Sexual abuse, sexual assault, incest or sexual molestation.

(3) HIV-related tests performed on persons convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be confidentially administered by a designee of the bureau or the local or county health department having proper jurisdiction. The commissioner may designate health care providers in regional jail facilities to administer HIV-related tests on such convicted persons if he or she deems it necessary and expedient.
(4) When the director of the department knows or has reason to believe, because of medical or epidemiological information, that a person, including, but not limited to, a person such as an IV drug abuser, or a person who may have a sexually transmitted disease, or a person who has sexually molested, abused or assaulted another, has HIV infection and is or may be a danger to the public health, he may issue an order to:

(i) Require a person to be examined and tested to determine whether the person has HIV infection;

(ii) Require a person with HIV infection to report to a qualified physician or health worker for counseling; and

(iii) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others.

(5) A person convicted of such offenses shall be required to undergo HIV-related testing and counseling immediately upon conviction and the court having jurisdiction of the criminal prosecution shall not release such convicted person from custody and shall revoke any order admitting the defendant to bail until HIV-related testing and counseling have been performed. The HIV-related test result obtained from the convicted person is to be transmitted to the court and, after the convicted person is sentenced, made part of the court record. If the convicted person is placed in the custody of the division of corrections, the court shall transmit a copy of the convicted person's HIV-related test results to the division of corrections. The HIV-related test results shall be closed and confidential and disclosed by the court and the bureau only in accordance with the provisions of section three of this article.

(6) A person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be informed upon initial court appearance by the judge or magistrate responsible for setting the person's condition of release pending trial of the availability of voluntary HIV-related testing and counseling conducted by the bureau.
The prosecuting attorney shall inform the victim, or parent or guardian of the victim, at the earliest stage of the proceedings of the availability of voluntary HIV-related testing and counseling conducted by the bureau and that his or her best health interest would be served by submitting to HIV-related testing and counseling. HIV-related testing for the victim shall be administered at his or her request on a confidential basis and shall be administered in accordance with the centers for disease control guidelines of the United States public health service in effect at the time of such request. The victim who obtains an HIV-related test shall be provided with pre- and post-test counseling regarding the nature, reliability and significance of the HIV-related test and the confidential nature of the test. HIV-related testing and counseling conducted pursuant to this subsection shall be performed by the designee of the commissioner of the bureau or by any local or county health department having proper jurisdiction.

If a person receives counseling or is tested under this subsection and is found to be HIV infected, the person shall be referred by the health care provider performing the counseling or testing for appropriate medical care and support services. The local or county health departments or any other agency providing counseling or testing under this subsection shall not be financially responsible for medical care and support services received by a person as a result of a referral made under this subsection.

The commissioner of the bureau or his or her designees may require an HIV test for the protection of a person who was possibly exposed to HIV infected blood or other body fluids as a result of receiving or rendering emergency medical aid or who possibly received such exposure as a funeral director. Results of such a test of the person causing exposure may be used by the requesting physician for the purpose of determining appropriate therapy, counseling and psychological support for the person rendering emergency medical aid including good samaritans, as well as for the patient, or individual receiving the emergency medical aid.
(10) If an HIV-related test required on persons convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation results in a negative reaction, upon motion of the state, the court having jurisdiction over the criminal prosecution may require the subject of the test to submit to further HIV-related tests performed under the direction of the bureau in accordance with the centers for disease control guidelines of the United States public health service in effect at the time of the motion of the state.

(11) The costs of mandated testing and counseling provided under this subsection and pre- and post-conviction HIV-related testing and counseling provided the victim under the direction of the bureau pursuant to this subsection shall be paid by the bureau.

(12) The court having jurisdiction of the criminal prosecution shall order a person convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation to pay restitution to the state for the costs of any HIV-related testing and counseling provided the convicted person and the victim, unless the court has determined such convicted person to be indigent.

(13) Any funds recovered by the state as a result of an award of restitution under this subsection shall be paid into the state treasury to the credit of a special revenue fund to be known as the "HIV testing fund" which is hereby created. The moneys so credited to such fund may be used solely by the bureau for the purposes of facilitating the performance of HIV-related testing and counseling under the provisions of this article.

(g) Premarital screening:

(1) Every person who is empowered to issue a marriage license shall, at the time of issuance thereof, distribute to the applicants for the license, information concerning acquired immunodeficiency syndrome (AIDS) and inform them of the availability of HIV-related testing and counseling. The informational brochures shall be furnished by the bureau.

(2) A notation that each applicant has received the
AIDS informational brochure shall be placed on file with the marriage license on forms provided by the bureau.

(h) The commissioner of the bureau may obtain and test specimens for AIDS or HIV infection for research or epidemiological purposes without consent of the person from whom the specimen is obtained if all personal identifying information is removed from the specimen prior to testing.

(i) Nothing in this section is applicable to any insurer regulated under chapter thirty-three of this code: Provided, That the commissioner of insurance shall develop standards regarding consent for use by insurers which test for the presence of the HIV antibody.

(j) Whenever consent of the subject to the performance of HIV-related testing is required under this article, any such consent obtained, whether orally or in writing, shall be deemed to be a valid and informed consent if it is given after compliance with the provisions of subsection (b) of this section.

§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

(a) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

(1) The subject of the test;

(2) The victim of the crimes of sexual abuse, sexual assault, incest or sexual molestation at the request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is an infant where disclosure of the HIV-related test results of the convicted sex offender are requested;

(3) Any person who secures a specific release of test results executed by the subject of the test;

(4) A funeral director or an authorized agent or employee of a health facility or health care provider if
the funeral establishment, health facility or health care
provider itself is authorized to obtain the test results, the
agent or employee provides patient care or handles or
processes specimens of body fluids or tissues and the
agent or employee has a need to know such information:
Provided, That such funeral director, agent or employee
shall maintain the confidentiality of such information;

(5) Licensed medical personnel or appropriate health
care personnel providing care to the subject of the test,
when knowledge of the test results is necessary or useful
to provide appropriate care or treatment, in an approp-
riate manner: Provided, That such personnel shall
maintain the confidentiality of such test results. The
entry on a patient's chart of an HIV-related illness by
the attending or other treating physician or other health
care provider shall not constitute a breach of confiden-
tiality requirements imposed by this article;

(6) The bureau or the centers for disease control of the
United States public health service in accordance with
reporting requirements for a diagnosed case of AIDS,
or a related condition;

(7) A health facility or health care provider which
procures, processes, distributes or uses: (A) A human
body part from a deceased person with respect to
medical information regarding that person; (B) semen
provided prior to the effective date of this article for the
purpose of artificial insemination; (C) blood or blood
products for transfusion or injection; or (D) human body
parts for transplant with respect to medical information
regarding the donor or recipient;

(8) Health facility staff committees or accreditation or
oversight review organizations which are conducting
program monitoring, program evaluation or service
reviews so long as any identity remains anonymous; and

(9) A person allowed access to said record by a court
order which is issued in compliance with the following
provisions:

(i) No court of this state may issue such order unless
the court finds that the person seeking the test results
has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest;

(ii) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the test subject of the test. The disclosure to the parties of the test subject's true name shall be communicated confidentially in documents not filed with the court;

(iii) Before granting any such order, the court shall, if possible, provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party;

(iv) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that the public hearing is necessary to the public interest and the proper administration of justice; and

(v) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the person who may have access to the information, the purposes for which the information may be used and appropriate prohibitions on future disclosure.

(b) No person to whom the results of an HIV-related test have been disclosed pursuant to subsection (a) of this section may disclose the test results to another person except as authorized by said subsection.

(c) Whenever disclosure is made pursuant to this section, except when such disclosure is made to persons in accordance with subdivisions (1) and (6), subsection (a) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: “This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any
further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.”

(d) Notwithstanding the provisions set forth in subsections (a) through (c) of this section, the use of HIV test results to inform individuals named or identified as sex partners or contacts or persons who have shared needles that they may be at risk of having acquired the HIV infection as a result of possible exchange of body fluids, is permitted. The name or identity of the person whose HIV test result was positive is to remain confidential. Contacts or identified partners may be tested anonymously at the state bureau of public health’s designated test sites, or at their own expense by a health care provider or an approved laboratory of their choice. A cause of action will not arise against the bureau, a physician or other health care provider from any such notification.

(e) There is no duty on the part of the physician or health care provider to notify the spouse or other sexual partner of, or persons who have shared needles with, an infected individual of their HIV infection and a cause of action will not arise from any failure to make such notification. However, if contact is not made, the bureau will be so notified.

§16-3C-8. Administrative implementation.

(a) The commissioner of the bureau shall immediately implement and enforce the provisions of this article, and shall adopt rules to the extent necessary for further implementation of the article. The rules proposed by the bureau pursuant to this article may include procedures for taking appropriate action with regard to health care facilities or health care providers which violate this article or the rules promulgated hereunder. The provisions of the state administrative procedures act apply to all administrative rules and procedures of the bureau pursuant to this article, except that in case of conflict between the state administrative procedures act
and this article, the provisions of this article shall control.

(b) The bureau shall promulgate rules to assure adequate quality control for all laboratories conducting HIV tests and to provide for a reporting and monitoring system for reporting to the bureau all positive HIV tests results.

CHAPTER 61

(Com. Sub. for H. B. 2272—By Delegates P. White, H. White and L. White)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and six, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of need; defining new institutional health services; designating additional ventilator services as a new institutional health service; setting minimum criteria for certificate of need reviews; and setting criteria for certificate of need review for additional ventilator beds in health care facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-3. Certificate of need.

§16-2D-6. Minimum criteria for certificate of need reviews.

§16-2D-3. Certificate of need.

1 Except as provided in section four of this article, any new institutional health service may not be acquired, offered or developed within this state except upon application for and receipt of a certificate of need as provided by this article. Whenever a new institutional health service for which a certificate of need is required
by this article is proposed for a health care facility for which, pursuant to section four of this article, no certificate of need is or was required, a certificate of need shall be issued before the new institutional health service is offered or developed. No person may knowingly charge or bill for any health services associated with any new institutional health service that is knowingly acquired, offered or developed in violation of this article, and any bill made in violation of this section is legally unenforceable. For purposes of this article, a proposed “new institutional health service” includes:

(a) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;

(b) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;

(c) Any obligation for a capital expenditure incurred by or on behalf of a health care facility, except as exempted in section four of this article, or health maintenance organization in excess of the expenditure minimum or any obligation for a capital expenditure incurred by any person to acquire a health care facility. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(1) When a contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(2) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(3) In the case of donated property, on the date on which the gift is completed under state law;

(d) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;
The addition of health services which are offered by or on behalf of a health care facility or health maintenance organization and which were not offered on a regular basis by or on behalf of the health care facility or health maintenance organization within the twelve-month period prior to the time the services would be offered; and

(2) The addition of ventilator services for any nursing facility bed by any health care facility or health maintenance organization;

(f) The deletion of one or more health services, previously offered on a regular basis by or on behalf of a health care facility or health maintenance organization which is associated with a capital expenditure;

(g) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure, if the change is associated with a previous capital expenditure for which a certificate of need was issued and if the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken;

(h) The acquisition of major medical equipment;

(i) A substantial change in an approved new institutional health service for which a certificate of need is in effect. For purposes of this subsection, “substantial change” shall be defined by the state agency in regulations adopted pursuant to section eight of this article.

§16-2D-6. Minimum criteria for certificate of need reviews.

(a) Except as provided in subsections (f) and (g), section nine of this article, in making its determination as to whether a certificate of need shall be issued, the state agency shall, at a minimum, consider all of the following criteria that are applicable: Provided, That in the case of a health maintenance organization or an ambulatory care facility or health care facility con-
trolled, directly or indirectly, by a health maintenance
organization or combination of health maintenance
organizations, the criteria considered shall be only those
set forth in subdivision (12) of this subsection: Provided,
however, That the criteria set forth in subsection (f) of
this section applies to all hospitals, nursing homes and
health care facilities when ventilator services are to be
provided for any nursing facility bed:

(1) The recommendation of the designated health
systems agency for the health service area in which the
proposed new institutional health service is to be
located;

(2) The relationship of the health services being
reviewed to the state health plan and to the applicable
health systems plan and annual implementation plan
adopted by the designated health systems agency for the
health service area in which the proposed new institu-
tional health service is to be located;

(3) The relationship of services reviewed to the long-
range development plan of the person providing or
proposing the services;

(4) The need that the population served or to be served
by the services has for the services proposed to be
offered or expanded, and the extent to which all
residents of the area, and in particular low income
persons, racial and ethnic minorities, women, handi-
capped persons, other medically underserved popula-
tion, and the elderly, are likely to have access to those
services;

(5) The availability of less costly or more effective
alternative methods of providing the services to be
offered, expanded, reduced, relocated or eliminated;

(6) The immediate and long-term financial feasibility
of the proposal as well as the probable impact of the
proposal on the costs of and charges for providing health
services by the person proposing the new institutional
health service;

(7) The relationship of the services proposed to the
existing health care system of the area in which the
services are proposed to be provided;

(8) In the case of health services proposed to be provided, the availability of resources, including health care providers, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health plan, applicable health systems plan and annual implementation plan;

(9) The appropriate and nondiscriminatory utilization of existing and available health care providers;

(10) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(11) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. The entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(12) To the extent not precluded by subdivision (1), subsection (f), section nine of this article, the special needs and circumstances of health maintenance organizations. These needs and circumstances are limited to:

(A) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization for the health services proposed to be provided by the organization; and

(B) The availability of the new health services from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(i) Would be available under a contract of at least five
years' duration;

(ii) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization;

(iii) Would cost no more than if the services were provided by the health maintenance organization; and

(iv) Would be available in a manner which is administratively feasible to the health maintenance organization;

(13) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(14) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population, and the elderly, to obtain needed health care;

(15) In the case of a construction project: (A) The cost and methods of the proposed construction, including the costs and methods of energy provision and (B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons;

(16) In the case of health services proposed to be provided, the effect of the means proposed for the delivery of proposed health services on the clinical needs of health professional training programs in the area in which the services are to be provided;

(17) In the case of health services proposed to be provided, if the services are to be available in a limited
number of facilities, the extent to which the schools in
the area for health professions will have access to the
services for training purposes;

(18) In the case of health services proposed to be
provided, the extent to which the proposed services will
be accessible to all the residents of the area to be served
by the services;

(19) In accordance with section five of this article, the
factors influencing the effect of competition on the
supply of the health services being reviewed;

(20) Improvements or innovations in the financing and
delivery of health services which foster competition, in
accordance with section five of this article, and serve to
promote quality assurance and cost effectiveness;

(21) In the case of health services or facilities proposed
to be provided, the efficiency and appropriateness of the
use of existing services and facilities similar to those
proposed;

(22) In the case of existing services or facilities, the
quality of care provided by the services or facilities in
the past;

(23) In the case where an application is made by an
osteopathic or allopathic facility for a certificate of need
to construct, expand, or modernize a health care facility,
acquire major medical equipment, or add services, the
need for that construction, expansion, modernization,
acquisition of equipment, or addition of services shall be
considered on the basis of the need for and the avail-
ability in the community of services and facilities for
osteopathic and allopathic physicians and their patients.
The state agency shall consider the application in terms
of its impact on existing and proposed institutional
training programs for doctors of osteopathy and
medicine at the student, internship, and residency
training levels;

(24) The special circumstances of health care facilities
with respect to the need for conserving energy;

(25) The contribution of the proposed service in
meeting the health related needs of members of medically underserved populations which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the state health plan, applicable health systems plan and annual implementation plan, as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:

(A) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(B) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance, including the existence of any civil rights access complaints against the applicant;

(C) The extent to which medicare, medicaid and medically indigent patients are served by the applicant; and

(D) The extent to which the applicant offers a range of means by which a person will have access to its services, including, but not limited to, outpatient services, admission by a house staff and admission by personal physician;

(26) The existence of a mechanism for soliciting consumer input into the health care facility's decision making process.

(b) The state agency may include additional criteria which it prescribes by regulations adopted pursuant to section eight of this article.

(c) Criteria for reviews may vary according to the purpose for which a particular review is being con-
ducted or the types of health services being reviewed.

(d) An application for a certificate of need may not be made subject to any criterion not contained in this article or not contained in regulations adopted pursuant to section eight of this article.

(e) In the case of any proposed new institutional health service, the state agency may not grant a certificate of need under its certificate of need program unless, after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed, the state agency makes, in addition to findings required in section nine of this article, each of the following findings in writing: (1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist and the development of alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

(f) In the case where an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of current medicaid services. No facility may, by providing ventilator services, provide a higher level of service for a nursing facility bed without demonstrating that the change in level of service by provision of the
241 additional ventilator services will result in no additional
242 fiscal burden to the state.

CHAPTER 62
(Com. Sub. for H. B. 2599—By Delegates Gallagher, Huntwork,
P. White and Douglas)

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to repeal section five-a, article five-c, chapter sixteen
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend said chapter
sixteen by adding thereto a new article, designated
article thirty-b, relating to health care surrogate act;
legislative findings and purposes; definitions; applicabil-
ity; private decision-making process and authority of
surrogate; determination of incapacity; selection of
surrogate; surrogate decision-making standards; re-
liance on authority of surrogate decision-maker and
protection of health care providers; conscience objec-
tions; interinstitutional transfers; insurance; not suicide
or murder; preservation of existing rights; relation to
existing law and no abrogation of common law doctrine
of medical necessity; and severability.

Be it enacted by the Legislature of West Virginia:

That section five-a, article five-c, chapter sixteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; and that said chapter sixteen be
amended by adding thereto a new article, designated article
thirty-b, to read as follows:

ARTICLE 30B. HEALTH CARE SURROGATE ACT.

§16-30B-1. Short title.
§16-30B-2. Legislative findings and purpose.
§16-30B-3. Definitions.
§16-30B-4. Applicability.
§16-30B-5. Private decision-making process; authority of surrogate.
§16-30B-6. Determination of incapacity.
§16-30B-7. Selection of a surrogate.
§16-30B-8. Surrogate decision-making standards.
§16-30B-9. Reliance on authority of surrogate decision-maker and protection of health care providers.
§16-30B-10. Conscience objections.
§16-30B-11. Interinstitutional transfers.
§16-30B-12. Insurance.
§16-30B-13. Not suicide or murder.
§16-30B-14. Preservation of existing rights.
§16-30B-15. Relation to existing law; no abrogation of common law doctrine of medical necessity.
§16-30B-16. Severability.

§16-30B-1. Short title.

1 This article may be cited as the “Health Care Surrogate Act.”

§16-30B-2. Legislative findings and purpose.

1 (a) Findings.—The Legislature hereby finds that:
2 (1) All adults have a right to make decisions relating to their own medical treatment, including the right to consent to or refuse life-prolonging intervention; and
3 (2) The right to make medical treatment decisions extends to persons who are incapacitated at the moment of decision. Such persons who have not made their wishes known in advance through an applicable living will or medical power of attorney or through other means have the right to have health care decisions made on their behalf by persons who will act in accordance with the person’s expressed values and wishes, or, if unknown, in the person’s best interests.
4 (b) Purpose.—It is the purpose of this article to set forth a process for private health care decision-making for incapacitated adults that reduces the need for judicial involvement and that defines the circumstances under which immunity shall be available for health care providers and surrogate decision-makers who make such health care decisions. It is the intent of the Legislature to establish an effective method for private health care decision-making for incapacitated adults, and it is also the intent of the Legislature that the courts should not be the usual venue for making such decisions. It is not the intent of the Legislature to legalize, condone, authorize, or approve mercy killing or assisted
§16-30B-3. Definitions.

(a) "Adult" means a person who is eighteen years of age or older, an emancipated minor under section twenty-seven, article seven, chapter forty-nine of this code, or a mature minor.

(b) "Attending physician" means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

(c) "Close friend" means any person eighteen years of age or older who has exhibited special care and concern for the person and who, to the reasonable satisfaction of the attending physician, is willing and able to become involved in the person's health care, and has maintained such regular contact with the person as to be familiar with the person's activities, health, and religious and moral beliefs.

(d) "Committee" shall have the same meaning as defined in section one, article eleven, chapter twenty-seven of this code.

(e) "Death" shall have the same meaning as defined in article ten of this chapter.

(f) "Guardian" shall have the same meaning as defined in sections one through six, article ten-a, chapter forty-four of this code.

(g) "Health care decision" means a decision to give, withhold, or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, nursing care, hospitalization, treatment in a nursing home or other facility, and home health care.

(h) "Health care facility" means a type of health care provider commonly known by a wide variety of titles, including, but not limited to, hospitals, medical centers, ambulatory health care facilities, physicians' offices and
clinics, extended care facilities operated in connection with hospitals, nursing homes, hospital extended care facilities operated in connection with rehabilitation centers, and other facilities established to administer health care in their ordinary course of business or practice.

(i) “Health care provider” means any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(j) “Incapacity”, or words of like import, means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner.

(k) “Life-prolonging intervention” means any medical procedure or intervention which, when applied to a person, would serve solely to artificially prolong the dying process or to maintain the person in a persistent vegetative state. The term “life-prolonging intervention” does not include the administration of medication or the performance of any other medical procedure deemed necessary to provide comfort or to alleviate pain.

(l) “Medical information” shall have the same meaning as defined in section four-a, article five, chapter fifty-seven of this code and such definition shall apply to other health care facilities as defined in this section.

(m) “Parent” means a person who is the natural or adoptive mother or father of the child and whose parental rights have not been terminated by a court of law.

(n) “Person” means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency, or any other legal entity.

(o) “Qualified physician” means a physician licensed to practice medicine who has personally examined the person.
§16-30B-4. Applicability.

Nothing in this article shall be applied in derogation of a person's known wishes as expressed in an applicable living will executed in accordance with section three, article thirty of this chapter or a medical power of attorney executed in accordance with section six, article thirty-a of this chapter or by any other means the health care provider determines to be reliable.

§16-30B-5. Private decision-making process; authority of surrogate.

(a) Health care decisions shall be made by capable adults without regard to guidelines contained in this article.

(b) Health care providers may rely upon health care decisions on behalf of an incapacitated person without resort to the courts or legal process, if the decisions are made in accordance with the provisions of this article.

(c) The surrogate shall have the authority to make any and all health care decisions on the person's behalf.

The surrogate's authority shall commence upon a determination, made pursuant to section six of this article, of the incapacity of the adult. In the event the person no longer is incapacitated, the surrogate's authority shall cease, but shall recommence if the person subsequently becomes incapacitated as determined pursuant to section six of this article.

(d) The surrogate shall seek medical information necessary to make health care decisions. For the sole purpose of making health care decisions for the person, the surrogate shall have the same right of access to the
§16-30B-6. Determination of incapacity.

For the purposes of this article, a person shall not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or mental retardation, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated shall be made by the attending physician.

Before implementation of a decision by a surrogate decision-maker to withhold or withdraw life-prolonging intervention, at least one other qualified physician or a licensed psychologist who has personally examined the person must concur in the determination of incapacity of an adult.

The determination of incapacity shall be recorded contemporaneously in the person's medical record by the attending physician, and, if one is required, by the second physician or licensed psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature, and expected duration of the person's incapacity, if these are known.

If the person is conscious, the attending physician shall inform the person that he or she has been determined to be incapacitated and that a surrogate decision-maker may be making decisions regarding life-prolonging intervention for the person.

§16-30B-7. Selection of a surrogate.

(a) When a person is incapacitated, the health care provider must make reasonable inquiry as to the availability and authority of a medical power of attorney representative under the provisions of article thirty-a of this chapter. When no representative is authorized or available, and willing to serve, the health care provider must make a reasonable inquiry as to the availability of possible surrogates listed in items (1) through (8) of this subsection:
(1) The person's guardian of the person or committee;
(2) The person's spouse;
(3) Any adult child of the person;
(4) Either parent of the person;
(5) Any adult sibling of the person;
(6) Any adult grandchild of the person;
(7) A close friend of the person;
(8) Such other persons or classes of persons including,
but not limited to, such public agencies, public
guardians, other public officials, public and private
corporations, and other representatives as the depart-
ment of health and human resources may from time to
time designate in rules and regulations promulgated
pursuant to chapter twenty-nine-a of this code.

(b) After such inquiry, the health care provider shall
rely on surrogates in the order of priority set forth
above, provided:

(1) Where there are multiple possible surrogate
decision-makers at the same priority level, the health
care provider shall, after reasonable inquiry, choose as
the surrogate the one who reasonably appears to be best
qualified. In determining who appears to be best
qualified, the health care provider shall give special
consideration to whether the proposed surrogate reason-
able appears to be better able to make decisions either
in accordance with the known wishes of the person or
in accordance with the person's best interests. The
health care provider shall consider in this determination
the proposed surrogate's regular contact with the person
prior to and during the incapacitating illness, his or her
demonstrated care and concern, and his or her availa-
ability to visit the person during the illness and to engage
in face-to-face contact with the provider for the purposes
of fully participating in the decision-making process; or

(2) The health care provider may rely instead on a
proposed surrogate lower in the priority if, in the
provider's judgment, such individual is best qualified, as
described in subsection (b) of this section, to serve as the person's surrogate. The health care provider shall document in the medical record his or her reasons for selecting a surrogate in exception to the priority order in subsection (a) of this section.

(c) The surrogate decision-maker, as identified by the health care provider, is authorized to make health care decisions on behalf of the person without court order or judicial involvement. The health care provider may rely on the decisions of the surrogate if the provider believes, after reasonable inquiry, that a representative under a valid, applicable medical power of attorney is unavailable, and there is no other applicable advance directive: Provided, That there is not reason to believe such health care decisions are contrary to the person's religious beliefs or that there is not actual notice of opposition to such health care decisions to the health care provider by a member of the same or a prior class.

(d) In the event an individual in a higher, or lower, or the same priority level seeks to challenge the selection of or the decision of the identified surrogate decision-maker, the challenging party may initiate declaratory proceedings in the circuit court of the county in which the incapacitated person resides. No health care provider or other person is required to seek declaratory relief.

(e) Any surrogate who becomes unavailable for any reason may be replaced by applying the provisions of this section in the same manner as for the initial choice of surrogate.

(f) In the event an individual of a higher priority to an identified surrogate becomes available and willing to be the surrogate, the individual with higher priority may be identified as the surrogate unless the provisions of subsection (b) of this section apply.

(g) The authority of the surrogate expires when the person is no longer incapacitated or when the surrogate is unwilling or unable to continue to serve.

§16-30B-8. Surrogate decision-making standards.
(a) **General standards.**—

The surrogate shall make health care decisions:

1. In accordance with the person's wishes, including religious and moral beliefs; or
2. In accordance with the person's best interests if these wishes are not reasonably known and cannot with reasonable diligence be ascertained; and
3. Which reflect the values of the person, including the person's religious and moral beliefs, to the extent they are reasonably known or can with reasonable diligence be ascertained.

(b) **Assessment of best interests.**—

An assessment of the person's best interests shall include consideration of the person's medical condition, prognosis, the dignity and uniqueness of every person, the possibility and extent of preserving the person's life, the possibility of preserving, improving or restoring the person's functioning, the possibility of relieving the person's suffering, the balance of the burdens to the benefits of the proposed treatment or intervention, and such other concerns and values as a reasonable individual in the person's circumstances would wish to consider.

§16-30B-9. Reliance on authority of surrogate decision-maker and protection of health care providers.

A health care provider shall not be subject to civil or criminal liability for surrogate selection or good faith compliance and reliance upon the directions of the surrogate in accordance with the provisions of this article.

Nothing in this article shall be deemed to protect a provider from liability for the provider's own negligence in the performance of the provider's duties or in carrying out any instructions of the surrogate. Nothing in this article shall be deemed to alter the law of negligence as it applies to the acts of any surrogate or provider, and nothing herein shall be interpreted as
§16-30B-10. Conscience objections.

(a) Health care facilities.—Nothing in this article shall be construed to require a health care facility to change published policy of the health care facility that is expressly based on sincerely held religious beliefs or sincerely held moral convictions central to the facility’s operating principles.

(b) Health care providers.—Nothing in this article shall be construed to require an individual health care provider to honor a health care decision made pursuant to this article if:

1. The decision is contrary to the individual provider’s sincerely held religious beliefs or sincerely held moral convictions; and
2. The individual health care provider promptly informs the person who made the decision and the health care facility of his or her refusal to honor the decision. In such event, the surrogate decision-maker shall have responsibility for arranging the transfer of the person to another health care provider. The individual health care provider shall cooperate in facilitating such transfer, and a transfer under these circumstances shall not constitute abandonment.

§16-30B-11. Interinstitutional transfers.

If a person with an order to withhold or withdraw life-prolonging intervention is transferred from one health care facility to another, the existence of such order shall be communicated to the receiving facility prior to the transfer, and the written order shall accompany the person to the receiving facility and shall remain effective until a physician at the receiving facility issues admission orders.

§16-30B-12. Insurance.

No policy of life insurance, or annuity or other type of contract that is conditioned on the life or death of the person, shall be legally impaired or invalidated in any
manner by the withholding or withdrawal of life-
prolonging intervention from a person in accordance
with the provisions of this article, notwithstanding any
terms of the policy to the contrary.

§16-30B-13. Not suicide or murder.

The withholding or withdrawal of life-prolonging
intervention from a person in accordance with the
decision of a surrogate decision-maker made pursuant
to the provisions of this article does not, for any purpose,
constitute assisted suicide or murder. The withholding
or withdrawal of life-prolonging intervention from a
person in accordance with the decisions of a surrogate
decision-maker made pursuant to the provisions of this
article, however, shall not relieve any individual of
responsibility for any criminal acts that may have
caused the person's condition. Nothing in this article
shall be construed to legalize, condone, authorize, or
approve mercy killing or assisted suicide.

§16-30B-14. Preservation of existing rights.

The provisions of this article are cumulative with
existing law regarding an individual's right to consent
to or refuse medical treatment. The provisions of this
article shall not impair any existing rights or respon-
sibilities that a health care provider, a person, including
a minor or an incapacitated person, or a person's family
may have in regard to the withholding or withdrawal
of life-prolonging intervention, including any rights to
seek or forgo judicial review of decisions regarding life-
prolonging intervention under the common law or
statutes of this state.

§16-30B-15. Relation to existing law; no abrogation of
common law doctrine of medical
necessity.

(a) Individuals designated as patient representatives
pursuant to section five-a of article five-c heretofore set
forth in this chapter may agree to become surrogate
decision-makers subject to the provisions of this article.

(b) Nothing in this article shall be construed to
abrogate the common law doctrine of medical necessity.
§16-30B-16. Severability.

1 The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.

CHAPTER 63

(Com. Sub. for H. B. 2616—By Delegates Gallagher, Huntwork, P. White and Douglas)

[Passed April 8, 1993; in effect July 1, 1993. 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-c, relating to do not resuscitate act; legislative findings and purpose; definitions; applicability; presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation; issuance of a do not resuscitate order; order to be written by a physician; compliance with a do not resuscitate order; revocation; protection of persons carrying out in good faith do not resuscitate order; notification by physician refusing to comply with do not resuscitate order; insurance; interinstitutional transfers; preservation of existing rights; do not resuscitate order form; do not resuscitate identification; public education; not suicide or murder; full faith and credit; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30C. DO NOT RESUSCITATE ACT.
§16-30C-1. Short title.
§16-30C-2. Legislative findings and purposes.
§16-30C-3. Definitions.
§16-30C-4. Applicability.
§16-30C-5. Presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation.
§16-30C-6. Issuance of a do not resuscitate order; order to be written by a physician.
§16-30C-7. Compliance with a do not resuscitate order.
§16-30C-8. Revocation of do not resuscitate order.
§16-30C-9. Protection of persons carrying out in good faith do not resuscitate order; notification of representative or surrogate decision-maker by physician refusing to comply with do not resuscitate order.
§16-30C-10. Insurance.
§16-30C-11. Interinstitutional transfers.
§16-30C-13. Do not resuscitate order form; do not resuscitate identification; public education.
§16-30C-14. Not suicide or murder.
§16-30C-15. Full faith and credit.

§16-30C-1. Short title.

The article may be cited as the "Do Not Resuscitate Act."

§16-30C-2. Legislative findings and purposes.

(a) Findings. — The Legislature hereby finds that:

(1) Although cardiopulmonary resuscitation has saved the lives of persons experiencing sudden, unexpected death, present medical data indicates that cardiopulmonary resuscitation rarely leads to prolonged survival in persons with chronic illnesses in whom death is expected;

(2) In many circumstances, the performance of cardiopulmonary resuscitation on persons may cause infliction of unwanted and unnecessary pain and suffering;

(3) All persons have a right to make health care decisions including the right to refuse cardiopulmonary resuscitation;

(4) Persons with incapacity have the right to have
health care decisions made for them by surrogate
decision-makers;

(5) Existing emergency medical services protocols
require their personnel to proceed with cardiopulmo-
nary resuscitation when they find a person in a cardiac
or respiratory arrest even if such person has completed
a living will or medical power of attorney, indicating
that he/she does not wish to receive cardiopulmonary
resuscitation; and

(6) The administration of cardiopulmonary resuscita-
tion by emergency medical services personnel to persons
who have indicated by a living will or medical power
of attorney or other means that they do not wish to
receive such resuscitation offends the dignity of the
person and conflicts with standards of accepted medical
practice.

(b) Purpose. — It is the purpose of this article to
ensure that the right of a person to self-determination
relating to cardiopulmonary resuscitation is protected.
It is the intent of the Legislature by enacting this article
to give direction to emergency medical services person-
nel and other health care providers in regard to the
performance of cardiopulmonary resuscitation.

§16-30C-3. Definitions.

As used in this article, unless the context clearly
requires otherwise, the following definitions apply:

(a) “Attending physician” means the physician
selected by or assigned to the person who has primary
responsibility for treatment or care of the person and
who is a licensed physician. If more than one physician
shares that responsibility, any of those physicians may
act as the attending physician under the provisions of
this article.

(b) “Cardiopulmonary resuscitation” means those
measures used to restore or support cardiac or respira-
tory function in the event of a cardiac or respiratory
arrest.

(c) “Do not resuscitate identification” means a
standardized identification necklace, bracelet or card as set forth in this article that signifies that a do not resuscitate order has been issued for the possessor.

(d) "Do not resuscitate order" means an order issued by a licensed physician that cardiopulmonary resuscitation should not be administered to a particular person.

(e) "Emergency medical services personnel" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics, or other emergency services personnel, providers or entities, acting within the usual course of their professions.

(f) "Health care decision" means a decision to give, withhold, or withdraw informed consent to any type of health care including, but not limited to, medical and surgical treatments including life-prolonging interventions, nursing care, hospitalization, treatment in a nursing home or other extended care facility, home health care, and the gift or donation of a body organ or tissue.

(g) "Health care facility" means a facility established to administer and provide health care services and which is commonly known by a wide variety of titles, including, but not limited to, hospitals, medical centers, ambulatory health care facilities, physicians' offices and clinics, extended care facilities operated in connection with hospitals, nursing homes, and extended care facilities operated in connection with rehabilitation centers.

(h) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(i) "Home" means any place of residence other than a health care facility and includes residential board and care homes and personal care homes.

(j) "Incapacity" or words of like import, means the inability because of physical or mental impairment, to appreciate the nature and implications of a health care decision, to make an informed choice regarding the
alternatives presented and to communicate that choice
in an unambiguous manner.

(k) "Representative" means a person designated by a
principal to make health care decisions in accordance
with article thirty-a of this chapter.

(l) "Surrogate decision-maker" means a person or
persons over eighteen years of age with mental capacity
who is reasonably available, is willing to make health
care decisions on behalf of an incapacitated person, and
is identified by the attending physician in accordance
with applicable provisions of this code as the person or
persons who is to make decisions pursuant to this article:
Provided, That a representative named in the incapac-
itated person's medical power of attorney, if such
document has been completed, shall have priority over
a surrogate decision-maker.

(m) "Trauma" means blunt or penetrating bodily
injuries from impact which occur in situations includ-
ing, but not limited to, motor vehicle collisions, mass
casualty incidents and industrial accidents.

§16-30C-4. Applicability.

The provisions of this article apply to all persons
regardless of whether or not they have completed a
living will or medical power of attorney. For the
purposes of direction to emergency medical services
personnel, a do not resuscitate order does not apply to
treatment rendered at the site where trauma has
occurred to persons who experience a cardiac or
respiratory arrest as the result of severe trauma.

§16-30C-5. Presumed consent to cardiopulmonary resus-
citation; health care facilities not required
to expand to provide cardiopulmonary
resuscitation.

(a) Every person shall be presumed to consent to the
administration of cardiopulmonary resuscitation in the
event of cardiac or respiratory arrest, unless one or
more of the following conditions, of which the health
care provider has actual knowledge, apply:
(1) A do not resuscitate order in accordance with the provisions of this article has been issued for that person;

(2) A completed living will for that person is in effect, pursuant to the provisions of article thirty of this chapter, and the person is in a terminal condition or a persistent vegetative state; or

(3) A completed medical power of attorney for that person is in effect, pursuant to the provisions of article thirty-a of this chapter, in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation.

(b) Nothing in this article shall require a nursing home, personal care home, or extended care facility operated in connection with hospitals to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing equipment, facilities or personnel to provide cardiopulmonary resuscitation: Provided, That if a health care facility does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person, representative or surrogate decision-maker prior to admission.

§16-30C-6. Issuance of a do not resuscitate order; order to be written by a physician.

(a) It shall be lawful for the attending physician to issue a do not resuscitate order for persons who are present in or residing at home or in a health care facility, provided that the person, representative, or surrogate has consented to the order. A do not resuscitate order shall be issued in writing in the form as described in this section for a person not present or residing in a health care facility. For persons present in health care facilities, a do not resuscitate order shall be issued in accordance with the policies and procedures of the health care facility or in accordance with the provisions of this article.

(b) Persons may request their physicians to issue do not resuscitate orders for them.
(c) The representative or surrogate decision-maker may consent to a do not resuscitate order for a person with incapacity. A do not resuscitate order written by a physician for a person with incapacity with the consent of the representative or surrogate decision-maker is valid and shall be respected by health care providers.

(d) A parent may consent to a do not resuscitate order for his or her minor child, provided that a second physician who has examined the child concurs with the opinion of the attending physician that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards. If the minor is between the ages of sixteen and eighteen, and in the opinion of the attending physician, the minor is of sufficient maturity to understand the nature and effect of a do not resuscitate order, then no such order shall be valid without the consent of such minor. In the event of a conflict between the wishes of the parents or guardians and the wishes of the mature minor, the wishes of the mature minor shall prevail. For purposes of this section, no minor less than sixteen years of age shall be considered mature. Nothing in this article shall be interpreted to conflict with the provisions of the Child Abuse Prevention and Treatment Act and implementing regulations at 45 CFR 1340. In the event conflict is unavoidable, federal law and regulation shall govern.

(e) If a surrogate decision-maker is not reasonably available or capable of making a decision regarding a do not resuscitate order, an attending physician may issue a do not resuscitate order for a person with incapacity in a health care facility: Provided, That a second physician who has personally examined the person concurs in the opinion of the attending physician that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(f) For persons not present or residing in a health care facility, the do not resuscitate order shall be in the following form on a card suitable for carrying on the person.
Do Not Resuscitate Order

"As treating physician of ____________ and a licensed physician, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest. This order has been discussed with ________________ or his/her representative _____________ or his/her surrogate decision-maker _____________ who has given consent as evidenced by his/her signature below.

Physician Name __________________________

Physician Signature _______________________

Address _________________________________

Person Signature _________________________

Address _________________________________

Surrogate Decision-maker Signature _________

Address _________________________________

§16-30C-7. Compliance with a do not resuscitate order.

(a) Health care providers shall comply with the do not resuscitate order when presented with:

(1) A do not resuscitate order completed by a physician on a form as specified in section six of this article;

(2) Do not resuscitate identification as set forth in section thirteen of this article; or

(3) A do not resuscitate order for a person present or residing in a health care facility issued in accordance with the health care facility's policies and procedures.

(b) Pursuant to this article, health care providers shall respect do not resuscitate orders for persons in health care facilities, ambulances, homes and communities within this state.

§16-30C-8. Revocation of do not resuscitate order.

(a) At any time a person in a health care facility may revoke his or her previous request for or consent to a
do not resuscitate order by making either a written, oral
or other act of communication to a physician or other
professional staff of the health care facility.

(b) At any time a person residing at home may revoke
his/her do not resuscitate order by destroying such order
and removing do not resuscitate identification on his or
her person. The person is responsible for notifying his
or her physician of the revocation.

(c) At any time a representative or surrogate decision-
maker may revoke his or her consent to a do not
resuscitate order for a person with incapacity in a health
care facility by notifying a physician or other profes-
sional staff of the health care facility of the revocation
of consent in writing, or by orally notifying the
attending physician in the presence of a witness
eighteen years of age or older.

(d) At any time a representative or surrogate decision-
maker may revoke his or her consent for a person with
incapacity residing at home by destroying such order
and removing do not resuscitate identification from the
person. The representative or surrogate decision-maker
is responsible for notifying the person's physician of the
revocation.

(e) The attending physician who is informed of or
provided with a revocation of consent pursuant to this
section shall immediately cancel the do not resuscitate
order if the person is in a health care facility and notify
the professional staff of the health care facility respon-
sible for the person's care of the revocation and
cancellation. Any professional staff of the health care
facility who is informed of or provided with a revocation
of consent pursuant to this section shall immediately
notify the attending physician of such revocation.

(f) Only a licensed physician may cancel the issuance
of a do not resuscitate order.

§16-30C-9. Protection of persons carrying out in good
faith do not resuscitate order; notification
of representative or surrogate decision-
maker by physician refusing to comply
with do not resuscitate order.
(a) No health care provider, health care facility, or individual employed by, acting as the agent of, or under contract with any of the foregoing shall be subject to criminal prosecution or civil liability for carrying out in good faith a do not resuscitate order authorized by this article on behalf of a person as instructed by the person, representative or surrogate decision-maker or for those actions taken in compliance with the standards and procedures set forth in this article.

(b) No health care provider, health care facility, individual employed by, acting as agent of, or under contract with any of the foregoing or other individual who witnesses a cardiac or respiratory arrest shall be subject to criminal prosecution or civil liability for providing cardiopulmonary resuscitation to a person for whom a do not resuscitate order has been issued, provided that such physician or individual:

1. Reasonably and in good faith was unaware of the issuance of a do not resuscitate order; or
2. Reasonably and in good faith believed that consent to the do not resuscitate order had been revoked or canceled.

(c) Any physician who refused to issue a do not resuscitate order at a person's request or to comply with a do not resuscitate order entered pursuant to this article shall take reasonable steps to advise promptly the person, representative, or surrogate decision-maker of the person that such physician is unwilling to effectuate the order. The attending physician shall thereafter at the election of the person, representative or surrogate decision-maker permit the person, representative or surrogate decision-maker to obtain another physician.

§16-30C-10. Insurance.

(a) No policy of life insurance shall be legally impaired, modified, or invalidated in any manner by the issuance of a do not resuscitate order notwithstanding any term of the policy to the contrary.

(b) A person may not prohibit or require the issuance of a do not resuscitate order for an individual as a
condition of such individual's being insured or receiving health care services.

§16-30C-11. Interinstitutional transfers.

If a person with a do not resuscitate order is transferred from one health care facility to another health care facility, the existence of a do not resuscitate order shall be communicated to the receiving facility prior to the transfer, and the written do not resuscitate order shall accompany the person to the health care facility receiving the person and shall remain effective until a physician at the receiving facility issues admission orders.


(a) Nothing in this article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding of cardiopulmonary resuscitation in any lawful manner. In such respect, the provisions of this article are cumulative.

(b) Nothing in this article shall be construed to preclude a court of competent jurisdiction from approving the issuance of a do not resuscitate order under circumstances other than those under which such an order may be issued pursuant to the provisions of this article.

§16-30C-13. Do not resuscitate order form; do not resuscitate identification; public education.

(a) The secretary of the department of health and human resources, no later than one year after the passage of this article, shall implement the statewide distribution of do not resuscitate forms as described in section six of this article.

(b) Do not resuscitate identification as set forth in this article shall consist of either a medical condition bracelet or necklace with the inscription of the patient's name, date of birth in numerical form, and "WV do not resuscitate" on it. No other identification or wording shall be deemed to comply with the provisions of this article. Such identification shall be issued only upon
presentation of a properly executed do not resuscitate
order form as set forth in section six of this article or
a do not resuscitate order properly executed in accor-
dance with a health care facility's written policy and
procedure.

(c) The secretary of the department of health and
human resources, no later than one year after the
passage of this article, shall be responsible for establish-
ing a system for the distribution of the do not resuscitate
identification bracelets and necklaces.

(d) The secretary of the department of health and
human resources, no later than one year after the
passage of this article, shall develop and implement a
statewide educational effort to inform the public of their
right to accept or refuse cardiopulmonary resuscitation
and to request their physician to write a do not
resuscitate order for them.

§16-30C-14. Not suicide or murder.

The withholding of cardiopulmonary resuscitation
from a person in accordance with the provisions of this
article does not, for any purpose, constitute suicide or
murder. The withholding of cardiopulmonary resuscita-
tion from a person in accordance with the provisions of
this article, however, shall not relieve any individual of
responsibility for any criminal acts that may have
caused the person's condition. Nothing in this article
shall be construed to legalize, condone, authorize or
approve mercy killing or assisted suicide.

§16-30C-15. Full faith and credit.

It is the intention of the Legislature to recognize that
existence of do not resuscitate identification correctly
expresses the will of any person who bears it and that
foreign courts recognize this expression and give full
faith and credit to do not resuscitate identification.


The provisions of this article are severable and if any
provision, section or part thereof shall be held invalid,
circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.

CHAPTER 64
(S. B. 502—By Senator Brackenrich)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen and sixteen, article thirty-two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections nine-a, nine-b and nine-c, all relating to definitions; powers and duties of the director of health; asbestos management planner’s license required; asbestos abatement project designer’s license required; asbestos contractor’s license required; asbestos abatement supervisor’s license required; asbestos inspector’s license required; asbestos worker’s license required; asbestos analytical laboratory license required; asbestos clearance air monitor license required; resilient floor covering worker license required; special revenue account; notification; waivers; exemptions; approval of asbestos abatement courses; reciprocity; reprimands; suspensions or revocation of license; violations; orders; hearings; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. ASBESTOS ABATEMENT.
§16-32-4. Asbestos management planner's license required.
§16-32-5. Asbestos abatement project designer's license required.
§16-32-6. Asbestos contractor's license required.
§16-32-7. Asbestos abatement supervisor's license required.
§16-32-8. Asbestos inspector's license required.
§16-32-9a. Asbestos analytical laboratory license required.
§16-32-9b. Asbestos clearance air monitor license required.
§16-32-9c. Resilient floor covering worker license required.
§16-32-10. Special revenue account.
§16-32-11. Notification; waivers; exemptions.
§16-32-12. Approval of asbestos abatement courses.
§16-32-15. Reprimands; suspension or revocation of license; violations; orders; hearings.
§16-32-16. Penalties.


(a) “Asbestos” means the asbestiform varieties of chrysolite (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.

(b) “Asbestos analytical laboratory” means a facility or place which analyzes asbestos bulk samples or asbestos air samples.

(c) “Asbestos abatement project designer” means a person who specifies engineering controls, methods and work practices to be used during asbestos abatement projects.

(d) “Asbestos abatement supervisor” means a person responsible for direction of asbestos abatement projects.

(e) “Asbestos clearance air monitor” means a person who performs air monitoring to confirm clearance levels to establish that an area is safe for reoccupancy after an asbestos abatement project.

(f) “Asbestos-containing material” means any material or product which contains more than one percent asbestos by weight.

(g) “Asbestos contractor” means a person who enters into contract for an asbestos abatement project.
(h) "Asbestos inspector" means a person employed to inspect for the presence of asbestos containing materials, evaluate the condition of such materials and collect samples for asbestos content confirmation.

(i) "Asbestos management planner" means a person employed to interpret survey results, make hazard assessment, evaluation and selection of control options or develop an operation and maintenance plan.

(j) "Asbestos abatement project" means an activity involving the repair, removal, enclosure or encapsulation of asbestos-containing material.

(k) "Asbestos worker" means a person who works on an asbestos abatement project.

(l) "Contained work area" means designated rooms, spaces or other areas where asbestos abatement activities are being performed, including decontamination structures. The contained work area shall be separated from the uncontaminated environment by polyethylene sheeting or other materials used in conjunction with the existing floors, ceilings and walls of the structure.

(m) "Director" means the director of the division of health or the director's duly authorized representative.

(n) "Division" means the division of health of the department of health and human resources.

(o) "Encapsulate" means the application of any material onto any asbestos containing material to bridge or penetrate the material to prevent fiber release.

(p) "Enclosure" means the permanent confinement of friable asbestos containing materials with an airtight barrier in an area not used or designed as an air plenum.

(q) "Friable" means material which is capable of being crumbled, pulverized or reduced to powder by hand pressure of which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air.

(r) "Good faith report" means a report of conduct
defined in this article as wrongdoing or waste which is
made without malice or consideration of personal
benefit and which the person making the report has
reasonable cause to believe is true.

(s) “License” means a document authorizing a person
to perform certain specific asbestos related work
activities.

(t) “Person” means a corporation, partnership, sole
proprietorship, firm, enterprise, franchise, association
or any individual or entity.

(u) “Resilient floor covering” means floor tile, sheet
vinyl and associated adhesives which contain more than
one percent asbestos by weight.

(v) “Resilient floor covering worker” means a person
who is employed to remove resilient floor covering in
single-family dwellings.

(w) “Waste” means an employer’s conduct or omissions
which result in substantial abuse, misuse, destruction or
loss of funds or resources belonging to or derived from
federal, state or political subdivision sources.

(x) “Wrongdoing” means a violation which is not of a
merely technical or minimal nature of a federal or state
statute or regulation, of a political subdivision ordinance
or regulation or of a code of conduct or ethics designed
to protect the interest of the public or the employer.


1 The director of health shall administer and enforce
this article. The director has the following powers and
duties:

(a) To issue licenses and assess fees pursuant to this
article and the rules promulgated thereunder.

(b) To promulgate rules necessary to carry out the
requirements of this article in accordance with the
provisions of chapter twenty-nine-a of this code, to
include, but not be limited to, the required training, the
prescription of fees and procedures for the issuance and
renewal of licenses.
To approve the training courses administered to licensure applicants.

§16-32-4. Asbestos management planner’s license required.

(a) It is unlawful for an individual who does not possess a valid asbestos management planner’s license to design a building’s or facility’s asbestos management plan.

(b) To qualify for an asbestos management planner’s license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos management planners;

(2) Possess a valid asbestos inspector’s license;

(3) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(4) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos management planner’s license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos management planners to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-5. Asbestos abatement project designer’s license required.
(a) It is unlawful for any person who does not possess a valid asbestos abatement project designer's license to specify engineering controls, methods and work practices under an asbestos abatement project contract to another person.

(b) To qualify for an asbestos abatement project designer's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for abatement project designers;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration, the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos abatement project designer's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos abatement project designers to the division on the required form and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-6. Asbestos contractor's license required.

(a) It is unlawful for any person who does not possess a valid asbestos contractor's license to contract with another person for an asbestos abatement project.

(b) To qualify for an asbestos contractor's license, an
applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos supervisors;

(2) Demonstrate to the satisfaction of the director that the applicant and the applicant's employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos contractor's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency asbestos training course for supervisors to the division on the required form and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

(d) Licensed asbestos contractors shall carry out the following duties:

(1) Ensure that each of the contractor's employees or agents who will come into contact with asbestos or who will be responsible for an asbestos abatement project is licensed as required by this article;

(2) Ensure that each asbestos project is supervised by a licensed asbestos abatement supervisor;

(3) Keep a record of each asbestos abatement project and make the record available to the state departments of health and human resources and commerce, labor and
environmental resources upon request. Records required by this section shall be kept for at least thirty years. The records shall include:

(A) The name, address and license number of the individual who supervised the asbestos abatement project and each employee or agent who worked on the project;

(B) The location and design of the project and the amount of asbestos-containing material that was removed;

(C) The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and state standards;

(D) The name and address of each asbestos disposal site where waste containing asbestos was deposited and the disposal site receipts; and

(E) Ensure that each contained work area of an asbestos abatement project meets minimum clearance standards established by the director before allowing reoccupancy.

(e) The following situations and relationships involving asbestos abatement contractors are prohibited:

(1) A financial or proprietary interest of the contractor in a laboratory utilized by the contractor to perform asbestos sample analysis related to asbestos abatement projects performed or contracted for by the contractor;

(2) An employer-employee relationship between the contractor and an asbestos clearance air monitor for an asbestos abatement project performed or contracted for by the contractor; and

(3) A financial or proprietary interest of the contractor in the firm which performs asbestos clearance air monitoring for an asbestos abatement project performed or contracted for by the contractor.

(f) Persons who contract to remove resilient floor covering materials in single-family dwellings are not required to be licensed as asbestos contractors: Pro-
vided, That the individuals engaged in removal shall meet the requirements of this article and any rules promulgated hereunder relating to resilient floor covering removal.

§16-32-7. Asbestos abatement supervisor's license required.

(a) It is unlawful for an individual who does not possess a valid asbestos abatement supervisor's license to direct an asbestos abatement project.

(b) To qualify for an asbestos abatement supervisor's license, an applicant shall:

1. Satisfactorily complete a United States environmental protection agency approved training course for asbestos abatement supervisors;

2. Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

3. Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos abatement supervisor's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos abatement supervisors to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-8. Asbestos inspector's license required.

(a) It is unlawful for an individual who does not
possess a valid asbestos inspector's license to work as an asbestos inspector on an asbestos abatement project.

(b) To qualify for an asbestos inspector's license, an applicant shall:

1. Satisfactorily complete a United States environmental protection agency approved training course for asbestos inspectors;

2. Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

3. Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos inspector's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos inspectors to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.


(a) It is unlawful for an individual who does not possess a valid asbestos worker's license to work as an asbestos worker on an asbestos abatement project.

(b) To qualify for an asbestos worker's license an individual shall:

1. Satisfactorily complete a United States environmental protection agency approved training course for asbestos workers;
(2) Demonstrate to the satisfaction of the director that
the applicant is familiar with and is capable of
complying fully with all applicable requirements,
procedures and standards of the United States environ-
mental protection agency, the United States occupa-
tional safety and health administration and the state
departments of health and human resources and
commerce, labor and environmental resources covering
any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the
director.

(c) Applicants for an asbestos worker's license shall
submit an application and a certificate that shows
satisfactory completion of the United States environ-
mental protection agency training course for asbestos
workers to the division and shall pay the applicable fee
to the division. The director may deny a license if there
has been a failure to comply with the application
procedures or if the applicant fails to satisfy the
application criteria. Written notice of such denial and
an opportunity for reapplication shall be afforded to all
applicants.

§16-32-9a. Asbestos analytical laboratory license
required.

(a) After the first day of January, one thousand nine
hundred ninety-four, it shall be unlawful for any
laboratory that does not possess a valid asbestos
analytical laboratory license to analyze asbestos bulk
samples or asbestos air monitoring samples.

(b) To qualify for an asbestos analytical laboratory
license, an applicant shall:

(1) Demonstrate to the satisfaction of the director that
the applicant is familiar with and capable of complying
fully with all applicable requirements, procedures and
standards of the United States environmental protection
agency, the United States occupational safety and health
administration and the state departments of health and
human resources and commerce, labor and environmen-
tal resources covering analysis of asbestos bulk samples
or air monitoring samples; and

(2) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos analytical laboratory license shall submit an application to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-9b. Asbestos clearance air monitor license required.

(a) After the first day of January, one thousand nine hundred ninety-four, it shall be unlawful for any individual who does not possess a valid asbestos clearance air monitor license to sample asbestos abatement project areas for clearance.

(b) To qualify for an asbestos clearance air monitor license, an applicant shall:

(1) Satisfactorily complete a course approved by the director for asbestos clearance air monitors;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering final air clearances for asbestos abatement projects; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants shall submit an application and a certificate that shows satisfactory completion of a course approved by the director for asbestos air clearance monitors to the division and shall pay the applicable fee to the division. The director may deny a license if there
§16-32-9c. Resilient floor covering worker license required.

(a) After the first day of January, one thousand nine hundred ninety-four, it shall be unlawful for an individual who does not possess a valid resilient floor covering worker's license to be employed as a resilient floor covering worker.

(b) To qualify for a resilient floor covering worker's license an individual shall:

(1) Satisfactorily complete a training course approved by the director for resilient floor covering workers;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and is capable of complying fully with all applicable requirements, procedures and standards of the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering resilient floor covering removal; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for a resilient floor covering worker's license shall submit an application and a certificate that shows satisfactory completion of a training course approved by the director for resilient floor covering workers to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-10. Special revenue account.
Ch. 64] HEALTH 597

1 Fees and fines collected under this article and any
2 rules promulgated hereunder shall be deposited in a
3 special revenue account in the state treasury to be used
4 by the director for purposes related to the implementa-
5 tion of this article.

§16-32-11. Notification; waivers; exemptions.

(a) Each owner or other person responsible for the
operation of a building or facility where an asbestos
abatement project is to occur shall notify the division at
least ten working days prior to commencement of each
asbestos abatement project and shall comply with other
applicable state and federal legal and regulatory
notification requirements for asbestos abatement
projects.

(b) In an emergency that results from a sudden
unexpected event that is not a planned renovation or
demolition, the director may waive the requirement of
ten working days prior notification, but in all cases
notification shall be made to the division after the
emergency within the specified time required by the
director.

(c) Asbestos abatement projects involving less than
one hundred sixty square feet or two hundred sixty
linear feet of asbestos containing material are exempt
from the prior notification requirement, unless the
project takes place in a school for any of grades
kindergarten through twelve. A summary of such
projects shall be submitted to the division within a
specified time as required by the director.

(d) Persons who remove resilient floor covering
materials in single-family dwellings are exempt from
notification requirements.

§16-32-12. Approval of asbestos abatement courses.

A person or organization may apply for department
and United States environmental protection agency
approval of a course on the health and safety aspects of
asbestos abatement, removal, enclosure and encapsula-
tion by submitting a full description of the curriculum
and a written application on forms prescribed by the

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 as stringent licensing requirements as West Virginia.

§16-32-15. Reprimands; suspension or revocation of license; violations; orders; hearings.

(a) The director may reprimand, suspend or revoke the license of an asbestos analytical laboratory, clearance air monitor, contractor, inspector, management planner or worker, or of an asbestos abatement project designer or supervisor, or of a resilient floor covering worker, if the licensee:

1. Fraudulently or deceptively obtains or attempts to obtain a license or knowingly aids another in such fraud or deception;

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 or regulations adopted by the director;

3. Fails to meet applicable federal or state standards for asbestos abatement projects; or

4. Employs or permits an individual not licensed as required by this article to work on an asbestos abatement project.

(b) The director may investigate all suspected violations of this article or any rules promulgated hereunder. Upon the finding of a violation in connection with any asbestos abatement project, the director shall issue a cease and desist order directing that all work on the project be halted forthwith. Posting of the cease and desist order on the project site shall constitute notice of its contents to the property owner and all persons working on the asbestos abatement project. Where practicable, however, the director shall deliver a copy of such order by certified mail, return receipt requested, to the property owner and to the contractor.
(c) Hearings regarding violations of this article and any rules promulgated hereunder shall be conducted in accordance with the administrative procedures act of chapter twenty-nine-a of this code.

§16-32-16. Penalties.

1 The director may impose a civil penalty of not less than two hundred fifty dollars and not more than five thousand dollars for each separate violation of this article or any rules promulgated hereunder.

2 Notwithstanding any other provision of this code, any person who violates any provision of this article or any rule or regulation related hereto shall be guilty of a misdemeanor.

3 In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation shall be presumed to be willful and shall be assessed a civil penalty by the director of not less than ten thousand dollars nor more than twenty-five thousand dollars for an initial violation and not less than twenty-five thousand dollars nor more than fifty thousand dollars for each subsequent violation.

CHAPTER 65
(H. B. 2296—By Delegate Gallagher)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of directors of the not-for-profit corporation established to carry out the patient care activities of the West Virginia University medical center; requiring that, of the seven members appointed to the board of directors of the corporation to represent the public interest, at least one member come from each congressional district and all seven members be appointed to assure geographic diversity.
Be it enacted by the Legislature of West Virginia:

That section three, article eleven-c, 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 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 at least one member shall be from each congressional district and all shall be appointed to assure geographic diversity: 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 66

(Com. Sub. for H. B. 2785—By Delegate Manuel)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, twelve-b and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the daily license tax; the pari-mutuel pools tax; method of paying the taxes; alternative taxes; providing for alternative participation in the thoroughbred development fund; supplemental purses for West Virginia whelped dogs; televised racing days; providing for exemptions to the number of live racing dates required; appointment of binding arbitration board; providing that licensee pay one tenth of one percent of certain commissions to the general fund of certain counties; merging of pari-mutuel wagering pools; qualifications for merged simulcast pools; providing for payment of certain commissions into the pari-mutuel clerks’ pension fund; distribution of thoroughbred development fund; restricted races; and nonrestricted purse supplements.

Be it enacted by the Legislature of West Virginia:

That sections ten, twelve-b 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.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.
§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.
§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.
§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at two and three-
37 tenths percent; for fiscal year one thousand nine
38 hundred eighty-seven, be calculated at two percent of
39 the pool; for fiscal year one thousand nine hundred
40 eighty-eight, be calculated at one and one-half percent;
41 be calculated at one percent of the pool; for fiscal year
42 one thousand nine hundred ninety, seven tenths of one
43 percent, and for fiscal year one thousand nine hundred
44 ninety-one and each fiscal year thereafter, be calculated
45 at four tenths of one percent of the pool; and, on the pari-
46 mutuel pools conducted or made each day during all
47 other months, shall from the effective date of this section
48 and for fiscal year one thousand nine hundred eighty-
49 five, be calculated at three and six-tenths percent; for
50 fiscal year one thousand nine hundred eighty-six, be
51 calculated at three percent of the pool; for fiscal year
52 one thousand nine hundred eighty-seven, be
53 calculated at two and one-half percent; for fiscal year one thousand
54 ninety, be calculated at one and seven-tenths percent of
55 the pool; and for fiscal year one thousand ninety-one and each fiscal year thereafter, be calculated
56 at one and four-tenths percent of the pool: Provided,
57 That out of the amount realized from the three tenths
58 of one percent decrease in the tax effective for fiscal
59 year one thousand nine hundred ninety-one and thereaf-
60 after, which decrease correspondingly increases the
61 amount of commission retained by the licensee, the
62 licensee shall annually expend or dedicate (i) one half
63 of the realized amount for capital improvements in its
64 barn area at the track, subject to the racing commis-
65 sion’s prior approval of the plans for the improvements,
66 and (ii) the remaining one half of the realized amount
67 for capital improvements as the licensee may determine
68 appropriate at the track. The term “capital improve-
69 ment” shall be as defined by the Internal Revenue Code:
70 Provided, however, That any racing association operat-
71 ing a horse racetrack in this state having an average
72 daily pari-mutuel pool on horse racing of two hundred
73
eighty thousand dollars or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding three hundred thousand dollars the daily pari-mutuel pool tax shall be one thousand dollars plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of three hundred thousand dollars: Provided further, That upon the effective date of the reduction of the daily pari-mutuel pool tax to one thousand dollars from the former two thousand dollars, the association or licensee shall daily deposit five hundred dollars into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: And provided further, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to ten races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: And provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article: And provided further, That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia thoroughbred development fund for more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof;
four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of the pari-mutuel pools, five percent of the next fifty thousand dollars of the pari-mutuel pools, six percent of the next one hundred thousand dollars of the pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of the pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundredths of one percent in fiscal year one thousand nine hundred ninety-one; two tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts deducted shall be paid to the racing commission to 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-West Virginia Greyhound Breeding Development Fund.” The purpose of the fund is to promote better breeding and racing of greyhounds in the state through awards and purses for accredited West Virginia whelped greyhounds. The moneys shall be expended by the racing commission for purses for stake races, supplemental purse awards,
administration, promotion and educational programs involving West Virginia whelped dogs, under rules and regulations promulgated by the racing commission. The racing commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules and regulations promulgated by the racing commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the owner of an accredited greyhound or, if the greyhound is leased, the owner may choose to designate a percentage of the purse earned directly to the lessor as agreed to via a written purse distribution form on file with the racing commission.

The owner of accredited West Virginia whelped greyhounds that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia greyhound breeding development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of purses earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements.

The owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the racing commission for a percentage of his or her dog's earnings to be paid directly to the lessor of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's
203 achievements.

204 In no event shall purses earned at a meet held at a
205 track which did not make contributions to the West
206 Virginia greyhound breeder’s development fund out of
207 the daily pool on the day the meet was held qualify or
208 count toward eligibility for supplemental purse awards.

209 Any balance in the purse supplement funds after all
210 distributions have been made for the year revert to the
211 general account of the fund for distribution in the
212 following year.

213 In an effort to further promote the breeding of quality
214 West Virginia whelped greyhounds, a bonus purse
215 supplement shall be established in the amount of fifty
216 thousand dollars per annum, to be paid in equal
217 quarterly installments of twelve thousand five hundred
218 dollars per quarter using the same method to calculate
219 and distribute these funds as the regular supplemental
220 purse awards. This bonus purse supplement is for three
221 years only, commencing on the first day of July, one
222 thousand nine hundred ninety-three, and ending the
223 thirtieth day of June, one thousand nine hundred ninety-
224 six. This money would come from the current existing
225 balance in the greyhound development fund.

226 Each pari-mutuel greyhound track shall provide
227 stakes races for accredited West Virginia whelped
228 greyhounds: Provided, That each pari-mutuel track
229 shall have one juvenile and one open stake race annually.
230 The racing commission shall oversee and approve racing
231 schedules and purse amounts.

232 Ten percent of the deposits into the greyhound
233 breeding development fund beginning the first day of
234 July, one thousand nine hundred ninety-three and
235 continuing each year thereafter, shall be withheld by the
236 racing commission and placed in a special revenue
237 account hereby created in the state treasury called the
238 “administration, promotion and educational account”.
239 The racing commission is authorized to expend the
240 moneys deposited in the administration, promotion and
241 educational account at such times and in such amounts
242 as the commission determines to be necessary for
purposes of administering and promoting the greyhound
development program: Provided, That beginning with
fiscal year one thousand nine hundred ninety-five and
in each fiscal year thereafter 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,
promotion and education. The commission shall make an
annual report to the Legislature on the status of the
administration, promotion and education account,
including the previous year's expenditures and projected
expenditures for the next year.

The racing commission, for the fiscal year one
thousand nine hundred ninety-four only, may expend up
to thirty-five thousand dollars from the West Virginia
greyhound breeding development fund to accomplish
the purposes of this section without strictly following the
requirements in the previous paragraph.

(e) All daily license and pari-mutuel pools tax
payments required under the provisions of this section
shall be made to the racing commission or its agent after
the last race of each day of each horse or dog race
meeting, and the pari-mutuel pools tax payments shall
be made from all contributions to all pari-mutuel pools
to each and every race of the day.

(f) Every association or licensee subject to the
provisions of this article, including the changed provi-
sions of sections nine and ten of this article, shall
annually submit to the racing commission and the
Legislature financial statements, including a balance
sheet, income statement, statement of change in finan-
cial position and an audit of any electronic data system
used for pari-mutuel tickets and betting, prepared in
accordance with generally accepted auditing standards,
as certified by an experienced public accountant or a
certified public accountant.
§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: Provided, That at those thoroughbred racetracks participating in the West Virginia thoroughbred development fund authorized by section thirteen-b of this article, the licensee, in applying for racing dates, shall apply for not less than two hundred twenty live racing dates for each horse race meeting. If, thereafter, for reasons beyond the licensees control, the licensee concludes that this number of racing days cannot be attained, the licensee may file a request with the racing commission to reduce the authorized live racing days. Upon receipt of the request the racing commission shall within seventy-two hours of the receipt of the request notify the licensee and the representative of a majority of the owners and trainers at the requesting track that such request has been received and that if no objection to the request is received within ten days of the notification the request will be approved. If an objection is received by the commission within the time limits, the
commission shall establish a binding arbitration board. The board shall consist of one member appointed by the licensee, one member appointed by the representative of a majority of the owners and trainers at the racetrack and a third member to be selected by the two appointed members. In the event the two members cannot agree on the third member, each member shall submit two names to the racing commission and from those names the racing commission shall appoint the third member of the board. The board shall hear from all parties concerned and thereupon shall make recommendations to the racing commission on the required number of live racing days. The recommendations of the board are final. 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 commingle its wagering pools with the wagering pools of the host racing association. If the pools are commingled, the wagering at the licensee’s racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be electronically linked with the equipment at the sending racetrack. Subject to the approval of the commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules governing the sending racetrack and must be distributed in a manner agreed to between the licensee and the sending racetrack.

(d) The commission may assign televised racing days at any time. When a televised racing day is assigned, the commission shall assign either a steward or an auditor to preside over the televised races at the licensee racetrack.

(e) (1) From the licensee commissions authorized by
subsection (c) of this section, the licensee shall pay one
tenth of one percent of each commission into the general
fund of the county, in which the racetrack is located and
at which the wagering occurred and there is imposed
and the licensee shall pay, for each televised racing day
on which the total pari-mutuel pool exceeds one hundred
thousand dollars, the greater of either: (i) The total of
the daily license tax and the pari-mutuel pools tax
required by section ten of this article; or (ii) a daily
license tax of one thousand two hundred fifty dollars.
For each televised racing day on which the total pari-
mutuel pool is one hundred thousand dollars or less, the
licensee shall pay a daily license tax of five hundred
dollars plus an additional license tax of one hundred
dollars for each ten thousand dollars, or part thereof,
that the pari-mutuel pool exceeds fifty thousand dollars,
but does not exceed one hundred thousand dollars.
Payments of the tax imposed by this section are subject
to the requirements of subsection (e), section ten of this
article.

(2) From the license commissions authorized by
subsection (c) of this section, after payments are made
in accordance with the provisions of subdivision (1) of
this subsection, the licensee shall pay, for each televised
racing day, one fourth of one percent of the total pari-
mutuel pools for and on behalf of the pari-mutuel clerks.
The payment shall be made for and on behalf of the
pari-mutuel clerks by making a deposit into a special
fund to be established by the racing commission to be
used for payment into the pari-mutuel clerks' pension
plan.

(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 (1), subsection (b),
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 IX. Disposition of Permit Fees, Registration Fees 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 the 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 subdivision 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 the 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 subdivision 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 day 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 program provided for in this subsection in any one year is reserved for regular
purses, marketing expenses and for capital improve-
ments 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 in this
subsection only in accordance 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 De-
cember, 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: Provided, That the provisions of this subsection shall not apply to a thoroughbred race-track at which the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two.
CHAPTER 67
(H. B. 2286—By Delegates Phillips, P. While, Carper, Michael and Huntwork)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections five and five-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nine, article two of said chapter; to amend and reenact sections one and five-b, article three; sections fifteen and fifteen-a, article four; section four, article twenty-four; section six, article twenty-five; section two, article twenty-seven, all of said chapter thirty-three; to further amend said article twenty-seven by adding thereto a new section, designated section fourteen; to amend and reenact section eleven, article thirty-one; sections four and seventeen, article thirty-two; sections one, two, three, four, five, six, seven, nine, ten, eleven and thirteen, article thirty-three; to further amend article thirty-three by adding thereto three new sections, designated sections ten-a, fourteen and fifteen; to amend and reenact section four, article thirty-four-a; to amend and reenact article thirty-six, all of chapter thirty-three; and to further amend said chapter thirty-three by adding thereto a new article, designated article thirty-eight, all relating to insurance; insurance commissioner; examination of insurers, agents, brokers and solicitors; access to books, records, etc.; licensing, fees and taxation of insurers; license required; capital and surplus requirements; general provisions; reinsurance; credit for reinsurance; hospital service corporations, medical service corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; health care corporations; supervision and regulation by insurance commissioner; exemption from insurance laws; annual audited financial report; designation of independent certified public accountant; evaluation of accounting procedures and system of internal control; exemption from compliance; Canadian and British
companies; insurance holding company systems; definitions; regulatory authority; captive insurance; reinsurance; risk retention act; risk retention groups not chartered in this state; notice and registration requirements of purchasing groups; standards and commissioner's authority for companies deemed to be in hazardous financial condition; commissioner's authority; business transacted with producer controlled property/casualty insurer act; short title; definitions; applicability; minimum standards; disclosure; penalties; effective date; reinsurance intermediary act; short title; definitions; licensure; required contract provisions reinsurance intermediary-brokers; books and records reinsurance intermediary-brokers; duties of insurers utilizing the services of a reinsurance intermediary-broker; required contract provisions reinsurance intermediary-managers; prohibited acts; duties of reinsurers utilizing the services of a reinsurance intermediary-manager; examination authority; penalties and liabilities; regulatory authority; effective date.

Be it enacted by the Legislature of West Virginia:

That sections five and five-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nine, article two of said chapter be amended and reenacted; that sections one and five-b, article three; sections fifteen and fifteen-a, article four; section four, article twenty-four; section six, article twenty-five; section two, article twenty-seven of said chapter thirty-three be amended and reenacted; that said article twenty-seven be further amended by adding thereto a new section, designated section fourteen; that section eleven, article thirty-one; sections four and seventeen, article thirty-two; sections one, two, three, four, five, six, seven, nine, ten, eleven and thirteen, article thirty-three, be amended and reenacted; that said article thirty-three be further amended by adding thereto three new sections, designated sections ten-a, fourteen and fifteen; that section four, article thirty-four-a be amended and reenacted; that said chapter thirty-three be further amended by adding thereto three new sections, designated sections ten-a, fourteen and fifteen; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-eight, all to read as follows:
ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

(a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this state.

(b) For purposes of this section, the following definitions shall apply:

(1) "Commissioner" means the commissioner of insurance of this state.

(2) "Company" or "insurance company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to, any domestic or foreign stock company,
mutual company, mutual protective association, farmers
24 mutual fire companies, fraternal benefit society,
25 reciprocal or inter-insurance exchange, nonprofit
26 medical care corporation, nonprofit health care corpo-
27 ration, nonprofit hospital service association, nonprofit
28 dental care corporation, health maintenance organiza-
29 tion, captive insurance company, risk retention group or
30 other insurer, regardless of the type of coverage written,
31 benefits provided or guarantees made by each.
32 (3) “Department” means the department of insurance
33 of this state.
34 (4) “Examiners” means the commissioner of insu-
35 ranee, or any individual or firm having been authorized
36 by the commissioner to conduct an examination pursuant
37 to this section, including, but not limited to, the
38 commissioner’s deputies, other employees, appointed
39 examiners or other appointed individuals or firms who
40 are not employees of the department of insurance.
41 (c) The commissioner or his examiners may conduct
42 an examination under this section of any company as
43 often as the commissioner in his or her discretion deems
44 appropriate. The commissioner or his examiners shall at
45 least once every three years visit each domestic insurer
46 and thoroughly examine its financial condition and
47 methods of doing business and ascertain whether it has
48 complied with all the laws and regulations of this state.
49 The commissioner may also examine the affairs of any
50 insurer applying for a license to transact any insurance
51 business in this state.
52 (d) The commissioner or his examiners shall, at a
53 minimum, conduct an examination of every foreign or
54 alien insurer licensed in this state not less frequently
55 than once every five years. The examination of an alien
56 insurer may be limited to its United States business:
57 Provided, That in lieu of an examination under this
58 section of any foreign or alien insurer licensed in this
59 state, the commissioner may accept an examination
60 report on the company as prepared by the insurance
61 department for the company’s state of domicile or port-
62 of-entry state until the first day of January, one
thousand nine hundred ninety-four. Thereafter, such reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

(f) For purposes of completing an examination of any company under this section, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(g) The commissioner may also cause to be examined at such times as he or she deems necessary the books, records, papers, documents, correspondence and methods of doing business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes the commissioner or his examiners shall have free access to all books, records, papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records,
papers, documents and records are situate. The commis-
sioner may revoke the license of any agent, broker,
excess lines broker or solicitor who refuses to submit to
such examination.

(h) In addition to conducting an examination, the
commissioner or his examiners may, as the commis-
ioner deems necessary, analyze or review any phase of
the operations or methods of doing business of an
insurer, agent, broker, excess lines broker, solicitor or
other individual or corporation transacting or attempt-
ing to transact an insurance business in the state of West
Virginia. The commissioner may use the full resources
provided by this section in carrying out these responsi-
bilities, including any personnel and equipment pro-
vided by this section as the commissioner deems
necessary.

(i) Examinations made pursuant to this section shall
be conducted in the following manner:

(1) Upon determining that an examination should be
carried out, the commissioner or his designee shall issue
an examination warrant appointing one or more
examiners to perform the examination and instructing
them as to the scope of the examination. In conducting
the examination, the examiner shall observe those
guidelines and procedures set forth in the examiners’
handbook adopted by the national association of insu-
rance commissioners. The commissioner may also
employ any other guidelines or procedures as the
commissioner may deem appropriate.

(2) Every company or person from whom information
is sought, its officers, directors and agents shall provide
to the examiners appointed under subdivision (1) timely,
convenient and free access at all reasonable hours at its
offices to all books, records, accounts, papers, documents
and any or all computer or other recordings relating to
the property, assets, business and affairs of the company
being examined. The officers, directors, employees and
agents of the company or person shall facilitate the
examination and aid in the examination so far as it is
in their power to do so.
(3) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, refusal, or nonrenewal of any license or authority shall be conducted pursuant to section eleven, article two of this chapter.

(4) The commissioner or his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination, analysis or review. The subpoenas shall be enforced pursuant to the provisions of section six, article two of this chapter.

(5) When making an examination, analysis or review under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination, analysis or review.

(6) Nothing contained in this section may be construed to limit the commissioner's authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The commissioner or his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or review, whether or not a written report of the examination has at that time either been made, served or filed in the commissioner's office.

(7) Nothing contained in this section may be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any other information
discovered or developed during the course of any examination, analysis or review in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate. An examination report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against an insurance company, its officers or agents and shall be prima facie evidence of the facts stated therein.

(j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and any conclusions and recommendations the examiners find reasonably warranted from the facts.

(2) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than ten days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the commissioner, the commissioner may order the company to take any action
the commissioner considers necessary and appropriate
to cure such violation; or

(B) Rejecting the examination report with directions
to the examiners to reopen the examination for purposes
of obtaining additional data, documentation or informa-
tion and refiling pursuant to subdivision (2) above; or

(C) Calling for an investigatory hearing with no less
than twenty days notice to the company for purposes of
obtaining additional documentation, data, information
and testimony.

(4) All orders entered pursuant to this subsection shall
be accompanied by findings and conclusions resulting
from the commissioner's consideration and review of the
examination report, relevant examiner workpapers and
any written submissions or rebuttals. Any order issued
pursuant to paragraph (A), subdivision three of this
subsection shall be considered a final administrative
decision and may be appealed pursuant to section
fourteen, article two of this chapter and shall be served
upon the company by certified mail, together with a
copy of the adopted examination report. Within thirty
days of the issuance of the adopted report, the company
shall file affidavits executed by each of its directors
stating under oath that they have received a copy of the
adopted report and related orders.

(k) Hearings conducted pursuant to this section shall
be subject to the following requirements:

(1) Any hearing conducted pursuant to this section by
the commissioner or the commissioner's authorized
representative shall be conducted as a nonadversarial
confidential investigatory proceeding as necessary for
the resolution of any inconsistencies, discrepancies or
disputed issues apparent upon the face of the filed
examination report or raised by or as a result of the
commissioner's review of relevant workpapers or by the
written submission or rebuttal of the company. Within
twenty days of the conclusion of any such hearing, the
commissioner shall enter an order pursuant to para-
graph (A), subdivision (3), subsection (j) of this section.
(2) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the commissioner, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record. Nothing contained in this section shall require the commissioner to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(3) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

(I) Adoption of the examination report shall be subject to the following requirements:

(1) Upon the adoption of the examination report under paragraph (A), subdivision (3), subsection (j), of this section, the commissioner may continue to hold the content of the examination report as private and confidential information for a period of ninety days except to the extent provided in subdivision (6), subsection (i) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.
(2) Nothing contained in this section may prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results or any matter relating thereto or the results of any analysis or review to the insurance department of this or any other state or country or to law-enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this section.

(3) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, analysis or review, he or she may initiate any proceedings or actions as provided by law.

(4) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis or review made under this section must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be granted to the national association of insurance commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

(m) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:

(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on
the examiner's residence to a regulated entity if done
under customary terms and in the ordinary course of
business;

(3) An investment owner in shares of regulated
diversified investment companies; or

(4) A settlor or beneficiary of a “blind trust” into
which any otherwise impermissible holdings have been
placed.

(5) Notwithstanding the requirements of this subsec­
tion, the commissioner may retain from time to time, on
an individual basis, qualified actuaries, certified public
accountants or other similar individuals who are
independently practicing their professions, even though
these persons may from time to time be similarly
employed or retained by persons subject to examination
under this section.

(n) Personnel conducting examinations, analyses or
reviews of either a domestic, foreign or alien insurer
shall be compensated for each day worked at a rate set
by the commissioner. The personnel shall also be
reimbursed for their travel and living expenses at the
rate set by the commissioner. Other individuals who are
not employees of the department of insurance shall all
be compensated for their work, travel and living
expenses at rates approved by the commissioner, or as
otherwise provided by law. As used in this section the
costs of an examination, analysis or review means:

(1) The entire compensation for each day worked by
all personnel, including those who are not employees of
the department of insurance, the conduct of such
examination, analysis or review calculated as hereinbe­
fore provided;

(2) Travel and living expenses of all personnel,
including those who are not employees of the depart­
ment of insurance, directly engaged in the conduct of
the examination, analysis or review calculated at the
rates as hereinbefore provided for;

(3) All other incidental expenses incurred by or on
behalf of the personnel in the conduct of any authorized
(o) All insurers subject to the provisions of this section of the code shall annually pay to the commissioner on or before the first day of July, one thousand nine hundred ninety-one and every first day of July thereafter an examination assessment fee of eight hundred dollars. Four hundred fifty dollars of this fee shall be paid to the treasurer of the state to the credit of a special revolving fund to be known as the "Commissioner's Examination Revolving Fund" which is hereby established and three hundred fifty dollars shall be paid to the treasurer of the state. The commissioner may at his discretion, upon notice to the insurers subject to this section, increase this examination assessment fee or levy an additional examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee including any additional examination assessment fee levied exceed one thousand five hundred dollars per insurer in any calendar year.

(p) The moneys collected by the commissioner from an increase or additional examination assessment fee shall be paid to the treasurer of the state to be credited to the "Commissioner's Examination Revolving Fund." Any funds expended or obligated by the commissioner from the "Commissioner's Examination Revolving Fund" may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the commissioner's deputies, other employees and appointed examiners necessary for the commissioner to fulfill the statutory obligations created by this section.

(q) The commissioner may require other individuals who are not employees of the department of insurance who have been appointed by the commissioner to conduct or participate in the examination, analysis or
review of insurers, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state to:

(1) Bill and receive payments directly from the insurance company being examined, analyzed or reviewed for their work, travel and living expenses as previously provided for in this section; or

(2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the “Commissioner’s Examination Revolving Fund” for their work, travel and living expenses as previously provided for in this section.

(1) No cause of action shall arise nor shall any liability be imposed against the commissioner or his examiners for any statements made or conduct performed in good faith while carrying out the provisions of this section.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or his examiners pursuant to an examination, analysis or review made under this section, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) The commissioner or any examiner shall be entitled to an award of attorney’s fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is “substantially justified” if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This subsection does not abrogate or modify in any way any constitutional immunity or common law or
statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

§33-3-5b. Capital and surplus requirements.

§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 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 the license was in effect, or to liquidate such assets and liabilities of the insurer as may have resulted from its former authorized operations in West Virginia: Provided, That nothing herein allows an insurer to issue new policies or renew policies of insurance or collect premiums on those policies unless the insurer is authorized by a valid license issued by the commissioner, except as to the transactions that are otherwise provided for in this chapter.

(c) An insurer not transacting new insurance business in West Virginia but collecting premiums on and servicing of policies in force as to residents of or risks located in West Virginia, and where the policies were originally issued on nonresidents of or risks located outside of this state, 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.

§33-3-5b. Capital and surplus requirements.

(a) No insurer shall hereafter be licensed to transact the business of insurance in the state of West Virginia unless it has fully paid in capital stock, if a stock insurer, or surplus, if a mutual insurer, of at least one million dollars. In addition, each such insurer shall have and maintain additional surplus funds of at least one million dollars: Provided, That insurers duly licensed to transact insurance in West Virginia prior to the effective date of this section whose capital and surplus requirements are increased by virtue of this section shall have until the first day of January, one thousand nine hundred ninety-three, to meet such increased requirements. Such capital and surplus shall be unencumbered.

(b) The commissioner may for the protection of the policyholders and the general public of this state require an insurer to maintain funds in excess of the amounts required by subsection (a) of this section, due to the amount, kind or combination of kinds of insurance transacted by the insurer. Any additional amounts required shall be based upon all the kinds of insurance transacted by the insurer in all areas in which it operates or proposes to operate, whether or not only a portion of the kinds of insurance are to be transacted in this state. Failure of an insurer to maintain funds as ordered by the commissioner is grounds for suspension, revocation, refusal or nonrenewal of the insurer’s license.

(c) An order issued pursuant to the provisions of this section is subject to review pursuant to applicable state administrative proceedings under article two of this chapter.
ARTICLE 4. GENERAL PROVISIONS.

§33-4-15. Reinsurance.
§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

§33-4-15. Reinsurance.

1 (a) For purposes of this section, an “assumption reinsurance agreement” means any contract which:

2 (1) Transfers insurance obligations and/or risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and

3 (2) Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer’s insurance obligations and/or risks under the contracts are extinguished.

4 (b) An insurer shall reinsure its risks, or any part thereof, only in solvent insurers complying with the capital and surplus requirements of section five-b, article three of this chapter.

5 (c) Credit for reinsurance shall be governed by the provisions of sections fifteen-a and fifteen-b of this article. Credit shall not be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer nor unless under the reinsurance contract the liability for the reinsurance is assumed by the assuming insurer or insurers as of the same effective date.

6 (d) Any licensed insurer may accept reinsurance for the same kinds of insurance and within the same limits as it is authorized to transact direct insurance.

7 (e) A licensed insurer may reinsure all or substantially all of its risks on property or lives located in West Virginia, or substantially all of a major class thereof, with another insurer by an assumption reinsurance agreement: \textit{Provided,} That the assumption reinsurance
agreement shall not become effective unless filed in
advance with and approved in writing by the commis-
sioner: Provided, however, That if a licensed insurer is
deemed by the commissioner to be in hazardous
financial condition, as defined in article thirty-four-a of
this chapter, or an administrative or judicial proceeding
has been instituted against it for the purpose of
liquidating, reorganizing or conserving such insurer,
and the transfer of the contracts of insurance is
determined by the commissioner to be in the best
interest of the policyholders, the commissioner may by
written order waive the advance filing and approval
required by this section, which such waiver may include
a form of implied consent and adequate notification to
the policyholder of the circumstances requiring the
transfer.

(f) The commissioner shall approve such agreement
within one hundred twenty days after the filing of the
same unless he or she finds that it is inequitable to the
licensed insurer, its owners or its policyholders or would
substantially reduce the protection or service to its
policyholders. If the commissioner does not approve the
agreement, he or she shall so notify the insurer in
writing specifying his or her reasons therefor. If the
commissioner does not disapprove the agreement within
one hundred twenty days, the agreement shall be
deemed approved.

(g) A filing may not be made pursuant to this section
unless the reinsurance agreement is certified under oath
by responsible officers of the reinsurer and the rein-
sured to contain the entire agreement between the
parties to the reinsurance agreement.

(h) The commissioner shall promulgate rules and
regulations pursuant to chapter twenty-nine-a of this
code for the implementation and administration of the
provisions of this section to include, but not be limited
to, the type of assumption agreements subject to the
provisions of this section, their content and the stand-
ards the commissioner may utilize in reviewing the
agreements.
(i) Any insurer subject to this section is also subject to the provisions of article thirty-eight of this chapter.

§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. The 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. The 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 effective date of the
reinsurance contract.

(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: Provided,
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;

(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 require-
ments of subdivisions (1) through (4), subsection (c) of
this section, but only with respect to the insurance of
(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. 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 not less than twenty million dollars held jointly for the benefit of United States ceding insurers of any member of the group. The 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 the 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 the 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 accountants.

(3) Any trust that is subject to the provisions of this section shall be established in a form approved by the
193 commissioner. The trust instrument shall provide that
194 contested claims shall be valid and enforceable upon the
195 final order of any court of competent jurisdiction in the
196 United States. The trust shall vest legal title to its assets
197 in the trustees of the trust for its United States
198 policyholders and ceding insurers, their assigns and
199 successors in interest. The trust and the assuming
200 insurer shall be subject to examination as determined
201 by the commissioner. The trust described herein shall
202 remain in effect for as long as the assuming insurer
203 shall have outstanding obligations due under the
204 reinsurance agreements subject to the trust.

205 (4) No later than the twenty-eighth day of February
206 of each year the trustees of the trust shall report to the
207 commissioner in writing setting forth the balance of the
208 trust and listing the trust's investments at the preceding
209 year's end. The trustees shall certify the date of
210 termination of the trust, if so planned, or certify that
211 the trust shall not expire prior to the next following
212 December thirty-first.

213 (e) A reduction from liability for the reinsurance
214 ceded by a ceding insurer subject to the requirements
215 of this article to an assuming insurer not meeting the
216 requirements of subsection (c) of this section shall be
217 allowed in an amount not exceeding the liabilities
218 carried by the ceding insurer. The reduction shall be in
219 the amount of funds held by or on behalf of the ceding
220 insurer, including funds held in trust for the ceding
221 insurer, under a reinsurance contract with the assuming
222 insurer as security for the payment of obligations
223 thereunder: Provided, That the security is held in the
224 United States subject to withdrawal solely by, and
225 under the exclusive control of, the ceding insurer; or, in
226 the case of a trust, held in a qualified United States
227 financial institution, as defined by this section. The
228 security may be in the form of:

229 (1) Cash;

230 (2) Securities listed by the securities valuation office
231 of the national association of insurance commissioners
232 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, notwithstanding the issuing or confirming institution's subsequent 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 the 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.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; 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 insurance); section three, article sixteen (required policy provisions); 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-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77), which passed prior to this act, and by H. B. 2181 (Chapter 79), which passed subsequent to this act.
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 (adminis-
trative supervision); article thirty-four-a (standards and
commissioner's authority for companies deemed to be in
hazardous financial condition); article thirty-five
(crimesanctions for failure to report impairment);
and article thirty-seven (managing general agents); and
no other provision of this chapter may apply to these
corporations unless specifically made applicable by the
provisions of this article. If, however, the corporation is
converted into a corporation organized for a pecuniary
profit or if it transacts business without having obtained
a license as required by section five of this article, it
shall thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

*§33-25-6. Supervision and regulation by insurance
commissioner; exemption from insurance
laws.

1 Corporations organized under this article are subject
to supervision and regulation of the insurance commis-
2 sioner. The corporations organized under this article, to
3 the same extent these provisions are applicable to
4 insurers transacting similar kinds of insurance and not
5 inconsistent with the provisions of this article, shall be
6 governed by and be subject to the provisions as
7 hereinbelow indicated, of the following articles of this
8 chapter: Article four (general provisions), except that
9 section sixteen of said article shall not be applicable
10 thereto; article six-c (guaranteed loss ratio); article
11 seven (assets and liabilities); article eight (investments);
12 article ten (rehabilitation and liquidation); section
13 fourteen, article fifteen (individual accident and sick-
14 ness insurance); section three, article sixteen (required
15 policy provisions); article sixteen-a (group health
16 insurance conversion); article sixteen-c (small employer
17 group policies); article sixteen-d (marketing and rate
18 practices for small employers); article twenty-six-a

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77),
which passed prior to this act, and by H. B. 2181 (Chapter 79), which passed
subsequent to this act.
(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 these corporations unless specifically made applicable by the provisions of this article.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


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.

2 (b) “Commissioner” means the insurance commissioner, his or her deputies, or the insurance department, as appropriate.

2 (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 (l), 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 the
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 corpora-
tion, 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, author-
ities 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.

The insurance commissioner shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code setting forth procedural requirements necessary to implement the provisions of this article and specifying the reporting forms required by this article prior to the first day of August, one thousand nine hundred ninety-three.

ARTICLE 31. CAPTIVE INSURANCE.


A captive insurance company may procure reinsurance or issue policies of reinsurance to other licensed insurers transacting like kinds of insurance, pursuant to the provisions of section fifteen, article four of this chapter.

ARTICLE 32. RISK RETENTION ACT.

§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 any 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 (A) 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 (B) was offered before that 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 registered 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 pursuant to 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) Any 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.

§33-32-17. 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, on forms prescribed by the national association of insurance commissioners, which such forms shall:

(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 any 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 these requirements do 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 twenty-seventh 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-a of this code regarding the amount of all registration or filing fees required by this section.

 ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-1. Declaration of policy and purpose.

§33-33-2. Definitions.

§33-33-3. Filing and extensions for filing of annual audited financial reports.


§33-33-5. Designation of independent certified public accountant.

§33-33-6. Qualifications of independent certified public accountants.

§33-33-7. Consolidated or combined audits.


§33-33-10. Evaluation of accounting procedures and system of internal control.


§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.

§33-33-12. Exemptions from compliance.

§33-33-13. Canadian and British companies.


§33-33-1. Declaration of policy and purpose.

(a) The purpose of this article is to improve the insurance commissioner's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

(b) Foreign or alien insurers filing audited financial reports in another state, pursuant to the other state's requirement of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from this article if:

(1) A copy of the audited financial report, report on significant deficiencies in internal controls, and the accountant's letter of qualifications which are filed with the other state are filed with the commissioner in accordance with the filing dates specified in sections three, ten and ten-a, respectively. Canadian insurers may submit accountants' reports as filed with the
(2) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in section nine.

c) This article shall not prohibit or preclude or in any way limit the commissioner from performing examinations of insurers as specified in section nine, article two of this chapter or such any other examinations as the commissioner may be authorized to perform by this chapter.

§33-33-2. Definitions.

(a) "Accountant," and "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(b) "Annual statement" means the annual financial statement required to be filed by insurers with the commissioner pursuant to the provisions of this chapter.

(c) "Audited financial report" means and includes those items specified in section four of this article.

(d) "Insurer" for purposes of this article means any domestic insurer as defined in section six, article one of this chapter, and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

§33-33-3. Filing and extensions for filing of annual audited financial reports.

(a) Annual audited financial reports must be filed by
all insurers with the commissioner on or before the first day of June for the year ending the thirty-first day of December immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than the first day of June with ninety days advance notice to the insurer.

(b) Extensions of the filing date on the first day of June may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting the extension and determination by the commissioner of good cause for an extension. A request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.


(a) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices for preparation of the annual statement or as otherwise permitted by the commissioner.

(b) The annual audited financial report shall include the following:

1. Report of independent certified public accountant;
2. Balance sheet reporting admitted assets, liabilities, capital and surplus;
3. Statement of gain or loss from operations or statement of revenue and expenses;
4. Statement of cash flows statement;
5. Statement of changes in capital and surplus;
6. Notes to financial statements. These notes shall be those required by the appropriate national association of insurance commissioners annual statement instructions
and any other notes required by generally accepted accounting principles and shall also include:

(A) A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement with a written description of the nature of these differences;

(B) A summary of ownership and relationships of the insurer and all affiliated companies.

(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and:

(A) The financial statement shall be comparative, presenting the amounts as of the thirty-first day of December of the current year and the amounts as of the immediately preceding thirty-first day of December: Provided, That in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

(B) Amounts may be rounded to the nearest thousand dollars;

(8) Supplementary data and information. This shall include any additional clarifying information or data which the commissioner may require to be disclosed.

§33-33-5. Designation of independent certified public accountant.

(a) Each insurer required by this article to file an annual audited financial report must, within sixty days after becoming subject to such requirements, register with the commissioner in writing the name and address of the certified public accountant or accounting firm (generally referred to in this article as the "accountant") retained to conduct the annual audit set forth in this article.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of this code and
rules that relate to accounting and financial matters and
affirming that he or she will express his or her opinion
on the financial statements in terms of their conformity
to the statutory accounting practices prescribed or
otherwise permitted by the commissioner specifying any
exceptions as he may believe appropriate.

(c) If an accountant who was not the accountant for
the immediately preceding filed audited financial report
is engaged to audit the insurer's financial statements,
the insurer shall within thirty days of the date the
accountant is engaged notify the commissioner of this
event.

(d) If an accountant who was the accountant for the
immediately preceding filed audited financial report is
dismissed or resigns, the insurer shall within five
business days notify the commissioner of this event. The
insurer shall also furnish the commissioner with a
separate letter within ten business days of the above
notification stating whether in the twenty-four months
preceding the notification there were any disagreements
with the former accountant on any matter of accounting
principles or practices, financial statement disclosure,
or auditing scope or procedure, which disagreements, if
not resolved to the satisfaction of the former accountant,
would have caused him or her to make reference to the
subject matter of the disagreement in connection with
his or her opinion. The disagreements required to be
reported in response to this section include both those
resolved to the former accountant's satisfaction and
those not resolved to the former accountant's satisfac-
tion. Disagreements contemplated by this section are
those that occur at the decision-making level between
personnel of the insurer responsible for presentation of
its financial statements and personnel of the accounting
firm responsible for rendering its report. The insurer
shall also in writing request the former accountant to
furnish it a letter addressed to the insurer stating
whether the accountant agrees with the statements
contained in the insurer's letter and, if not, stating the
reasons for which he does not agree; and the insurer
shall furnish the responsive letter from the former
accountant to the commissioner together with its own.

§33-33-6. Qualifications of independent certified public accountants.

(a) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American institute of certified public accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant.

(b) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the code of professional ethics of the American institute of certified public accountants and the rules and regulations and code of ethics and rules of professional conduct of the West Virginia board of accountancy.

(c) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

2. Premium volume of the insurer; or

3. Number of jurisdictions in which the insurer transacts business: Provided, That the requirements of this subsection shall become effective two years after the enactment of this article.

(d) The commissioner shall not recognize as a qual-
ified independent certified public accountant, nor accept
any annual audited financial report, prepared in whole
or in part by, any natural person who:

(1) Has been convicted of fraud, bribery, a violation
of the Racketeer Influenced and Corrupt Organizations
Act, 18 U.S.C. Sections 1961-1968, or any dishonest
conduct or practices under federal or state law;

(2) Has been found to have violated the insurance laws
of this state with respect to any previous reports
submitted under this article; or

(3) Has demonstrated a pattern or practice of failing
to detect or disclose material information in previous
reports filed under the provisions of this article.

(e) The commissioner may hold a hearing to deter-
mine whether a certified public accountant is qualified
and considering the evidence presented, may rule that
the accountant is not qualified for purposes of express-
ing an opinion on the financial statements in the audited
financial report made pursuant to this article and
require the insurer to replace the accountant with
another whose relationship with the insurer is qualified
within the meaning of this article.

§33-33-7. Consolidated or combined audits.

(a) An insurer may make written application to the
commissioner for approval to file audited consolidated
or combined financial statements in lieu of separate
annual audited financial statements if the insurer is
part of a group of insurance companies which utilizes
a pooling or one hundred percent reinsurance agree-
ment that affects the solvency and integrity of the
insurer's reserves and the insurer cedes all of its direct
and assumed business to the pool. If an approval is
granted, a columnar consolidating or combining work-
sheet shall be filed with the report incorporating the
following:

(1) Amounts shown on the consolidated or combined
audited financial report shall be shown on the
worksheet;
(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

(b) The commissioner shall require any insurer to file separate annual audited financial statements although permission had previously been given to file on a consolidated basis or combined basis if the commissioner determines the reasons or circumstances given for approval of the consolidated audit, pursuant to subsection (a) of this section, no longer exist.

(c) An insurer who does not receive approval from the commissioner to file an audited financial report covering combined or consolidated audited financial statements for the insurer and any of its subsidiaries or affiliates must file pursuant to all the requirements of this article a separate audited financial report for the insurer and each subsidiary or affiliate.

(d) Notwithstanding any provision of this section, the commissioner may require an insurer to file a separate audited financial report for the insurer and each subsidiary or affiliate.


(a) The independent certified public accountant shall immediately notify, in writing, an officer or director of the insurer and the commissioner of any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the thirty-first day of December immediately preceding, or of any determination that the insurer does not meet the applicable minimum capital and surplus requirement of this
chapter or in the case of an insurer not subject to capital and surplus requirement, that the surplus of the insurer is less than one hundred thousand dollars as of the thirty-first day of December immediately preceding. For purposes of this article material misstatement shall have the meaning prescribed by the professional standards and pronouncements of the American institute of certified public accountants: Provided, That the independent certified public accountant shall report a misstatement that overstates the surplus as regards policyholders in single financial statement items by five percent or more, or when taken together with all financial statement items, the surplus as regards policyholders is overstated by ten percent or more.

(b) No independent public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with the above paragraph.

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this article, becomes aware of facts which might have affected the report, the commissioner notes the obligation of the accountant to take action as prescribed in Volume 1, Section AU 561 of the professional standards of the American institute of certified public accountants.

§33-33-10. Evaluation of accounting procedures and system of internal control.

(a) In addition to the annual audited financial reports, each insurer shall furnish the commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer’s internal control structure noted by the accountant during the audit. Statement on auditing standards (SAS) No. 60, “Communication of Internal Control Structure Matters Noted in an Audit”, AU Section 325 of the professional standards of the American institute of certified public accountants, requires an accountant to communicate significant deficiencies, known as “reportable conditions”, noted during a financial statement audit to the
appropriate parties within an entity. No report should
be issued if the accountant does not identify significant
deficiencies.
(b) If significant deficiencies are noted, the written
report shall be filed annually by the insurer with the
commissioner within sixty days after the filing of the
annual audited financial reports. The insurer is re-
quired to provide a description of remedial actions taken
or proposed to correct significant deficiencies, if the
actions are not described in the accountant's report.
(a) The accountant shall furnish the insurer in
connection with, and for inclusion in, the filing of the
annual audited financial report, a letter stating:
(1) That the accountant is independent with respect
to the insurer and conforms to the standards of his or
her profession as contained in the code of professional
ethics and pronouncements of the American institute of
certified public accountants and the rules of professional
conduct of the West Virginia board of accountancy.
(2) The background and experience in general, and
the experience in audits of insurers of the staff assigned
to the engagement and whether each is an independent
certified public accountant. Nothing within this article
shall be construed as prohibiting the accountant from
utilizing staff as he or she deems appropriate where use
is consistent with the standards prescribed by generally
accepted auditing standards.
(3) That the accountant understands the annual
audited financial report and the opinion thereon will be
filed in compliance with this article and that the
commissioner will be relying on this information in the
monitoring and regulation of the financial position of
insurers.
(4) That the accountant consents to the requirements
of section eleven of this article and that the accountant
consents and agrees to make available for review by the
commissioner, or the commissioner's designee or ap-
pointed agent, the workpapers, as defined in section
eleven.
(5) A representation that the accountant is properly licensed by the West Virginia board of accountancy and is a member in good standing in the American institute of certified public accountants.

(6) A representation that the accountant is in compliance with the requirements of section six of this article.

§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.

(a) Workpapers shall be kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to the examination of the financial statements of an insurer. Workpapers shall include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and which support the opinion thereon.

(b) Every insurer required to file an audited financial report pursuant to this article, shall require the accountant to make available for review by the commissioner the workpapers prepared in the conduct of the examination. The insurer shall require that the accountant retain the audit workpapers and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report of examination, as required by section nine, article two of this chapter, covering the period of the audit but no longer than seven years from the date of the audit report.

(c) In the conduct of the aforementioned periodic review by the commissioner, it shall be agreed that
photocopies of pertinent audit workpapers may be made and retained by the commissioner. Reviews by the commissioner shall be considered investigations and all workpapers and communications obtained during the course of any investigations shall be afforded the same confidentiality as other examination workpapers generated by the commissioner.


(a) Upon written application by an insurer, the commissioner may grant an exemption from compliance with this article if the commissioner finds, upon review of the application, that compliance with this article would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days of a denial of an insurer's written request for an exemption from this article, the insurer may request in writing a hearing on its application for an exemption.

(b) Foreign insurers shall comply with this article for the year ending the thirty-first day of December, one thousand nine hundred ninety-three and each year thereafter, unless the commissioner permits otherwise.

§33-33-14. Canadian and British companies.

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by the companies with their domiciliary supervision authority duly audited by an independent chartered accountant.

(b) For these insurers, the letter required in section five shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner pursuant to section three and shall affirm that the opinion expressed is in conformity with those requirements.


If any section or portion of a section of this article or
the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the article or the applicability of the provision to other persons or circumstances shall not be affected thereby.

ARTICLE 34A. STANDARDS AND COMMISSIONER’S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION.

§33-34A-4. Commissioner’s authority.

(a) For the purposes of making a determination of an insurer’s financial condition under this regulation, the commissioner may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

(2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) Increase the insurer’s liability in an amount equal to any contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(b) If, after notice of hearing, the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may, upon his determination, issue an order requiring the insurer to:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend or limit the volume of business being accepted or renewed;
(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured; or

(9) File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on such format as promulgated by the commissioner. If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

(c) An order issued pursuant to the provisions of this article is subject to review pursuant to applicable state administrative proceedings under article two of this chapter: Provided, That all hearings pursuant to this section shall be held privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

ARTICLE 36. BUSINESS TRANSAACTED WITH PRODUCER CONTROLLED PROPERTY/CASUALTY INSURER ACT.

§33-36-1. Short title.
§33-36-2. Definitions.
§33-36-3. Applicability.
§33-36-5. Disclosure.
§33-36-6. Penalties.
§33-36-7. Effective date.
§33-36-1. Short title.

This article may be cited as the "Business Transacted with Producer Controlled Insurer Act."

§33-36-2. Definitions.

As used in this article:

(a) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(b) "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 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 (l), section four, article twenty-seven of this chapter 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 the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(c) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

(d) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.
(e) "Licensed insurer" or "insurer" means any person, firm, association or corporation duly licensed to transact a property or casualty insurance business, or both property and casualty insurance, in this state: Provided, That the following are not licensed insurers for the purposes of this article:

(1) All risk retention groups as defined in article thirty-two of this chapter;

(2) All residual market pools and joint underwriting authorities or associations; and

(3) All captive insurance companies as defined in article thirty-one of this chapter.

(f) "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, the 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 the person, firm, association or corporation: Provided, That the designation of any individual or entity as a producer does not expand upon or provide for activities beyond those permitted by article twelve of this chapter.

§33-36-3. Applicability.

This article applies to licensed insurers as defined in section two of this article, either domiciled in this state or domiciled in a state that does not have in effect a substantially similar law. All provisions of article twenty-seven of this chapter, to the extent they are not superseded by this article, shall continue to apply to all parties within holding company systems subject to this article.


(a) The provisions of this section apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five
5 percent of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of the thirtieth day of September of the prior year: Provided, That the provisions of this section shall not apply if:

(1) The controlling producer:

(A) Places insurance only with the controlled insurer or only with the controlled insurer and a member or members of the controlled insurer's holding company system or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(2) The controlled insurer accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer: Provided, That the provisions of this subdivision do not apply to insurance business written through a residual market facility such as the "West Virginia Essential Property Insurance Association" or the "West Virginia Automobile Insurance Plan."

(b) A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(2) The controlling producer shall render accounts to
the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer;

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract;

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the applicable provisions of this chapter. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(6) The contract may not be assigned in whole or in part by the controlling producer;

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(8) The rates and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions,
charges and other fees may be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subdivision and subdivision (7) of this subsection, examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits and similar quality of business;

(9) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer’s profits on that business, then the compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer’s reserves on remaining claims has been independently verified pursuant to subdivision (1), subsection (d) of this section;

(10) A limit on the controlling producer’s writings in relation to the controlled insurer’s surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.
(c) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(d) 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 the following:

1. An opinion of an independent casualty actuary or any 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 losses, on business placed by the producer; and

2. A report and summary of the amount of commissions paid to the 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.

§33-36-5. Disclosure.

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. If the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his 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 or will notify the insured.

§33-36-6. Penalties.

(a) If the commissioner believes that the controlling producer or any other person has not materially complied with this article, or any rule or order promul-
4 gated hereunder, after notice and opportunity to be
5 heard, the commissioner may order the controlling
6 producer to cease placing business with the controlled
7 insurer.

8 (b) If it is found that because of any material
9 noncompliance that the controlled insurer or any
10 policyholder thereof has suffered any loss or damage,
11 the commissioner may maintain a civil action or
12 intervene in an action brought by or on behalf of the
13 insurer or policyholder for recovery of compensatory
14 damages for the benefit of the insurer or policyholder
15 or other appropriate relief.

16 (c) If an order for liquidation or rehabilitation of the
17 controlled insurer has been entered pursuant to article
18 ten of this chapter and the receiver appointed under that
19 order believes that the controlling producer or any other
20 person has not materially complied with this article or
21 any rule or order promulgated hereunder, and the
22 insurer suffered any loss or damage therefrom, the
23 receiver may maintain a civil action for recovery of
24 damages or other appropriate sanctions for the benefit
25 of the insurer.

26 (d) Nothing contained in this section may affect the
27 right of the commissioner to impose any other penalties
28 provided for in this chapter.

29 (e) Nothing contained in this section is intended to or
30 may in any manner alter or affect the rights of
31 policyholders, claimants, creditors or other third
32 parties.

§33-36-7. Effective date.

1 Controlled insurers and controlling producers who are
2 not in compliance with section four of this article on its
3 effective date have sixty days to come into compliance.
4 The controlled insurers and controlling producers have
5 sixty days after the effective date of this article to
6 comply with section five of this article.

ARTICLE 38. REINSURANCE INTERMEDIARY ACT.

§33-38-1. Short title.
§33-38-1. Short title.

This article may be cited as the "Reinsurance Intermediary Act."


As used in this article:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) "Commissioner" means the insurance commissioner of West Virginia.

(d) "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of this chapter as an insurer.

(e) "Licensed producer" means an agent or reinsurance intermediary licensed pursuant to the applicable provisions of this chapter.

(f) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subdivisions (g) and (h) of this section.

(g) "Reinsurance intermediary-broker" means any
person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(h) "Reinsurance intermediary-manager" means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer including the management of a separate division, department or underwriting office and acts as an agent for such reinsurer whether known as a reinsurance intermediary-manager, manager or other similar term. Notwithstanding the above, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this article:

(1) An employee of the reinsurer;

(2) A United States manager of the United States branch of an alien reinsurer;

(3) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to article twenty-seven of this chapter, and whose compensation is not based on the volume of premiums written.

(4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the official charged with regulation of insurance in the state in which the manager's principal business office is located.

(i) "Reinsurer" means any person, firm, association or corporation duly licensed or accredited in this state pursuant to the applicable provisions of this chapter as an insurer with the authority to assume reinsurance.

(j) "To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this article.
(k) For purposes of this article, a "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by 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.

§33-38-3. Licensure.

(a) No person, firm, association or corporation may act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) In this state, unless such reinsurance intermediary-broker is a licensed producer in this state; or

(2) In another state, unless such reinsurance intermediary-broker is a licensed producer in this state or another state having an article substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association or corporation may act as a reinsurance intermediary-manager:

(1) For a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(2) In this state, if the reinsurance intermediary-manager maintains an office either directly or as a
member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(3) In another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed producer in this state or another state having an article substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

(c) The commissioner may require a reinsurance intermediary-manager subject to the provisions of subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(d) The commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of this article. Any license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all of these persons shall be named in the application and any supplements thereto. Any license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all of these persons shall be named in the application and any supplements thereto.

(e) If the applicant for a reinsurance intermediary license is a nonresident, the applicant as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner and with the same legal effect provided for by this chapter for designation of service of process upon unauthorized insurers.
shall also furnish the commissioner with the name and
address of a resident of this state upon whom notices or
orders of the commissioner or process affecting such
nonresident reinsurance intermediary may be served.
The licensee shall promptly notify the commissioner in
writing of every change in its designated agent for
service of process, and the change shall not become
effective until acknowledged by the commissioner.

(f) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment,
the applicant, any one named on the application or any
member, principal, officer or director of the applicant
is not trustworthy or that any controlling person of the
applicant is not trustworthy to act as a reinsurance
intermediary or that any of the foregoing has given
cause for revocation or suspension of such license or has
failed to comply with any prerequisite for the issuance
of the license. Upon written request therefor, the
commissioner shall furnish a summary of the basis for
refusal to issue a license, which document shall be
privileged and not subject to the provisions of article
one, chapter twenty-nine of this code.

(g) Licensed attorneys at law of this state when acting
in their professional capacity are exempt from this
section.

§33-38-4. Required contract provisions; reinsurance
intermediary-brokers.

(a) Transactions between a reinsurance intermediary-
broker and the insurer it represents in that capacity
may only be entered into pursuant to a written author-
ization, specifying the responsibilities of each party.

(b) Each written authorization shall, at a minimum,
provide that:

(1) The insurer may terminate the reinsurance
intermediary-broker's authority at any time.

(2) The reinsurance intermediary-broker shall render
accounts to the insurer accurately detailing all material
transactions, including information necessary to support
all commissions, charges and other fees received by, or
owing, to the reinsurance intermediary-broker, and remit all funds due to the insurer within thirty days of receipt.

(3) All funds collected for the insurer's account shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein.

(4) The reinsurance intermediary-broker shall comply with section five of this article.

(5) The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

§33-38-5. Books and records; reinsurance intermediary-brokers.

(a) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker will keep a complete record for each transaction showing:

(1) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

(3) Reporting and settlement requirements of balances;

(4) Rate used to compute the reinsurance premium;

(5) Names and addresses of assuming reinsurers;

(6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(7) Related correspondence and memoranda;
19 (8) Proof of placement;
20 (9) Details regarding retrocessions handled by the
21 reinsurance intermediary-broker including the identity
22 of retrocessionaires and percentage of each contract
23 assumed or ceded;
24 (10) Financial records, including but not limited to,
25 premium and loss accounts; and
26 (11) When the reinsurance intermediary-broker
27 procures a reinsurance contract on behalf of a licensed
28 ceding insurer:
29 (A) Directly from any assuming reinsurer, written
30 evidence that the assuming reinsurer has agreed to
31 assume the risk; or
32 (B) If placed through a representative of the assuming
33 reinsurer, other than an employee, written evidence that
34 such reinsurer has delegated binding authority to the
35 representative.
36 (b) The insurer shall have access and the right to copy
37 and audit all accounts and records maintained by the
38 reinsurance intermediary-broker related to its business
39 in a form usable by the insurer.

§33-38-6. Duties of insurers utilizing the services of a
reinsurance intermediary-broker.
1 (a) An insurer may not engage the services of any
2 person, firm, association or corporation to act as a
3 reinsurance intermediary-broker on its behalf unless
4 that person is licensed as required by subsection (a),
5 section three of this article.
6 (b) An insurer may not employ an individual who is
7 employed by a reinsurance intermediary-broker with
8 which it transacts business, unless the reinsurance
9 intermediary-broker is under common control with the
10 insurer and subject to article twenty-seven of this
11 chapter.
12 (c) The insurer shall annually obtain a copy of
13 statements of the financial condition of each reinsurance
14 intermediary-broker with which it transacts business.
§33-38-7. Required contract provisions; reinsurance intermediary-managers.

(a) Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the commissioner for approval.

(b) Every contract required by this section shall, at a minimum, provide, that:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-
manager shall keep a complete record for each transaction showing:

(A) The type of contract, limits, underwriting restrictions, classes of risks and territory;

(B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(C) Reporting and settlement requirements of balances;

(D) Rate used to compute the reinsurance premium;

(E) Names and addresses of reinsurers;

(F) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(G) Related correspondence and memoranda;

(H) Proof of placement;

(I) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by subsection (d), section nine of this article, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(J) Financial records, including but not limited to, premium and loss accounts; and

(K) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

(5) The reinsurer shall have access and the right to
copy all accounts and records maintained by the
reinsurance intermediary-manager related to its busi-
ness in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part
by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager shall
comply with the written underwriting and rating
standards established by the insurer for the acceptance,
rejection or cession of all risks.

(8) Sets forth the rates, terms and purposes of
commissions, charges and other fees which the reinsu-
rance intermediary-manager may levy against the
reinsurer.

(9) If the contract permits the reinsurance interme-
diary-manager to settle claims on behalf of the
reinsurer:

(A) All claims shall be reported to the reinsurer in
a timely manner;

(B) A copy of the claim file shall be sent to the
reinsurer at its request or as soon as it becomes known
that the claim:

(i) Has the potential to exceed the lesser of an amount
determined by the commissioner or the limit set by the
reinsurer;

(ii) Involves a coverage dispute;

(iii) May exceed the reinsurance intermediary-
manager's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of the lesser of an amount
set by the commissioner or an amount set by the
reinsurer;

(C) All claim files will be the joint property of the
reinsurer and reinsurance intermediary-manager.
However, upon an order of liquidation of the reinsurer
these files shall become the sole property of the
reinsurer or its estate. The reinsurance intermediary-
manager shall have reasonable access to and the right to copy the files on a timely basis;

(D) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager that these interim profits may not be paid until one year after the end of each underwriting period for property business, and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subsection (c), section nine of this article.

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.

(12) The reinsurer shall periodically, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting.


1 The reinsurance intermediary-manager may not:

2 (a) Cede retrocessions on behalf of the reinsurer,
except that the reinsurance intermediary-manager may
cede facultative retrocessions pursuant to obligatory
facultative agreements if the contract with the reinsurer
contains reinsurance underwriting guidelines for the
retrocessions. The guidelines shall include a list of
reinsurers with which the automatic agreements are in
effect, and for each reinsurer, the coverages and
amounts or percentages that may be reinsured, and
commission schedules.

(b) Commit the reinsurer to participate in reinsurance
syndicates.

(c) Appoint any producer without assuring that the
producer is lawfully licensed to transact the type of
reinsurance for which he is appointed.

(d) Without prior approval of the reinsurer, pay or
commit the reinsurer to pay a claim, net of retroces­
sions, that exceeds the lesser of an amount specified by
the reinsurer or one percent of the reinsurer’s policy­
holder’s surplus as of the thirty-first day of December,
next preceding.

(e) Collect any payment from a retrocessionaire or
commit the reinsurer to any claim settlement with a
retrocessionaire, without prior approval of the rein­
surer. If prior approval is given, a report must be
promptly forwarded to the reinsurer.

(f) Jointly employ an individual who is employed by
the reinsurer unless such reinsurance intermediary­
manager is under common control with the reinsurer
subject to article twenty-seven of this chapter.

(g) Appoint a subreinsurance intermediary-manager.

§33-38-9. Duties of reinsurers utilizing the services of a
reinsurance intermediary-manager.

(a) A reinsurer may not engage the services of any
person, firm, association or corporation to act as a
reinsurance intermediary-manager on its behalf unless
that person is licensed as required by subsection (b),
section three of this article.

(b) The reinsurer shall annually obtain a copy of
statements of the financial condition of each reinsurance intermediary-manager which such reinsurer has engaged prepared by an independent certified public accountant in a form acceptable to the commissioner.

(c) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who may not be affiliated with the reinsurance intermediary-manager.

(e) Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of such termination to the commissioner.

(f) A reinsurer may not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by article twenty-seven of this chapter.

§33-38-10. Examination authority.

(a) A reinsurance intermediary is subject to examination by the commissioner at his or her discretion. The commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the commissioner.

(b) A reinsurance intermediary-manager may be examined as if it were the reinsurer.


(a) A reinsurance intermediary, insurer or reinsurer found by the commissioner, after a hearing conducted
in accordance with section thirteen, article two of this chapter, to be in violation of any provision or provisions of this article, shall:

(1) For each separate violation, pay a penalty in an amount not exceeding five thousand dollars;

(2) Be subject to revocation or suspension of its license; and

(3) If a violation was committed by the reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(b) The decision, determination or order of the commissioner pursuant to subsection (a) of this section is subject to judicial review pursuant to section fourteen, article two of this chapter.

(c) Nothing contained in this section may affect the right of the commissioner to impose any other penalties provided in the insurance law.

(d) Nothing contained in this article is intended to or may in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.


The commissioner is hereby authorized to promulgate reasonable rules, pursuant to chapter twenty-nine-a of the West Virginia code, for the implementation and administration of the provisions of this article, these rules to include, but not be limited to, setting reasonable fees and standards for licensing.


This article shall take effect on the first day of January, one thousand nine hundred ninety-four. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after the effective date unless utilization is in compliance with this article.
CHAPTER 68
(H.B. 2518—By Delegates Carper and Michael)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven-b, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right to return a life or accident and sickness insurance policy, certificate or contract, to clarify the rights of group insurance certificate holders; and to exempt from the requirements of this section certain group annuity contracts.

Be it enacted by the Legislature of West Virginia:

That section eleven-b, 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.

§33-6-11b. Right to return life or accident and sickness insurance policy, certificate or contract.

1 All life or sickness and accident insurance policies, certificates or contracts issued to persons in this state shall have a notice prominently printed on the first page of the policy, certificate or contract stating in substance that the insured person or person obtaining the policy shall have the right to return the policy, certificate or contract within ten days of its receipt and to have the premium refunded if, after examination of the policy, certificate or contract, the person obtaining the insurance is not satisfied for any reason: Provided, That this section does not apply to group annuity policies, contracts or certificates issued in connection with a pension or profit-sharing plan qualified or exempt under sections 401, 403, 408, 457 or 501 of the Internal Revenue Code.
CHAPTER 69
(H. B. 2179—By Delegates Phillips, Gallagher, Douglas and Michael)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-three, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to release by minors for payments made by a life insurer under the provisions of an insurance policy, annuity contract or settlement agreement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§1. Repeal of section relating to release by minor of certain payments made by insurance company.

1 Section twenty-three, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 70
(H. B. 2728—By Delegates Phillips, Michael, Dempsey, Staton, Carper, Harrison and Douglas)

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one-c, relating to substandard risk motor vehicle insurance policies; definitions; required notices and provisions; the promulgation of rules by the insurance commissioner; and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31c. Substandard risk motor vehicle insurance policies; definitions; required notices and provisions; promulgation of rules; effective date.

(a) For purposes of this section, the following definitions shall apply:

1. A "substandard risk" means an applicant for insurance who presents a greater exposure to loss than that contemplated by commonly used rate classifications, as evidenced by one or more of the following conditions:

   (A) Record of traffic accidents;
   (B) Record of traffic law violations;
   (C) Undesirable occupational circumstances;
   (D) Undesirable moral characteristics.

2. "Substandard risk rate" means a rate or premium charge that reflects the greater than normal exposure to loss which is assumed by an insurer writing insurance for a substandard risk.

(b) Every application for a motor vehicle insurance policy to be issued in this state and written on the basis of a substandard risk rate schedule shall have printed thereon, in bold-faced type in a contrasting color, a statement reading substantially as follows: THE POLICY FOR WHICH YOU ARE APPLYING HAS BEEN RATED IN ACCORDANCE WITH A SPECIAL RATING SCHEDULE FILED WITH THE COMMISSIONER OF INSURANCE PROVIDING FOR HIGHER PREMIUM CHARGES THAN THOSE GENERALLY APPLICABLE FOR AVERAGE RISKS. IF THE COVERAGE OR PREMIUM IS NOT SATISFACTORY, YOU MAY BE ELIGIBLE FOR OTHER INSURANCE.

(c) Every motor vehicle insurance policy issued in
this state and written on the basis of a substandard risk rate schedule shall have printed thereon, in bold-faced type in a contrasting color, a statement reading substantially as follows: THIS POLICY HAS BEEN RATED IN ACCORDANCE WITH A SPECIAL RATING SCHEDULE FILED WITH THE COMMISSIONER OF INSURANCE PROVIDING FOR HIGHER PREMIUM CHARGES THAN THOSE GENERALLY APPLICABLE FOR AVERAGE RISKS. IF THE COVERAGE OR PREMIUM IS NOT SATISFACTORY, YOU MAY BE ELIGIBLE FOR OTHER INSURANCE.

(d) On or before the first day of July, one thousand nine hundred ninety-three, all insurers licensed or registered in this state to market or sell substandard risk motor vehicle insurance policies shall submit all applications and policies for substandard risk insurance to the commissioner of insurance for approval prior to being used by the insurer.

(e) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the format, style, design and approval of substandard risk insurance applications and policies and such other procedures as may be required by this section.

(f) The effective date of this section shall be the first day of July, one thousand nine hundred ninety-three.

CHAPTER 71

(H. B. 2580—By Mr. Speaker, Mr. Chambers, and Delegates Ashley, Staton, Rowe, Phillips and Michael)

(Passed April 10, 1993; in effect from passage. Approved by the Governor.)

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one-d; and to amend article twelve of said chapter by adding thereto a new section, designated
section thirty-one, all relating to uninsured and underinsured insurance coverage.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 33. INSURANCE.

Article
   6. The Insurance Policy.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

(a) Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle coverage required by section thirty-one of this article shall be made available to the named insured at the time of initial application for liability coverage and upon any request of the named insured on a form prepared and made available by the insurance commissioner. The contents of the form shall be as prescribed by the commissioner and shall specifically inform the named insured of the coverage offered and the rate calculation therefor, including, but not limited to, all levels and amounts of such coverage available and the number of vehicles which will be subject to the coverage. The form shall be made available for use on or before the effective date of this section. The form shall allow any named insured to waive any or all of the coverage offered.

(b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the form to each person who applies for the issuance of such policy by delivering the form to the applicant or by mailing the form to the applicant together with the applicant's initial premium notice. The applicant shall complete, date and sign the form and return the form to the insurer within thirty
24 days after receipt thereof. No insurer or agent thereof
25 is liable for payment of any damages applicable under
26 any optional uninsured or underinsured coverage
27 authorized by section thirty-one of this article for any
28 incident which occurs from the date the form was
29 mailed or delivered to the applicant until the insurer
30 receives the form and accepts payment of the approp-
31 riate premium for the coverage requested therein from
32 the applicant: Provided, That if prior to the insurer's
33 receipt of the executed form the insurer issues a policy
34 to the applicant which provides for such optional
35 uninsured or underinsured coverage, the insurer shall
36 be liable for payment of claims against such optional
37 coverage up to the limits provided therefor in such
38 policy. The contents of a form described in this section
39 which has been signed by an applicant shall create a
40 presumption that such applicant and all named insureds
41 received an effective offer of the optional coverages
42 described in this section and that such applicant
43 exercised a knowing and intelligent election or rejection,
44 as the case may be, of such offer as specified in the form.
45 Such election or rejection shall be binding on all persons
46 insured under the policy.
47 (c) Any insurer who has issued a motor vehicle
48 insurance policy in this state which is in effect on the
49 effective date of this section shall mail or otherwise
50 deliver the form to any person who is designated in the
51 policy as a named insured. A named insured shall
52 complete, date and sign the form and return the form
53 to the insurer within thirty days after receipt thereof.
54 No insurer or agent thereof is liable for payment of any
55 damages in any amount greater than any limits of such
56 coverage, if any, provided by the policy in effect on the
57 date the form was mailed or delivered to such named
58 insured for any incident which occurs from the date the
59 form was mailed or delivered to such named insured
60 until the insurer receives the form and accepts payment
61 of the appropriate premium for the coverage requested
62 therein from the applicant. The contents of a form
63 described in this section which has been signed by any
64 named insured shall create a presumption that all
65 named insureds under the policy received an effective
66 offer of the optional coverages described in this section
67 and that all such named insured exercised a knowing
68 and intelligent election or rejection, as the case may be,
69 of such offer as specified in the form. Such election or
70 rejection is binding on all persons insured under the
71 policy.
72 (d) Failure of the applicant or a named insured to
73 return the form described in this section to the insurer
74 as required by this section within the time periods
75 specified in this section creates a presumption that such
76 person received an effective offer of the optional
77 coverages described in this section and that such person
78 exercised a knowing and intelligent rejection of such
79 offer. Such rejection is binding on all persons insured
80 under the policy.
81 (e) The insurer shall make such forms available to any
82 named insured who requests different coverage lim i ts
83 on or after the effective date of this section. No insurer
84 is required to make such form available or notify any
85 person of the availability of such optional coverages
86 authorized by this section except as required by this
87 section.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS
LINE.

§33-12-31. Termination of contractual relationship
prohibited.

1 No insurance company may cancel, refuse to renew
2 or otherwise terminate a written contractual relation-ship with any insurance agent who has been employed
3 or appointed pursuant to that written contract by such
4 insurance company as a result of any analysis of a loss
5 ratio resulting from claims paid under the provisions of
6 an endorsement for uninsured and underinsured motor
7 vehicle coverage issued pursuant to the provisions of
8 section thirty-one, article six of this chapter, nor may
9 any provision of that contract, including the provisions
10 for compensation therein, operate to deter or discourage
11 the insurance agent from selling and writing endor-se-ments for optional uninsured or underinsured motor
12 vehicle coverage.
CHAPTER 72


[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six, relating to insurance policies; the continuation of coverage under automobile liability policies; exclusions; notice; and rules to be promulgated by the commissioner of insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-36. Continuation of coverage under automobile liability policy; selection of coverage; exclusions; notice.

(a) In the event of death, legal separation or termination of the marital relationship of the named insured, the named insured or spouse covered by a motor vehicle liability policy for a period of two or more years shall, upon request of the named insured or spouse within thirty days of the expiration of said policy, be issued his or her own individual motor vehicle liability insurance policy providing the same coverage as the original policy through the same insurer, without any lapse in coverage: Provided, That any such named insured or spouse may elect to increase or decrease the amount of coverage in his or her respective policies without affecting any privilege provided by this section. Any named insured or spouse requesting an individual policy pursuant to this section shall be entitled to the continuation of all rights and privileges afforded by section one-a and
section four of article six-a of this chapter which were
accrued under the original policy: Provided, however,
That this section shall not apply to any motor vehicle
liability insurance policy canceled, nonrenewed or
terminated pursuant to the provisions of section one or
section four, article six-a of this chapter.

(b) Insurers shall notify all named insureds at policy
issuance or the first renewal after the effective date of
this section and upon any change or termination of the
policy for reasons other than those provided in sections
one and four of article six-a of this chapter of the right
of the named insured or spouse to continue coverage as
provided by this section.

(c) The commissioner shall promulgate rules in
accordance with the provisions of chapter twenty-nine-
a of this code regarding the form of such notice and
procedures required by this section.

CHAPTER 73
(Com. Sub. for S. B. 510—By Senators Minard, Jones, Helmick,
Blatnik, Dittmar, Manchin, Sharpe, Felton,
Wiedebusch, Bailey, Wooton and Grubb)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]
and sickness insurance policies and certificates; establishing requirements for rate increase requests after the first day of July, one thousand nine hundred ninety-four, for insurers issuing individual accident and sickness insurance policies; revising certain definitions and eliminating others relating to marketing and rate practices for small employer accident and sickness insurance policies; substituting the term "carrier" for "insurer"; applying the provisions of article sixteen-d of said chapter to any health benefit plan described therein that covers one or more employees of a small employer situate in West Virginia; specifying additional premium rating restrictions; eliminating provisions on the insurance commissioner conducting a public hearing before increasing the anticipated loss ratio for a small employer carrier; eliminating enumerated rule-making mandates; granting permissive rule-making authority to the insurance commissioner; requiring disclosure of preexisting conditions limitations in such health benefit plans; requiring certification of compliance with statutory premium rating provisions; creating a new article sixteen-e of said chapter on limited benefits accident and sickness insurance policies and certificates; defining the scope of and terms used in said article; establishing loss ratio standards for premium rate increase requests made after the first day of July, one thousand nine hundred ninety-three, for such policies and certificates; establishing loss ratios requiring premium refunds to be made after the first day of July, one thousand nine hundred ninety-four; requiring annual filing of verified statements of actual loss ratio; requiring sixty days' notice of cancellation or nonrenewal of such policies or certificates; prohibiting preexisting conditions limitations, waiting periods and the like upon replacement of such policies and certificates; providing for extraterritorial jurisdiction of the insurance commissioner over certain policies; specifying severability of provisions of said article; providing for the promulgation of rules; and making technical corrections.

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

Article
6C. Guaranteed Loss Ratios as Applied to Individual Sickness and Accident Insurance Policies.
15. Accident and Sickness Insurance.
16E. Limited Benefits Accident and Sickness Insurance Policies and Certificates.

ARTICLE 6C. GUARANTEED LOSS RATIOS AS APPLIED TO INDIVIDUAL SICKNESS AND ACCIDENT INSURANCE POLICIES.

§33-6C-1. Loss ratio guarantees; definitions.
§33-6C-2. Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.
§33-6C-4. Form of guarantee; requirements.

§33-6C-1. Loss ratio guarantees; definitions.

As used in this article:

(a) "Commissioner" means the insurance commissioner of West Virginia;

(b) "Experience period" means, for any given rate filing for which a loss ratio guarantee is made, the period beginning on the first day of the calendar year during which the guaranteed rates first take effect and ending on the last day of the calendar year during which the insurer earns one million dollars in premiums on the form in West Virginia or, if the annual premium earned on the form in West Virginia is less than one million dollars, earns nationally;

(c) "Form" means individual sickness and accident policy forms of any insurer offering such benefits, other than a form for a limited benefits policy or certificate
as defined in section two, article sixteen-e of this chapter;

(d) "Loss ratio" means the ratio of incurred claims to earned premium; and

e) "Successive experience period" means the experience period beginning on the first day following the end of the preceding experience period.

§33-6C-2. Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.

(a) The insurance commissioner shall establish a guaranteed loss ratio which may be implemented by any insurer offering individual sickness and accident insurance policies other than limited benefits accident and sickness insurance policies or certificates, which are subject to loss ratio requirements set forth in sections three and four, article sixteen-e of this chapter. The loss ratios shall be calculated by the commissioner and each individual insurer and shall be based upon studies and relevant information collected from various sources, including, but not limited to, the health care cost review authority and the national association of insurance commissioners' rate filing guidelines: Provided, That the guaranteed loss ratio shall not be less than sixty percent. The guaranteed loss ratio for each insurer shall be published by the insurance commissioner in the register maintained by the secretary of state.

(b) The guaranteed loss ratio shall be based upon experience periods during which the insurer earns one million dollars in premium in West Virginia: Provided, That if the annual earned premium volume in West Virginia is less than one million dollars, the loss ratio guarantee shall be based on such other actuarially sound methods as the commissioner may determine are appropriate, including, but not limited to, the actual nationwide loss ratios: Provided, however, That if the aggregate earned premium for all states is less than one million dollars, the experience period will be extended until the end of the calendar year in which one million
Any insurer may apply to the commissioner to operate on a guaranteed loss ratio basis. The insurance commissioner may review each application and, in his or her discretion, approve or reject the same. Any insurer approved by the commissioner shall be exempt from filing rate increase applications as required by the commissioner and other provisions of this chapter.

§33-6C-4. Form of guarantee; requirements.

(a) Individual sickness and accident policy benefits under a policy form other than a limited benefits policy form or certificate shall be deemed reasonable in relation to the premium charged, as required by subdivision (e), section nine, article six of this chapter, if the premium rates are filed pursuant to a loss ratio guarantee which meets the requirements of this article. The insurance commissioner shall not withdraw approval of a form on the grounds that benefits are unreasonable in relation to premiums charged so long as the insurer complies with the terms of the loss ratio guarantee.

(b) Each insurer of individual sickness and accident policy benefits other than benefits under limited benefits policy forms or certificates shall execute and deliver to the insurance commissioner a loss ratio guarantee, to be provided by the commissioner, which guarantee shall be signed by an officer of the insurer.

(c) Each loss ratio guarantee shall contain, at a minimum, the following:

(1) A recitation of the anticipated lifetime and durational target loss ratios contained in the original actuarial memorandum filed with the policy form when it was originally approved;

(2) A guarantee that the actual West Virginia loss ratios for the experience period in which the new rates take effect, and for each experience period thereafter until new rates are filed, will meet or exceed the anticipated lifetime and durational target loss ratios contained in the original actuarial memorandum noted
above;

(3) A guarantee that the actual West Virginia or, if applicable, national, loss ratio results for the experience period at issue will be independently audited at the insurer’s expense; that such audit will be completed in the second quarter of the year following the end of the experience period; and that the results of such audit will be reported to the insurance commissioner not later than the thirtieth day of June following the end of the experience period;

(4) A guarantee that if the actual loss ratio during an experience period is less than the anticipated loss ratio for that period, then West Virginia policyholders will receive a proportional refund based on premium earned, which refunds shall be calculated and paid pursuant to section thirty-nine of this article; and

(5) A guarantee that the insurer does not engage in any discriminatory practices prohibited by section four, article eleven of this chapter or any such practice which discriminates against any individual on the basis of his or her legal occupation, race, religion or residence.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-la. Premium rate increase requests; loss ratio requirement.

To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-four, any insurer issuing accident and sickness insurance policies which are subject to the provisions of this article shall have a minimum anticipated loss ratio of sixty-five percent. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes for the same experience period which are attributable to the policy forms affected by this section and which were paid to the state of West Virginia pursuant to the provisions of article three of this chapter.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.
§33-16D-2. Definitions.
§33-16D-3. Health insurance plans subject to this article.
§33-16D-4. Discrimination in marketing prohibited; annual filing with commissioner; violations and penalties.
§33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.
§33-16D-6. Insurance commissioner to promulgate rules.
§33-16D-7. Renewability of coverage; exceptions.
§33-16D-10. Suspension of requirements.
§33-16D-12. Equality of terms; preexisting conditions; continuous coverage restrictions.

§33-16D-2. Definitions.

As used in this article:

(a) "Actuarial certification" means a written statement by an actuary, or other individual acceptable to the commissioner, that a small employer carrier is in compliance with the provisions of section five of this article, based upon that person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans.

(b) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(c) "Carrier" means any person who provides accident and sickness insurance in this state. For purposes of this article, carrier includes a licensed insurance company; a hospital service corporation, medical service corporation or health service corporation organized pursuant to article twenty-four of this chapter; a health care corporation organized pursuant to article twenty-five of this chapter; a health maintenance organization organized pursuant to article twenty-five-a of this chapter; a multiple-employer trust or multiple-employer welfare arrangement; or any other person providing a plan of
accident and sickness insurance subject to state insurance regulations.

(d) "Case characteristics" means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the carrier in the determination of premium rates for the small employer. Claim experience, health status and duration of coverage since issue are not case characteristics for the purposes of this article.

(e) "Class of business" means all or any distinct grouping of small employers as shown on the records of the small employer carrier, which shall be subject to the following requirements:

(1) A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans:

(A) Are marketed and sold through individuals and organizations which are not participating in the marketing or sale of other distinct groupings of small employers for such small employer carrier;

(B) Have been acquired from another small employer carrier as a distinct grouping of plans;

(C) Are provided through an association with membership of not less than two small employers which has been formed for purposes other than obtaining insurance; or

(D) Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in paragraph (A), subdivision (1), subsection (a), section five of this article.

(2) A small employer carrier may establish no more than two additional groupings under subdivision (1) of this subsection on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

(3) The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that
such action would enhance the efficiency and fairness of
the small employer insurance marketplace.

(f) "Commissioner" means the insurance commissioner
of West Virginia.

(g) "Department" means the department of insurance.

(h) "Health benefit plan" means any hospital or
medical expense incurred policy; health, hospital or
medical service corporation contract; plan provided by
a multiple-employer trust or a multiple-employer
welfare arrangement; health maintenance organization
contract offered by an employer; or any other policy or
plan issued by a carrier which provides health related
benefits to small employers: Provided, That for purposes
of this article, a health benefit plan shall not include
accident only, credit, dental or disability income
insurance; coverage issued as a supplement to liability
insurance; insurance arising out of a workers' compensa-
tion or similar law; automobile medical-payment
insurance, or insurance under which benefits are
payable with or without regard to fault and which is
statutorily required to be contained in any liability
insurance policy or equivalent self-insurance.

(i) "Index rate" means for each class of business for
small employers with similar case characteristics the
arithmetic average of the applicable base premium rate
and the corresponding highest premium rate.

(j) "New business premium rate" means, for each class
of business as to a rating period, the premium rate
charged or offered by the small employer carrier to
small employers with similar case characteristics for
newly issued health benefit plans with the same or
similar coverage.

(k) "Rating period" means the calendar period of at
least twelve months for which premium rates estab-
lished by a small employer carrier are assumed to be
in effect, as determined by the small employer carrier.

(l) "Small employer" means any person, firm, corpo-
pation, partnership or association actively engaged in
business in the state of West Virginia for at least one
year who, on at least fifty percent of its working days during the preceding year, employed no more than sixty or not fewer than two eligible employees: Provided, That companies which are affiliated companies or which are eligible to file a combined tax return for state tax purposes shall be considered one employer.

(m) “Small employer carrier” means any carrier which offers health benefit plans covering the employees of a small employer situate within the state of West Virginia.

§33-16D-3. Health insurance plans subject to this article.

The provisions of this article apply to any health benefit plan which provides coverage to one or more eligible employees of a small employer situate in the state of West Virginia: Provided, That the provisions of this article shall not apply to individual health insurance policies which are subject to policy form and premium rate approval as required by article sixteen-b of this chapter.

§33-16D-4. Discrimination in marketing prohibited; annual filing with commissioner; violations and penalties.

(a) All carriers subject to this article are strictly prohibited from marketing their product to a specific group, legal occupation, locale, zip code, neighborhood, race, religion, or any discriminatory group.

(b) All carriers subject to this article shall file any marketing information upon request of the commissioner. The commissioner shall review said information and shall have the authority to take appropriate action to eliminate discriminatory marketing practices, including imposing fines on violators of this section of not more than ten thousand dollars. Upon a second violation of this section, the commissioner shall have the authority to revoke the violator’s license to transact insurance.

§33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.
(a) Premium rates for health benefit plans subject to this article shall be subject to the following provisions:

(1) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent: Provided, That this subdivision shall not apply to a class of business if all of the following apply:

(A) The class of business is one for which the carrier does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status;

(B) The carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefits plan into or out of the class of business; and

(C) The class of business is currently available for purchase.

(2) For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent of the index rate.

(3) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(A) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period.

In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate;

(B) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status
or duration of coverage of the employees or dependents of the small employer as determined from the carrier's rate manual for the class of business; and

(C) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(4) In the case of health benefit plans issued prior to the effective date of this article, a premium rate for a rating period may exceed the ranges described in subdivision (1) or (2) of this subsection for a period of five years following the effective date of this article. In that case, the percentage increase in the premium rate charged to a small employer in such a class of business for a new rating period may not exceed the sum of the following:

(A) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate; and

(B) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(b) Nothing in this section is intended to affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

(c) Adjustments in rates for claim experience, health status and duration of coverage may not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.
(d) A small employer carrier shall utilize industry as a case characteristic in establishing premium rates: Provided, That the highest rate factor associated with any industry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.

(e) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

(f) A small employer carrier may not involuntarily transfer a small employer into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration since issue.

(g) To be eligible to make a rate increase request after the first day of July, one thousand nine hundred ninety-three, a carrier shall have a minimum anticipated loss ratio of seventy-three percent. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes for the same experience period which are attributable to the policy forms or certificates affected by this section and which were paid to the state of West Virginia pursuant to the provisions of article three of this chapter.

(h) All insurance carriers subject to this article, effective the first day of July, one thousand nine hundred ninety-three, shall be prohibited from distinguishing more than four classes of business within its small group insurance coverage.

(i) If any health benefit plan is provided by a carrier through an association of small employers not in the business of selling insurance and with not fewer than
two hundred cumulative employees, and if such association is rated on the basis of the number of employees and not on the basis of the individual small employers, such association or group is exempt from the provisions of this article.

§33-16D-6. Insurance commissioner to promulgate rules.

Pursuant to chapter twenty-nine-a of this code, the insurance commissioner may promulgate rules necessary to implement the provisions of this article.

§33-16D-7. Renewability of coverage; exceptions.

(a) A health benefit plan subject to this article shall be renewable to all eligible employees at the option of the small employer: Provided, That a carrier may refuse to renew a health benefit plan for any of the following reasons:

(1) Nonpayment of required premiums;
(2) Fraud or misrepresentation by the small employer or by the insured individual;
(3) Noncompliance with plan provisions;
(4) The number of individuals covered under the plan is fewer than the number or less than the percentage of eligible individuals necessary pursuant to the percentage requirements under the plan; or
(5) The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.

(b) A small employer carrier may cease to renew all plans under a class of business. Upon the small employer’s election of nonrenewal, the carrier shall provide notice of such election not to renew to all affected health benefit plans and to the commissioner in each state in which an affected insured individual is known to reside at least ninety days prior to termination of coverage.

(c) A carrier which exercises its right to cease to renew all plans in a class of business may not:
(1) Establish a new class of business for a period of five years after the nonrenewal of the plans without prior approval of the commissioner; or

(2) Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the carrier offers to transfer or provide coverage to all affected employers and eligible employees without regard to case characteristics, claim experience, health status or duration of coverage.


(a) Each small employer carrier shall make reasonable disclosure in solicitation and sales materials provided to small employers of the following:

(1) The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status or duration of coverage of the employees of the small employer;

(2) The provisions concerning the carrier’s right to change premium rates and the factors, including case characteristics, which affect changes in premium rates;

(3) A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans;

(4) The provisions relating to renewability of coverage;

(5) The provisions relating to any preexisting conditions limitations; and

(6) An explanation, if applicable, that the small employer is purchasing a minimum benefits plan issued pursuant to article sixteen-c of this chapter.

(b) All disclosure statements shall be presented in clear and understandable form and format and shall be separate from any policy, certificate or evidence of coverage otherwise provided.

(a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation which demonstrate that its rating methods and practices are based upon commonly accepted actuarial principles.

(b) Each small employer carrier shall file each first day of March with the commissioner an actuarial certification that the carrier is in compliance with the provisions of section five of this article and that the rating methods of the carrier are actuarially sound. A copy of such certification shall be retained by the carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (a) of this section available to the commissioner upon request.

§33-16D-10. Suspension of requirements.

The insurance commissioner may suspend all or part of the requirements of this article applicable to one or more health benefit plans for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

§33-16D-12. Equality of terms; preexisting conditions; continuous coverage restrictions.

Health benefit plans and, to the extent permitted by the federal Employee Retirement Income Security Act (ERISA), other benefit arrangements covering small employers shall be subject to the following provisions:

(a) Preexisting conditions provisions may not exclude coverage for a period beyond twelve months following an individual's effective date of coverage and may only relate to conditions which had, during the twelve months immediately preceding the effective date of coverage, manifested themselves in such a manner as
would cause an ordinarily prudent person to seek medical advice, diagnosis, care or treatment or for which medical advice, diagnosis, care or treatment was recommended or received, or as to a pregnancy existing on the effective date of coverage.

(b) In determining whether a preexisting condition limitation provision applies to an eligible employee or dependent, all health benefit plans shall credit the time such person was covered under a previous employer-based health benefit plan, a comparable individual health benefit plan, or a self-insured plan if the previous coverage was continuous to a date not more than thirty days prior to the effective date of the new coverage, exclusive of any applicable waiting period under such plan.

(c) Subject to subsections (a) and (b) of this section, when a small group employer converts its health benefit plan from one health benefit plan to another health benefit plan or from one carrier to another carrier, all eligible employees who at the time of conversion are covered by the health benefit plan shall be offered health benefits coverage under the subsequent plan, and no employee who at the time of conversion is covered by a health benefit plan offered by said employer may be treated any differently relative to other covered employees under the new health benefit plan than he or she is treated under the current health benefit plan.

ARTICLE 16E. LIMITED BENEFITS ACCIDENT AND SICKNESS INSURANCE POLICIES AND CERTIFICATES.

§33-16E-1. Scope of article.
§33-16E-2. Definitions.
§33-16E-3. Premium rate increase requests; loss ratio requirements.
§33-16E-4. Premium refunds; calculation of refunds; payments.
§33-16E-5. Statement of actual loss ratios to be filed with commissioner; form; examinations.
§33-16E-6. Notice of cancellation or nonrenewal.
§33-16E-7. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies or certificates.
§33-16E-8. Extraterritorial jurisdiction.
§33-16E-10. Commissioner to promulgate rules.
§33-16E-1. Scope of article.

1 The provisions of this article shall apply to all limited benefits policies and certificates in force on the effective date of this article, as well as to any limited benefits policy or certificate delivered or issued for delivery in this state after the effective date hereof.

§33-16E-2. Definitions.

1 For purposes of this article:

2 (a) "Limited benefits policy or certificate" means any individual or group accident and sickness insurance policy that is not required to offer or provide all benefits mandated by any other applicable provision of this chapter. Such policies include, but are not limited to, accident and sickness disability, accident only, sickness only disability, sickness only, accident only disability, hospital indemnity, specified disease, and travel accident insurance policies: Provided, That the following types of policies and certificates are excluded from the definition of "limited benefits policy or certificate" for purposes of this article:

3 (1) Credit accident and sickness insurance;

4 (2) Long-term care insurance;

5 (3) Medicare supplement insurance; and

6 (4) Minimum benefits accident and sickness insurance issued pursuant to section fifteen, article fifteen or article sixteen-c of this chapter.

7 (b) "Experience period" means the period beginning on the first day of the calendar year during which a premium rate first takes effect and ending on the last day of the calendar year during which the insurer earns five hundred thousand dollars in premiums on the form in West Virginia or, if the annual premium earned on the form in West Virginia is less than five hundred thousand dollars, earns nationally.

8 (c) "Successive experience period" means the experience period beginning on the first day following the end of the preceding experience period.
§33-16E-3. Premium rate increase requests; loss ratio requirements.

(a) To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-three, any insurer offering a limited benefits policy form or certificate form in West Virginia shall be expected to return to policyholders and certificateholders in the form of five-year aggregate loss ratios under the policy form or certificate form:

1. At least seventy-five percent of the earned premiums in the case of a group policy or certificate;
2. At least sixty-five percent of the earned premiums in the case of an individual policy; and
3. At least fifty-five percent of the earned premiums in the case of an individual or group accident and sickness disability policy or certificate.

(b) With respect to a policy form or certificate form which has been offered by an insurer in West Virginia or nationally for five years or less the insurer may use the anticipated loss ratio filed with and approved by the commissioner for that form to determine compliance with the requirements of this section.

(c) For purposes of this section, limited benefits policies and certificates issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

§33-16E-4. Premium refunds; calculation of refunds; payments.

(a) Beginning on the first day of July, one thousand nine hundred ninety-four, any insurer offering a limited benefits policy or certificate in West Virginia shall make premium refunds to policyholders and certificateholders if it fails to return to such policyholders and certificateholders in the form of annual loss ratios under the policy or certificate:

1. At least sixty-five percent of the earned premiums in the case of a group policy or certificate;
(2) At least fifty-five percent of the earned premiums in the case of an individual policy; and

(3) At least forty-five percent of the earned premiums in the case of an individual or group accident and sickness disability policy or certificate.

(b) With respect to a policy form or certificate form which has been offered by an insurer either in West Virginia or nationally for more than five years, refunds to West Virginia policyholders or certificateholders made pursuant to the requirements of this section and based upon annual earned premium volume in West Virginia shall be calculated by multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period.

(c) With respect to a policy form or certificate form which has been offered by an insurer for more than five years, refunds to West Virginia policyholders or certificateholders made pursuant to the requirements of this section and based upon national annual earned premium volume shall be calculated by:

(1) Multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period; and

(2) Multiplying the results of subdivision (1) of this subsection by the total earned premium during the experience period from all West Virginia policyholders or certificateholders eligible for refunds; and

(3) Dividing the results of subdivision (2) of this subsection by the total earned premium during that period in all states on the policy form.

(d) With respect to a policy form or certificate form which has been offered by an insurer in West Virginia or nationally for five years or less, the insurer may use the anticipated loss ratio filed with and approved by the commissioner to determine the amount of premium refunds, if any, that must be made pursuant to subsec-
(e) Refunds shall be made to all West Virginia policyholders and certificateholders who are insured under the applicable policy form or certificate as of the last day of the experience period. Such refund shall include interest, at the current accident and health reserve interest rate established by the national association of insurance commissioners, from the end of the experience period until the date of payment. Payment shall be made during the third quarter of the year following the experience period for which a refund is determined to be due.

(f) Refunds of less than ten dollars shall be aggregated and held by the insurer in a policyholders' and certificateholders' liability fund and shall be used to offset any future rate increases.

§33-16E-5. Statement of actual loss ratios to be filed with commissioner; form; examinations.

(a) Every insurer offering limited benefits policy forms or certificate forms which have been in effect for five years or more in West Virginia shall file with the commissioner, on or before the first day of September of each year, a statement of the actual loss ratios for each policy form or certificate form issued in this state. Such statement shall be made under the oath of the insurer's president or other authorized officer on a form prescribed by the commissioner.

(b) The commissioner shall have the authority to examine the records and files of any insurer offering limited benefits policy forms or certificate forms in West Virginia to determine compliance with the provisions of this article.

§33-16E-6. Notice of cancellation or nonrenewal.

No insurer may cancel or nonrenew a limited benefits policy or certificate unless written notice of such cancellation or nonrenewal is forwarded to the policyholder or certificateholder not less than sixty days prior to the expiration date of the policy or certificate.
§33-16E-7. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies or certificates.

1. (a) If a limited benefits policy or certificate replaces another limited benefits policy or certificate providing similar coverage, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new limited benefits policy or certificate to the extent that such time was spent under the original policy or certificate.

2. (b) If a limited benefits policy or certificate replaces another limited benefits policy or certificate providing similar coverage that has been in effect for at least six months, the replacing policy may not provide any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

§33-16E-8. Extraterritorial jurisdiction.

1. (a) No limited benefits policy or certificate may be offered to a resident of this state under a policy issued in another state, unless this state or another state having statutory and regulatory limited benefits policy or certificate requirements substantially similar to those adopted in this state has made a determination that such requirements have been met.

2. (b) Any such limited benefits policy form or certificate form offered to a resident of this state under a policy issued in another state shall be filed with the insurance commissioner.


1. Except as otherwise provided, and except where the context clearly requires otherwise, all the provisions of article fifteen of this chapter are applicable to individual limited benefits policies and all provisions of article sixteen of this chapter are applicable to group limited benefits policies and certificates.

§33-16E-10. Commissioner to promulgate rules.
1 The commissioner may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the implementation, regulation and enforcement of the provisions of this article.


1 If any provision of this article or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the article and application of such provision to other persons or circumstances shall not be affected thereby.

CHAPTER 74
(Com. Sub. for H. B. 2182—By Delegates Phillips, Gallagher, Vest and Michael)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting an insurance agent from transacting any business with unlicensed insurers, brokers or solicitors or transacting any business on behalf of an insurer prior to being appointed as agent for such insurer; exceptions.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-19. Agent to deal only with licensed insurer, broker or solicitor; appointment as agent required prior to transacting business.

1 (a) An agent may not accept any risk, place any insurance or issue any policy except with an insurer licensed in this state and for which insurer such agent has been appointed and licensed.
(b) An agent may not accept any contract of insurance from any broker not licensed in this state.

(c) An agent may not employ or accept the services of any solicitor not duly appointed and licensed as solicitor for such agent.

(d) An agent may not solicit, market, sell or transact any business of any kind on behalf of any insurer until after the agent has been appointed as agent for that insurer pursuant to the provisions of this article and such appointment has been approved by the commissioner of insurance.

(e) Notwithstanding any other provision in this section to the contrary, an agent may, without an appointment, submit to an insurer an inquiry and obtain a bid for any kind of life insurance, health insurance or annuity for which the agent has a valid and effective license if due insurer has a valid and effective certificate of authority under this article for the kind of insurance with respect to which the inquiry is made.

CHAPTER 75

(Com. Sub. for H. B. 2440—By Delegates Phillips, Farris, Louisos, L. White and Beane)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, 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 thirty; and to amend article twelve-b of said chapter by adding thereto a new section, designated section fourteen, all relating to the requirement of agents, solicitors, excess line brokers, service representatives and adjusters to keep current addresses on file with the insurance commissioner so that proper notices of hearing can be served; requiring procedures for serving notice of hearing; permitting hearings to proceed if individual fails to appear; requiring evidence at hearings; setting an appeal period for reconsideration
and judicial review.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 thirty; and that article twelve-b of said chapter be amended by adding thereto a new section, designated section fourteen, all to read as follows:

Article

12B. Adjusters.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-30. Notice of hearing before the commissioner; failure to appear; entry of orders; appeal.

(a) When conducting any hearing authorized by section thirteen, article two of this chapter which concerns any agent, solicitor, excess line broker or service representative, the commissioner shall give notice of such hearing and the matters to be determined therein to such agent, solicitor, excess line broker or service representative by certified mail, return receipt requested, sent to the last address filed by such person or entity pursuant to section twenty-nine of this article.

(b) If an agent, solicitor, excess line broker or service representative fails to appear at such hearing, the hearing may proceed, at which time the commissioner shall establish that notice was sent to such person pursuant to this section prior to the entry of any orders adverse to the interests of such agent, solicitor, excess line broker or service representative based upon the allegations against such person which were set forth in the notice of hearing. Certified copies of all orders entered by the commissioner shall be sent to the person affected therein by certified mail, return receipt requested, at the last address filed by such person with the division.

(c) An agent, solicitor, excess line broker or service representative who fails to appear at a hearing of which
notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within thirty calendar days of the entry of such adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and reasonable cause for such person's failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his discretion, and upon a finding that the agent, solicitor, excess line broker or service representative has shown good and reasonable cause for his failure to appear, shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

(d) Orders entered pursuant to this section are subject to the judicial review provisions of section fourteen, article two of this chapter.

ARTICLE 12B. ADJUSTERS.

§33-12B-14. Current address of adjusters to be filed; effective notice of appearance at hearing before commissioner.

(a) Each adjuster shall file with the commissioner the complete address of his principal place of business and the complete address of his residence including the name and number of the street, or if the street where the business is located is not numbered, the number of the post office box. Within thirty days of a change of business or residence address by an adjuster the adjuster must file with the commissioner notice of such change of address.

(b) When conducting any hearing authorized by section thirteen, article two of this chapter which concerns any adjuster, the commissioner shall give notice of such hearing and the matters to be determined therein to such adjuster by certified mail, return receipt requested, sent to the last address filed by such person or entity pursuant to this section.

(c) If an adjuster fails to appear at such hearing, the
hearing may proceed, at which time the commissioner shall establish that notice was sent to such person pursuant to this section prior to the entry of any orders adverse to the interests of such adjuster based upon the allegations against such person which were set forth in the notice of hearing. Certified copies of all orders entered by the commissioner shall be sent to the person affected therein by certified mail, return receipt requested, at the last address filed by such person with the division.

(d) An adjuster who fails to appear at a hearing of which notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within thirty calendar days of the entry of such adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and reasonable cause for the adjuster's failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his discretion, and upon a finding that the adjuster has shown good and reasonable cause for his failure to appear shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

(e) Orders entered pursuant to this section are subject to the judicial review provisions of section fourteen, article two of this chapter.

CHAPTER 76

(Com. Sub. for H. B. 2758—By Delegates Carper, Ashley, L. White, Rutledge and Douglas)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]
a, all relating to insurance adjusters; license requirements and exceptions; applications for licenses; fees and exceptions; authorizing emergency insurance adjusters; application of insurance company; approval and limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12B. ADJUSTERS.

§33-12B-4. License required; exception for emergency adjusters.

No person shall in West Virginia act as or hold himself out to be an adjuster unless then licensed therefor pursuant to this article: Provided, That the provisions of this section do not apply to emergency insurance adjusters as defined in section eleven-a of this article.

§33-12B-5. Qualifications for adjuster's license; examinations; exemptions.

(a) For the protection of the people of West Virginia, the commissioner shall not issue, renew or permit to exist any adjuster's license, except to an individual who:

(1) Is eighteen years of age or more.

(2) Is a resident of West Virginia, except for nonresident adjusters as provided in section nine of this article.

(3) Satisfies the commissioner that he is trustworthy and competent.
(b) For purposes of subdivision (3) of subsection (a) herein, the commissioner may, at his discretion, test the competency of an applicant for a license under this section by examination. If such examination is required by the commissioner, each examinee shall pay a twenty-five dollar examination fee for each examination to the commissioner which fees shall be used for the purposes set forth in section thirteen, article three of this chapter. The commissioner may, at his discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the commissioner, and examination fees charged by such service shall be paid by the applicant.

(c) Any applicant who is engaged in the practice of professional insurance adjusting prior to the first day of July, one thousand nine hundred eighty-nine, shall be exempt from the examination requirement of subsection (b) of this section.

(d) The requirements of this section shall not apply to licenses issued to emergency adjusters as defined in section eleven-a of this article.

§33-12B-6. Application.

(a) Application for an adjuster’s license or renewal thereof or emergency adjusters’ licenses shall be made to the commissioner upon a form prescribed by him and shall contain such information and be accompanied by such supporting documents as the commissioner may require, and the commissioner may require such application to be made under the applicant’s oath.

(b) Willful misrepresentation of any fact in any such application or any documents in support thereof is a violation of this chapter.

§33-12B-8. License fee; exemptions.

The fee for an adjuster’s license shall be twenty-five dollars as provided in section thirteen, article three of this chapter: Provided, That when any other state imposes a tax, bond, fine, penalty, license fee or other obligation or prohibition on adjusters resident in this
state, the same tax, bond, fine, penalty, license fee or other obligation or prohibition shall be imposed upon adjusters (where licensing of nonresident adjusters is permitted under this article) of each other state licensed or seeking a license in this state. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter: Provided, however, That the provisions of this section shall not apply to emergency insurance adjusters as defined in section eleven-a of this article.

§33-12B-11a. Emergency adjusters and insurance emergencies; definitions; authorization of temporary emergency adjusters; applications; limitations and authority.

(a) For purposes of this section, the following definitions shall apply:

(1) "Emergency adjuster" means an individual authorized by the commissioner to act as an insurance adjuster in the circumstances of an insurance emergency.

(2) "Insurance emergency" means a temporary situation as declared by the insurance commissioner when the number of licensed adjusters in the state of West Virginia is inadequate to meet the demands of the public.

(b) Whenever the commissioner determines that a state insurance emergency exists in the state of West Virginia, the commissioner may authorize individuals to be emergency adjusters. The commissioner may authorize such number of additional adjusters as he considers necessary to adequately address the emergency condition existing in the state.

(c) Any insurance company licensed to do business in this state may submit to the commissioner an application requesting appointment and authorization of one or more emergency adjusters. Each such application shall state the names of any individuals that the company wishes to be authorized as emergency adjusters and other information as the commissioner may require.
(d) The commissioner shall act on the application within twenty-four hours after such application has been submitted to him. Emergency adjusters shall be authorized to act as such only upon approval of the application by the commissioner.

(e) Any such emergency license is valid only for so long as the commissioner specifies, not to exceed a period of one hundred twenty days.

(f) During the time an individual is licensed as an emergency adjuster, he or she has the same power, authority and responsibility as other adjusters authorized by this article.

CHAPTER 77

(Com. Sub. for S. B. 326—By Senators Minard and Helmick)

[Passed April 5, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the promulgation of rules for minimum policy provisions on group accident and sickness coverage; applying the same to hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

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

Article
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations,
    Dental Service Corporations and Health Service Corporations.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3. Required policy provisions.

1 Each such policy hereafter delivered or issued for
delivery in this state shall contain in substance the
following provisions:

4 (a) A provision that the policy, the application of the
policyholder, a copy of which shall be attached to such
policy, and the individual applications, if any, submitted
in connection with such policy by the employees or
members shall constitute the entire contract between
the parties, and that all statements made by any
applicant or applicants shall be deemed representations
and not warranties, and that no such statement shall
void the insurance or reduce benefits thereunder unless
contained in a written application.

14 (b) A provision that the insurer will furnish to the
policyholder, for delivery to each employee or member
of the insured group, an individual certificate setting
forth in substance the essential features of the insurance
coverage of such employee or member and to whom
benefits thereunder are payable. If dependents are
included in the coverage, only one certificate need be
issued for each family unit.

22 (c) A provision that all new employees or members,
as the case may be, in the groups or classes eligible for
insurance, shall from time to time be added to such
groups or classes eligible to obtain such insurance in
accordance with the terms of the policy.

27 (d) No provision relative to notice or proof of loss or
the time for paying benefits or the time within which
suit may be brought upon the policy shall be less
favorable to the insured than would be permitted in the
case of an individual policy by the provisions set forth
in article fifteen of this chapter.

(e) A provision that all members in groups or classes
eligible for insurance provided through an employee's
group plan shall be permitted to pay the premiums at
the same group rate and receive the same coverages for
a period not to exceed eighteen months when they are
involuntarily laid off from work.

(f) Such further provisions establishing group acci-
dent and sickness minimum policy coverage standards
as the commissioner shall promulgate by rule pursuant
to chapter twenty-nine-a of this code.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.
1 Every corporation defined in section two of this
2 article is hereby declared to be a scientific, nonprofit
3 institution and exempt from the payment of all property
4 and other taxes. Every corporation, to the same extent
5 the provisions are applicable to insurers transacting
6 similar kinds of insurance and not inconsistent with the
7 provisions of this article, shall be governed by and be
8 subject to the provisions as hereinbelow indicated, of the
9 following articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once
12 every four years; article four (general provisions), except
13 that section sixteen of said article shall not be applicable
14 thereto; section thirty-four, article six (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be five dollars;
19 section fourteen, article fifteen (individual accident and

* Clerk's Note: This section was also amended by H. B. 2286 (Chapter 67)
and H. B. 2181 (Chapter 79), which passed subsequent to this act.
ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

1 Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not

* Clerk's Note: This section was also amended by H. B. 2286 (Chapter 67) and H. B. 2181 (Chapter 79), which passed subsequent to this act.
inconsistent with the provisions of this article, shall be
governed by and be subject to the provisions as
hereinbelow indicated, of the following articles of this
chapter: Article four (general provisions), except that
section sixteen of said article shall not be applicable
thereto; article six-c (guaranteed loss ratio); article
seven (assets and liabilities); article eight (investments);
article ten (rehabilitation and liquidation); section
fourteen, article fifteen (individual accident and sick-
ness insurance); section three, article sixteen (required
policy provisions); article sixteen-a (group health
insurance conversion); article sixteen-c (small employer
group policies); article sixteen-d (marketing and rate
practices for small employers); article twenty-six-a
(West Virginia life and health insurance guaranty
association act); article twenty-seven (insurance holding
company systems); article thirty-three (annual audited
financial report); article thirty-four-a (standards and
commissioner’s authority for companies deemed to be in
hazardous financial condition); article thirty-five
(criminal sanctions for failure to report impairment);
and article thirty-seven (managing general agents); and
no other provision of this chapter may apply to these
corporations unless specifically made applicable by the
provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

*§33-25A-24. Statutory construction and relationship to
other laws.

(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
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

*Clerk's Note: This section was also amended by H. B. 2181 (Chapter 79), which passed subsequent to this act.
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 individual 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 (individual accident and sickness insurance); article fifteen-b (uniform health care administration act); section three, article sixteen (required policy provisions); section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-seven (insurance holding company systems); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment) and article thirty-seven (managing general agents) shall be applicable to any health maintenance organization granted a certificate of authority under this article.
(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

CHAPTER 78

(S. B. 282—By Senators Minard and Helmick)

[Passed April 7, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-d, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-b, article twenty-eight of said chapter, all relating to medicare supplement insurance; revising the definition of medicare supplement policy; requiring disclosure in a medicare supplement policy of any automatic renewal premium increases based on a policyholder's age; increasing the free examination period from ten to thirty days for a medicare supplement policy issued other than by direct response solicitation; requiring that any premium refund requested pursuant to a free examination of such a policy be paid directly to the policy applicant in a timely manner; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That section three-d, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-b, article twenty-eight of said chapter be amended and reenacted, all to read as follows:

Article

16. Group Accident and Sickness Insurance.


ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3d. Medicare supplement insurance.

1 (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 corporations or health maintenance organizations), other than a policy issued pursuant to a contract under Section 1876 or 1833 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, 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; or

(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. —

(1) 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 for 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 subsection, 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 subdivision (1) above. For purposes of this subdivision, “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 and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age;

(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 or certificate within thirty 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. Any refund made pursuant to this section shall be paid
directly to the applicant by the issuer in a timely manner. 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. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

(g) Administrative procedures. — Rules promulgated pursuant to this section shall be subject to the provisions of chapter twenty-nine-a (the West Virginia Administrative Procedures Act) of this code.

(h) Severability. — 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 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE MINIMUM STANDARDS.

§33-28-5b. Medicare supplement insurance.

(a) Definitions. —

(1) “Applicant” means, in the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits.

(2) “Medicare supplement policy” means an individual policy of accident and sickness insurance or a subscriber contract (of hospital and medical service corporations or health maintenance organizations), other than a policy issued pursuant to a contract under Section 1876 or 1833 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, 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; or

(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.

(3) “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.

(1) 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 for 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 subsection, 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 subdivision (1) above. For purposes of this subdivision, “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 and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age;

(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 or certificate within thirty 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. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner. 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. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

(g) Administrative procedures. — Rules promulgated pursuant to this section shall be subject to the provisions of chapter twenty-nine-a (the West Virginia Administrative Procedures Act) of this code.

(h) Severability. — If any provision of this section or
169 the application thereof to any person or circumstance is
170 for any reason held to be invalid, the remainder of the
171 section and the application of such provision to other
172 persons or circumstances shall not be affected thereby.

CHAPTER 79
(Com. Sub. for H. B. 2181—By Delegates Phillips, Gallagher, P. White,
Kessel, Douglas, Michael and Williams)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article
16A. sixteen-a; section four, article twenty-four; section six,
16B. article twenty-five; and section twenty-four, article
16C. twenty-five-a, all of chapter thirty-three of the code of
16D. West Virginia, one thousand nine hundred thirty-one, as
16E. amended, relating to advance notice by insurers to
16F. covered employees, members, spouses, children or
16G. dependents of conversion rights upon termination of the
16H. policy and the requirement that certain health care
16I. providers, insurers, health care corporations and other
16J. such agencies comply with the provisions of article
16K. sixteen-a regarding group health insurance conversion.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article sixteen-a; section four, article
twenty-four; section six, article twenty-five; and section
twenty-four, article twenty-five-a, all of chapter thirty-three of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be amended and reenacted, all to read as
follows:

Article
16A. Group Health Insurance Conversion.
24. Hospital Service Corporations, Medical Service Corporations,
Dental Service Corporations and Health Service
Corporations.

ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.
§33-16A-14. Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state.

(a) If the benefit levels required in section nine of this article exceed the benefit levels provided under the group policy, the conversion policy may offer benefits which are substantially similar to those provided under the group policy in lieu of those required in section nine.

(b) The insurer may elect to provide group insurance coverage in lieu of the issuance of a converted individual policy.

(c) The insurer, prior to terminating the policy for any reason, shall notify each employee or member, or such employee's or member's spouse, child or dependent entitled to the conversion privilege under this article, at least sixty days in advance of the termination, in writing, of the pending termination. The notice shall inform the employee or member of the conversion privilege provided in this article.

(d) A notification of the conversion privilege shall also be included in each certificate of coverage.

(e) A converted policy which is delivered outside this state must be on a form which could be delivered in such other jurisdiction as a converted policy had the group policy been issued in that jurisdiction.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77) and H. B. 2286 (Chapter 67), which passed prior to this act.
subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; 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 insurance); section three, article sixteen (required policy provisions); 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-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company systems); article twenty-eight (individual accident and sickness insurance minimum standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment) and article thirty-seven (managing general agents); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary profit or if it transacts business without having obtained a license as required by section five of this article, it
shall thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section fourteen, article fifteen (individual accident and sickness insurance); section three, article sixteen (required policy provisions); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); and article thirty-seven (managing general agents); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.

* Clerk's Note: This section was also amended by S. B. 326 (Chapter 77) and H. B. 2286 (Chapter 67), which passed prior to this act.
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws 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.

(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 individual 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 (individual accident and sickness insurance), article fifteen-b

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77), which passed prior to this act.
(uniform health care administration act), section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder), article sixteen-a (group health insurance conversion), article sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-seven (insurance holding company systems), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition), article thirty-five (criminal sanctions for failure to report impairment) and article thirty-seven (managing general agents) shall be applicable to any health maintenance organization granted a certificate of authority under this article.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

CHAPTEH 80
(H. B. 2180—By Delegates Phillips, Gallagher and Michael)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ten, article seventeen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fire and marine insurance auditing and stamping offices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. FIRE AND MARINE INSURANCE.

§1. Repeal of section relating to fire and marine insurance auditing and stamping offices.

Section ten, article seventeen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
CHAPTER 81

(Com. Sub. for H. B. 2467—By Delegates Walters, Kiss, Petersen, Gallagher, Rutledge, Michael and Facemyer)

[Passed April 8, 1993; 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 twenty-five-b, relating to authorizing nonprofit corporations to provide federal insurance subsidy for children's health funds; providing definitions; powers of corporation; administration; civil penalties; voucher applications; duties and responsibilities of corporation; training sessions by the department of health and human resources; annual reports and audits; tax exempt status; and limiting personal liability of members of corporation.

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 twenty-five-b, to read as follows:

ARTICLE 25B. FEDERAL INSURANCE SUBSIDY FOR CHILDREN'S HEALTH.

§33-25B-1. Definitions.
§33-25B-4. Voucher applications; contents.
§33-25B-6. Duties and responsibilities of department of health and human resources to provide training and other services.
§33-25B-7. Allowable commission for applicant aides; prohibited practices.
§33-25B-8. Activities not deemed the sale of insurance; exemptions from benefits and taxation.
§33-25B-11. Personal liability of members or persons acting on behalf of the corporation.

§33-25B-1. Definitions.
The following words, as used in this article, have the meanings set forth below, unless the context clearly requires otherwise:

(a) "Applicant aide" means an individual licensed by the state to care for the physical or emotional needs of children or an employee authorized by his employer where the employer is an institution licensed by the state to care for the physical or emotional needs of children and who has received an applicant aide certificate. Individuals include, but are not limited to, licensed teachers, child care workers, social workers, guidance counselors, psychologists, nurses and physicians. Licensed institutions include, but are not limited to, hospitals, schools, local human services offices, child care centers and medical clinics;

(b) "Approved providers" means any accident and health insurer licensed by the state or any health services organization licensed by the state or any other entity approved by the insurance commissioner for provision of health care coverage for children;

(c) "Corporation" means a nonprofit corporation organized under the laws of West Virginia which has undertaken to implement a federal insurance subsidy for children’s health insurance created by this article; and

(d) "Insurance subsidy fund" or "fund" means a fund or account established by the corporation for the deposit of moneys to implement the insurance subsidy program.


The purpose of this article is to:

(a) Assist, promote, encourage, develop and advance the knowledge of lower to moderate income families with dependent children of the earned income credit available for money spent on health insurance;

(b) Cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and education of lower to moderate income families with dependent children of the earned
income credit available for money spent on health insurance;

(c) Establish a system of qualified applicant aides who shall be trained by the department of health and human services and, who, for a modest dollar incentive, will on a volunteer basis make knowledge of this program available to the targeted families; and

(d) Establish a mechanism by which to provide counseling and assistance to families and aid them in filing for the insurance voucher, selecting an appropriate health insurance policy and completing the required federal income tax return.


In order for a nonprofit corporation to participate in the program provided pursuant to this article, the nonprofit corporation must be organized and incorporated as a nonprofit corporation pursuant to the provisions of article one, section thirty-one of this code. The nonprofit corporation, in addition to all other lawful powers, shall have the power to provide counseling services to West Virginia families on the purchase of federally subsidized health insurance and to accept gifts, grants, or loans from and enter into contracts or other transactions with any federal or state agency, any municipality, any private organization or any other source as may be authorized by law.

§33-25B-4. Voucher applications; contents.

A guardian or applicant aide may file with a nonprofit corporation, organized for the purposes of this article, a sworn voucher application signed by the guardian asserting:

(a) That the guardian meets the requirements for the federal earned income credit for child health insurance for the current or next calendar year;

(b) The good-faith estimate value of the health insurance earned income credit for the year in question;

(c) That the guardian will use the voucher to purchase health insurance covering dependent children;
(d) That the guardian will prepare a federal tax return for the year in question; and
(e) That the guardian agrees to assign the value of any federal tax refund, in the amount of the voucher issued by the corporation to the corporation when filing the guardian’s federal tax return.


Upon presentation of a valid voucher application, the corporation shall issue from its insurance subsidy fund a voucher to the guardian or applicant aide, made out in behalf of the guardian and redeemable for the face amount by any approved provider. The corporation shall retain in the fund all moneys received from refundable tax credits of guardians. These moneys shall be used to extend additional vouchers. The corporation may solicit and receive donations of moneys for the fund. No corporation may require that vouchers be presented to a specific approved provider in order to be eligible to participate in the program.

§33-25B-6. Duties and responsibilities of department of health and human resources to provide training and other services.

(a) The department of health and human resources shall design and provide the vouchers to any corporation wishing to participate in the program at a cost not to exceed the actual cost of the voucher.

(b) No later than ninety days after a request is made by a corporation wishing to participate in the insurance subsidy program, the department of health and human resources in cooperation with the corporations participating in the program, shall begin to conduct regional training and information sessions in all regions of the state. The purpose of these sessions is to train guardians and potential applicant aides in the necessary rules to qualify under the federal guidelines for earned income credits and the requirements of this section. These sessions shall be open to the public and potential applicant aides, at a charge not to exceed ten dollars which shall be used solely to defray the costs of
conducting the training sessions. Sessions shall be available in at least the first and fourth quarter of the calendar year in all regions of the state after a request has been made by a corporation to commence such training sessions. The department of health and human resources may waive the fee for guardians.

(c) Potential applicant aides shall be tested by the department of health and human resources. Potential applicant aides who successfully complete the test shall be awarded a certificate entitled them to work as an applicant aide. The department of health and human resources shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§33-25B-7. Allowable commission for applicant aides; prohibited practices.

(a) Applicant aides may receive a commission not to exceed five percent of the voucher, from an approved provider. No commission may be paid until the fund is fully reimbursed for the voucher. Applicant aides may not solicit or accept any compensation from guardians or potential guardians.

(b) An applicant aide shall be prohibited from entering into any agreement with an approved provider, whether such agreement is for profit or not for profit, to recommend a specific approved provider, to the exclusion of all other approved providers, in the course of counseling guardians or applicants.

(c) Applicant aides who engage in deceptive practices or who aid or encourage deception or fraud may, upon hearing by the corporation, have their certificate as an applicant aide revoked for a period of not less than five years. This action shall be in addition to any other penalties available at law.

(d) The corporation may pursue triple damages in civil court for any losses to the fund attributable to actions or the conduct of applicant aides or guardians.

§33-25B-8. Activities not deemed the sale of insurance; exemptions from benefits and taxation.

(a) Assisting individuals in the preparation of appli-
cations to the fund and selection of the providers does not constitute the sale of insurance and shall not be subject to regulation by the insurance commissioner.

(b) Insurance coverage bought by the guardian through the use of a voucher provided pursuant to the provisions of this article will be exempt from state law and regulations requiring certain mandatory state insurance coverages or benefits.

(c) Insurance coverage bought by guardians through the use of a voucher provided pursuant to the provisions of this article shall not be subject to state premium taxes.


On the first day of January of each year the corporation shall report on its operations for the preceding fiscal year to the governor and the state Legislature. The report shall include a summary of the activities of the corporation and a complete operating and financial statement. A corporation shall cause an annual audit to be made by a resident certified public accountant or a registered public accountant of its books, accounts and records, with respect to its receipts, disbursements and all other matters related to the operation of the insurance subsidy program. The person performing such audit shall also furnish copies of the audit report to the joint committee on government and finance and the legislative auditor.


Any corporation organized for the purposes of this article is exempt from all franchise, corporate, business and taxes of every nature levied by the state.

§33-25B-11. Personal liability of members or persons acting on behalf of the corporation.

No person acting on behalf of the corporation executing any contracts, commitments or agreements issued pursuant to this article may be liable personally upon the contracts, commitments or agreements or be subject to any personal liability or accountability by reason thereof.
CHAPTER 82

(Com. Sub. for H. B. 2632—By Delegates Phillips, Beane, Michael and L. White)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the life and health insurance guaranty association.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

§33-26A-2. Purpose of article and association of insurers.
§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.
§33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.
§33-26A-7. Board of directors; members; vacancies; voting rights, appointment and reimbursement.
§33-26A-12. Prevention of insolvencies; duties of commissioner; coordination with board of directors; duties of the board of directors; requested examinations; procedures and reports.
§33-26A-15. Examination of association; annual report.
§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.


1 This article shall be known and may be cited as the
§33-26A-2. Purpose of article and association of insurers.

(a) The purpose of this article is to protect, subject to certain limitations, the persons specified in subsection (a) of section three of this article against failure in the performance of contractual obligations, under life and health insurance policies and annuity contracts specified in subsection (b) of section three of this article, because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(b) To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purpose of this article.

§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.

(a) This article shall provide coverage for the policies and contracts specified in subsection (b) of this section:

(1) To persons who, regardless of where they reside, are the beneficiaries, assignees or payees of the persons covered under subdivision (2) below: Provided, That the provisions of this subdivision shall not apply to nonresident certificate holders under group policies or contracts;

(2) To persons who are owners of or certificate holders under such policies or contracts; or in the case of unallocated annuity contracts, persons who are contract holders, and who

(A) Are residents of the state; or

(B) Are not residents of this state, but only under all of the following conditions:

(i) Such insurers which issued these policies or contracts are domiciled in this state;

(ii) Such insurers never held a license or certificate of authority in the state in which such person resides;
(iii) Such states have associations similar to the association created by this article; and

(iv) The persons are not eligible for coverage by such associations.

(b) Coverage as provided by this article shall be as follows:

(1) This article shall provide coverage to the persons specified in subsection (a) of this section for direct, nongroup life, health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts, issued by member insurers, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts and any immediate or deferred annuity contracts.

(2) This article shall not provide coverage for:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued;

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based:

(i) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(ii) On and after the date on which the association becomes obligated with respect to such policy or
contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(D) Any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association or similar entity under:

(i) A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) A minimum premium group insurance plan;

(iii) A stop-loss group insurance plan; or

(iv) An administrative services only contract;

(E) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(F) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(G) Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation; and

(H) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union or association of natural persons benefit plan or a government lottery.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an
impaired or insolvent insurer; or

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Three hundred thousand dollars in life insurance death benefits, but no more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(ii) One hundred thousand dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(B) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b) or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, one hundred fifty thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values: Provided, That in no event shall the association be liable to expend more than three hundred thousand dollars in the aggregate with respect to any one individual under paragraphs 2 (A) and (B) above;

(C) With respect to any one contract holder covered by any unallocated annuity contract not included in subsection (2) (B) of this section, one million dollars in benefits, irrespective of the number of contracts held by that contract holder.

(d) The liability of the association is strictly limited by the express terms of the covered policies and contracts and by the provisions of this article and shall not in any event include any amount in excess of the applicable limits of coverage provided by the contracts or policies as limited by this article. The association is not liable for any extra contractual damages, claims, fees of any kind whatsoever, including interest, except as specifically provided by the terms of the policies or
contracts as limited by this article.


This article shall be liberally construed to effect the purpose under section two of this article which shall constitute an aid and guide to interpretation.


As used in this article:

(1) “Account” means either of the two accounts created under section six of this article.

(2) “Association” means the West Virginia life and health insurance guaranty association created under section six of this article.

(3) “Commissioner” means the commissioner of insurance of this state.

(4) “Contractual obligation” means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section three of this article.

(5) “Covered policy” means any policy or contract within the scope of this article under section three of this article.

(6) “Impaired insurer” means a member insurer which, after the effective date of this article, is not an insolvent insurer, and (1) is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or (2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(7) “Insolvent insurer” means a member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(8) “Member insurer” means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section three of this article, and includes
any insurer whose license or certificate of authority in
this state may have been suspended, revoked, not
renewed or voluntarily withdrawn, and includes non-
profit service corporations as defined in article twenty-
four of this chapter and health care corporations as
defined in article twenty-five of this chapter: Provided,
That the term "member insurer" does not include:

(A) A health maintenance organization;
(B) A fraternal benefit society;
(C) A mandatory state polling plan;
(D) A mutual assessment company or any entity that
operates on an assessment basis;
(E) An insurance exchange; or
(F) Any entity similar to any of the above.

(9) "Moody's Corporate Bond Yield Average" means
the monthly average corporates as published by Moody's
Investors Service, Inc., or any successor thereto.
(10) "Person" means any individual, corporation,
partnership, association or voluntary organization.

(11) "Premiums" means amounts received on covered
policies or contracts less premiums, considerations and
deposits returned thereon, and less dividends and
experience credits thereon. "Premiums" does not include
any amounts received for any policies or contracts or for
the portions of any policies or contracts for which
coverage is not provided under subsection (b) of section
three of this article, except that assessable premium
shall not be reduced on account of paragraph (C),
subdivision (2), subsection (b) of section three of this
article relating to interest limitations and subdivision
(2), subsection (c) of section three of this article relating
to limitations with respect to any one individual, any one
participant and any one contract holder: Provided, That
"premiums" shall not include any premiums in excess
of one million dollars on any unallocated annuity
contract not issued under a government retirement plan
established under section 401, 403 (b) or 457 of the
United States Internal Revenue Code.
"Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

"Health insurance" means accident and sickness insurance as defined in subsection (b), section ten, article one of this chapter.

"Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

"Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

§33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.

(a) There is created a nonprofit legal entity to be known as the West Virginia life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section ten of this article and shall exercise its powers through a board of directors established under section seven of this article. For purposes of administration and assessment, the association shall maintain the following two accounts:

(1) The life insurance and annuity account which includes the following subaccounts:

(A) Life insurance account;

(B) Annuity account; and

(C) Unallocated annuity account which shall include
contracts qualified under section 403 (b) of the United States Internal Revenue Code.

(2) The health insurance account.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

§33-26A-7. Board of directors; members; vacancies; voting rights; appointment and reimbursement.

(a) The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(b) To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

(c) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(d) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

(a) If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed or reinsured, any or all the covered policies or contracts of the impaired insurer;

2. Provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate subdivision (1) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under said subdivision (1); or

3. Loan money to the impaired insurer.

(b) (1) If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in subdivision (2) of this subsection, the association shall, in its discretion, either:

(A) Take any of the actions specified in subsection (a) of this section, subject to the conditions therein; or

(B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(2) The association shall be subject to the requirements of subdivision (1) of this subsection only if:

(A) The laws of the impaired insurer’s state of domicile provide that until all payments of or on account of the impaired insurer’s contractual obligations by and
guaranty associations, along with all expenses thereof
and interest on all payments and expenses, shall have
been repaid to the guaranty associations or a plan of
repayment by the impaired insurer shall have been
approved by the guaranty associations:

(i) The delinquency proceeding shall not be
dismissed;

(ii) Neither the impaired insurer nor its assets shall
be returned to the control of its shareholders or private
management;

(iii) It shall not be permitted to solicit or accept new
business or have any suspended or revoked license
restored; and

(B) (i) If the impaired insurer is a domestic insurer,
it has been placed under an order of rehabilitation by
a court of competent jurisdiction in this state; or

(ii) The impaired insurer is a foreign or alien insurer;

(I) It has been prohibited from soliciting or accepting
new business in this state;

(II) Its certificate of authority has been suspended or
revoked in this state; and

(III) A petition for rehabilitation or liquidation has
been filed in a court of competent jurisdiction in its state
domicile by the commissioner of the state.

(c) If a member insurer is an insolvent insurer, the
association shall, in its discretion, either:

(1) (A) Guarantee, assume or reinsure, or cause to be
guaranteed, assumed or reinsured, the policies or
contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of
the insolvent insurer; and

(C) Provide moneys, pledges, guarantees, or other
means as are reasonably necessary to discharge such
duties; or

(2) With respect only to life and health insurance
policies, provide benefits and coverages in accordance
with subsection (d) of this section.

(d) When proceeding under (b) (1) (B) or (c) (2) of this section, the association shall, with respect to only life and health insurance policies:

(1) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred:

(A) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies;

(B) With respect to individual policies, not later than the earlier of the next renewal date, if any, under these policies or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to such policies;

(2) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty days' notice of the termination of the benefits provided; and

(3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (4) of this subsection, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(4) (A) In providing the substitute coverage required under subdivision (3) of this subsection, the association...
may offer either to reissue the terminated coverage or to issue an alternative policy.

(B) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(C) The association may reinsure any alternative or reissued policy.

(5) (A) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(7) The association’s obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date that the coverage or policy is replaced by another similar policy by the policyholder, the
(e) When proceeding under subsection (b) (1) (B) or (C) of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subsection (b) (2) (C) of section three of this article.

(f) Nonpayment of premium within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under such policy or coverage under this article with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this article.

(g) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(h) The protection provided by this article shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(i) In carrying out its duties under subsections (b) and (c) of this section, the association may, subject to approval by the court:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association's duties under this article, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or
contract liens, to be in the public interest;

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(j) If the association fails to act within a reasonable period of time as provided in subsections (b) (1) (B), (c) and (d) of this section, the commissioner shall have the powers and duties of the association under this article with respect to impaired or insolvent insurers.

(k) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(l) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article. Standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(m) (1) Any person receiving benefits under this article shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of
Ch. 82] INSURANCE 767

231 substitute or alternative coverages. The association may
232 require an assignment to it of such rights and cause of
233 action by any payee, policy or contract owner, benefi-
234 ciary, insured or annuitant as a condition precedent to
235 the receipt of any right or benefits conferred by this
236 article upon such person.

237 (2) The subrogation rights of the association under
238 this subsection shall have the same priority against the
239 assets of the impaired or insolvent insurer as that
240 possessed by the person entitled to receive benefits
241 under this article.

242 (3) In addition to subdivisions (1) and (2) above, the
243 association shall have all common law rights of subro-
244 gation and any other equitable or legal remedy which
245 would have been available to the impaired or insolvent
246 insurer or holder of a policy or contract with respect to
247 such policy or contracts.

248 (n) The association may:

249 (1) Enter into such contracts as are necessary or
250 proper to carry out the provisions and purposes of this
251 article;

252 (2) Sue or be sued, including taking any legal actions
253 necessary or proper to recover any unpaid assessments
254 under section nine of this article and to settle claims or
255 potential claims against it;

256 (3) Borrow money to effect the purpose of this article;
257 any notes or other evidence of indebtedness of the
258 association not in default shall be legal investments for
259 domestic insurers and may be carried as admitted
260 assets;

261 (4) Employ or retain such persons as are necessary to
262 handle the financial transactions of the association, and
263 to perform such other functions as become necessary or
264 proper under this article;

265 (5) Take such legal action as may be necessary to
266 avoid payment of improper claims;

267 (6) Exercise, for the purposes of this article and to the
268 extent approved by the commissioner, the powers of a
domestic life or health insurer, but in no case may the
association issue insurance policies or annuity contracts
other than those issued to perform its obligations under
this article.

(o) The association may join an organization of one or
more other state associations of similar purposes, to
further the purposes and administer the powers and
duties of the association.


(a) For the purpose of providing the funds necessary
to carry out the powers and duties of the association, the
board of directors shall assess the member insurers,
separately for each account, at such time and for such
amounts as the board finds necessary. Assessments shall
be due not less than thirty days after prior written
notice to the member insurers and shall accrue interest
at ten percent per annum on and after the due date.

(b) There shall be two assessments, as follows:

(1) Class A assessments shall be made for the purpose
of meeting administrative and legal costs and other
expenses and examinations conducted under the author-
ity of subsection (e) of section twelve, of this article.
Class A assessments may be made whether or not
related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent
necessary to carry out the powers and duties of the
association under section eight with regard to an
impaired or insolvent insurer.

(c) (1) The amount of any Class A assessment shall be
determined by the board and may be made on a pro rata
or non-pro rata basis. If pro rata, the board may provide
that it be credited against future Class B assessments.
A non-pro rata assessment shall not exceed one hundred
fifty dollars per member insurer in any one calendar
year. The amount of any Class B assessment shall be
allocated for assessment purposes among the accounts
pursuant to an allocation formula which may be based
on the premiums or reserves of the impaired or insolvent
insurer or any other standard deemed by the board in
(2) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this article. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) (1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent and for the health account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the
maximum assessment, together with the other assets of
the association in any account, does not provide in any
one year in either account an amount sufficient to carry
out the responsibilities of the association, the necessary
additional funds shall be assessed as soon thereafter as
permitted by this article.

(2) The board may provide in the plan of operation
a method of allocating funds among claims, whether
relating to one or more impaired or insolvent insurers,
when the maximum assessment will be insufficient to
cover anticipated claims.

(3) If a one percent assessment for any subaccount of
the life and annuity account in any one year does not
provide an amount sufficient to carry out the responsi-
bilities of the association, then pursuant to subdivision
(2), subsection (c) of this section, the board shall assess
all subaccounts of the life and annuity account for the
necessary additional amount, subject to the maximum
stated in subdivision (1), subsection (e) of this section.

(f) The board may, by an equitable method as
established in the plan of operation, refund to member
insurers, in proportion to the contribution of each
insurer to that account, the amount by which the assets
of the account exceed the amount the board finds is
necessary to carry out during the coming year the
obligations of the association with regard to that
account, including assets accruing from assignment,
subrogation, net realized gains and income from
investments. A reasonable amount may be retained in
any account to provide funds for the continuing expenses
of the association and for future losses.

(g) It shall be proper for any member insurer, in
determining its premium rates and policy owner
dividends as to any kind of insurance within the scope
of this article, to consider the amount reasonably
necessary to meet its assessment obligations under this
article.

(h) The association shall issue to each insurer paying
an assessment under this article, other than Class A
assessment, a certificate of contribution, in a form
prescribed by the commissioner, for the amount of the
assessment so paid. All outstanding certificates shall be
of equal dignity and priority without reference to
amounts or dates of issue. A certificate of contribution
may be shown by the insurer in its financial statement
as an asset in such form and for such amount, if any,
and period of time as the commissioner may approve.


(a) The association shall submit to the commissioner
a plan of operation and any amendments thereto
necessary or suitable to assure the fair, reasonable and
equitable administration of the association. The plan of
operation and any amendments thereto shall become
effective upon the commissioner's written approval or
unless he has not disapproved of the same within thirty
days.

(b) If the association fails to submit a suitable plan
of operation within one hundred eighty days following
the effective date of this article or if at any time
thereafter the association fails to submit suitable
amendments to the plan, the commissioner shall, after
notice and hearing, adopt and promulgate such reaso-
nable rules as are necessary or advisable to effectuate
the provisions of this article. Such rules shall continue
in force until modified by the commissioner or super-
ceded by a plan submitted by the association and
approved by the commissioner.

(c) All member insurers shall comply with the plan
of operation.

(d) The plan of operation shall, in addition to require-
ments enumerated elsewhere in this article:

(1) Establish procedures for handling the assets of the
association;

(2) Establish the amount and method of reimbursing
members of the board of directors under section seven
of this article;

(3) Establish regular places and times for meetings
including telephone conference calls of the board of
directors;

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(6) Establish any additional procedures for assessments under section nine of this article; and

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(e) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision (3), subsection (m), section eight, and section nine of this article, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this article.


1 In addition to the duties and powers enumerated elsewhere in this article:

(a) The commissioner shall:

(1) Upon request of the board of directors, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer;

(2) When an impairment is declared and the amount
of the impairment is determined, serve a demand upon
the impaired insurer to make good the impairment
within a reasonable time. Notice to the impaired insurer
shall constitute notice to its shareholders, if any; the
failure of the insurer to promptly comply with the
demand shall not excuse the association from the
performance of its powers and duties under this article;
and

(3) In any liquidation or rehabilitation proceeding
involving a domestic insurer, be appointed as the
liquidator or rehabilitator.

(b) The commissioner may suspend or revoke, after
notice and hearing, the certificate of authority to
transact insurance in this state of any member insurer
which fails to pay an assessment when due or fails to
comply with the plan of operation. As an alternative, the
commissioner may levy a forfeiture on any member
insurer which fails to pay an assessment when due. The
forfeiture shall not exceed five percent of the unpaid
assessment per month, but no forfeiture shall be less
than one hundred dollars per month.

(c) Any action of the board of directors or the
association may be appealed to the commissioner by any
member insurer if such appeal is taken within sixty
days of the final action being appealed. If a member
company is appealing an assessment, the amount
assessed shall be paid to the association and available
to meet association obligations during the pendency of
an appeal. If the appeal on the assessment is upheld, the
amount paid in error or excess shall be returned to the
member company. Any final action or order of the
commissioner shall be subject to judicial review in a
court of competent jurisdiction.

(d) The liquidator, rehabilitator or conservator of any
impaired insurer may notify all interested persons of the
effect of this article.

§33-26A-12. Prevention of insolvencies; duties of commis-
sioner; coordination with board of direc-
tors; duties of the board of directors; requested examinations; procedures and reports.
To aid in the detection and prevention of insurer insolvencies or impairments:

(a) It shall be the duty of the commissioner:

(1) To notify the commissioners of all the other states, territories of the United States and the District of Columbia when he takes any of the following actions against a member insurer:

(A) Revocation of license;

(B) Suspension of license; or

(C) Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus or any other account for the security of policyholders or creditors: Provided, That such notice shall be mailed to all commissioners within thirty days following the action taken or the date on which the action occurs.

(2) To report to the board of directors when he or she has taken any of the actions set forth in subdivision (1) of subsection (a) of this section or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(3) To report to the board of directors when he or she has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer.

(4) To furnish to the board of directors the national association of insurance commissioners (NAIC) insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsi-
bilities under this section. The report and the information contained therein shall be kept confidential by the board of directors until it is made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his or her duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. The reports and recommendations shall not be considered public documents.

(d) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

(e) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of a request, the commissioner shall begin an examination. The examination may be conducted as a national association of insurance commissioner's examination or may be conducted by persons that the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (a) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by
the commissioner, but it shall not be open to public
inspection prior to the release of the examination report
to the public.

(f) The board of directors may, upon majority vote,
make recommendations to the commissioner for the
detection and prevention of insurer insolvencies.

(g) The board of directors shall, at the conclusion of
any insurer insolvency in which the association was
obligated to pay covered claims, prepare a report to the
commissioner containing such information as it may
have in its possession bearing on the history and causes
of such insolvency. The board shall cooperate with the
boards of directors of guaranty associations in other
states in preparing a report on the history and causes
of insolvency of a particular insurer, and may adopt by
reference any report prepared by such other associa-
tions.


1 The association may recommend a natural person to
serve as a special deputy to act for the commissioner and
under his or her supervision in the liquidation, rehabil-
itation or conservation of any member insurer.


(a) Nothing in this article shall be construed to
reduce the liability for unpaid assessments of the
insureds of an impaired or insolvent insurer operating
under a plan with assessment liability.

(b) Records shall be kept of all negotiations and
meetings in which the association or its representatives
are involved to discuss the activities of the association
in carrying out its powers and duties under section eight
of this article. Records of such negotiations or meetings
shall be made public only upon the termination of a
liquidation, rehabilitation or conservation proceeding
involving the impaired or insolvent insurer, upon the
termination of the impairment or insolvency of the
insurer, or upon the order of a court of competent
jurisdiction. Nothing in this subsection shall limit the
duty of the association to render a report of its activities
under section fifteen of this article.

(c) For the purpose of carrying out its obligations under this article, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as assignee or subrogee pursuant to subsection (m), section eight of this article. All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this article. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) (1) Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In making such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section eight of this article with respect to the insurer have been fully recovered by the association.

(e) (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions other than
stock dividends paid by the insurer on its capital stock
made at any time during the five years preceding the
petition for liquidation or rehabilitation subject to the
limitations of this subsection.

(2) Distribution shall not be recoverable if the insurer
shows that when paid the distribution was lawful and
reasonable, and that the insurer did not know and could
not reasonably have known that the distribution might
adversely affect the ability of the insurer to fulfill its
contractual obligations.

(3) Any person who, as an affiliate, controlled the
insurer at the time the distributions were paid shall be
liable up to the amount of distributions he or she
received. Any person who, as an affiliate, controlled the
insurer at the time the distributions were declared, shall
be 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.

(4) The maximum amount recoverable under this
subsection shall be the amount required in excess of all
other available assets of the impaired or insolvent
insurer to pay the contractual obligations of the
impaired or insolvent insurer.

(5) If any person under subdivision (3) is insolvent, all
its affiliates that controlled it at the time the distribu-
tion was paid shall be jointly and severally liable for any
resulting deficiency in the amount recovered from the
insolvent affiliate.

§33-26A-15. Examination of association; annual report.

The association shall be subject to examination and
regulation by the commissioner. The board of directors
shall submit to the commissioner, not later than the first
day of May of each year, a financial report for the
preceding calendar year in a form approved by the
commissioner and a report of its activities during the
preceding calendar year.


There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his or her representatives, for any action or omission by them in the performance of their powers and duties under this article. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.


All proceedings in which the impaired or insolvent insurer is a party in any court in this state shall be stayed sixty days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on default the association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

(a) A person, including any insurer, agent or affiliate of an insurer shall not make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or
oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by the West Virginia life and health insurance guaranty association act: Provided, That this section shall not apply to the association or any other entity which does not sell or solicit insurance.

(b) Within one hundred eighty days of the effective date of this section, the association shall prepare a summary document describing the general purposes and current limitations of the act and complying with subsection (c) of this section. This document should be submitted to the commissioner for approval. Sixty days after receiving such approval, no insurer may deliver a policy or contract described in subdivision (1) of subsection (b) of section three of this article to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except if subsection (d) of this section applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or the contract of the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the act may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder or insured any greater rights than those stated in this article.

(c) The document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:

(1) State the name and address of the association and insurance department;

(2) Prominently warn the policy or contract holder that the association may not cover the policy or, if
coverage is available, it will be subject to substantial
limitations and exclusions and conditioned on continued
residence in the state;

(3) State that the insurer and its agents are prohi-
bited by law from using the existence of the association
for the purpose of sales, solicitation or inducement to
purchase any form of insurance;

(4) Emphasize that the policy or contract holder
should not rely on coverage under the association when
selecting an insurer;

(5) Provide other information as directed by the
commissioner.

(d) An insurer or agent may not deliver a policy or
contract described in subdivision (1) of subsection (b) of
section three of this article and excluded under para-
graph (A), subdivision (2), subsection (b) of section three
of this article from coverage under this article unless the
insurer or agent, prior to or at the time of delivery, gives
the policy or contract holder a separate written notice
which clearly and conspicuously discloses that the policy
or contract is not covered by the association. The
commissioner shall by rule specify the form and content
of the notice, which rules shall be promulgated on or
before the second day of August, one thousand nine
hundred ninety-three.

CHAPTER 83
(H. B. 2779—By Delegates Carper, Evans, Facemyer, Higgins,
Louisos, Oliverio and Vest)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twelve of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section nine-e, relating to establishing a fifteen million
dollar revolving loan fund to be used by the West
Virginia economic development authority for industrial
development; limiting the amount of the loans; legisla­tive findings; loans for industrial development; availa­bility of funds and interest rates.

_Be it enacted by the Legislature of West Virginia:_

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

**ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.**

§12-6-9e. _Legislative findings; loans for industrial develop­ment; availability of funds and interest rates._

(a) The Legislature hereby finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that an industrial develop­ment loan program will provide for economic growth and stimulation within the state; and that loans from pools established in the consolidated fund will assist in providing the needed capital to assist industrial develop­ment. This section is enacted in view of these findings.

(b) The board of investments may make available, on a revolving basis, up to fifteen million dollars from the consolidated fund to loan the West Virginia economic development authority for industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code: _Provided,_ That the West Virginia economic development authority may not loan more than two million dollars for any one industrial development project. The loans shall be secured by notes, security interests or bonds issued by the West Virginia economic development authority evidencing the indebtedness of the economic development authority to the board.

The notes, security interests or bonds issued by the economic development authority shall be secured by security equal to or better than one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities or by a letter of credit guarantee issued by a bank having an un-
28 secured legal lending limit greater than two million
dollars.

29 (c) The interest rates and maturity dates on the loans
to the West Virginia economic development authority
shall be at competitive rates and maturities as deter-
mined by the board. The board shall determine the
financial condition of pools within the consolidated fund
and shall determine if there is sufficient liquidity within
the pools to make the loans specified in this section.

CHAPTER 84

(Com. Sub. for H. B. 2307—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 17, 1993: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven,
chapter twelve of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to limitation on investments by the jobs investment trust
fund; allowing an additional investment for eligible
businesses; limiting the additional investment; and
requiring that the additional investment be in the form
of a short-term debt investment.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, 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 7. JOBS INVESTMENT TRUST FUND.

§12-7-7. Limitation on investments.

1 Subject to the provisions of section nine of this article,
the board may invest in any eligible business: Provided,
3 That at the time of the placement of the investment not
more than twenty percent of the board's total investment
portfolio is invested in one eligible business within any
2-year period: Provided, however, That the board may
7 invest in an eligible business up to an additional twenty
percent of the board’s total investment portfolio, or up
to a total of two million dollars, whichever is less. The
additional investment must be in the form of a short-
term debt investment to be repaid within twelve months
of the investment.

CHAPTER 85
(S. B. 51—By Senators Wooton, Dalton,
Plymale and Wagner)

[Passed March 1, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two,
chapter one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
apportionment of the Senate; and making technical
corrections to senatorial 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 one, 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.

§1-2-1. Senatorial districts.

(a) This section shall be known and may be cited as
“The Senate Redistricting Act of 1991”.

(b) As used in this section:

(1) “County” means the territory comprising a county
of this state as such county existed on the first day of
January, one thousand nine hundred ninety, notwith-
standing any boundary changes thereof made subse-
quently thereto;

(2) “Block”, “block group”, “census tract” 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 compris­
ing 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; and

(4) "Incumbent senator" means a senator elected at
the general election held in the year one thousand nine
hundred ninety or at any general election thereafter,
with an unexpired term of at least two years in duration.

(c) The Legislature recognizes that in dividing the
state into senatorial districts, the Legislature is bound
not only by the United States constitution but also by
the West Virginia constitution; that in any instance
where the West Virginia constitution conflicts with the
United States constitution, the United States constitu­
tion must govern and control, as recognized in section
one, article one of the West Virginia constitution; that
the United States constitution, as interpreted by the
United States supreme court and other federal courts,
requires state legislatures to be apportioned so as to
achieve equality of population as near as is practicable,
population disparities being permissible where justified
by rational state policies; and that the West Virginia
constitution requires two senators to be elected from
each senatorial district for terms of four years each, one
such senator being elected every two years, with one half
of the senators being elected biennially, and requires
senatorial districts to be compact, formed of contiguous
territory and bounded by county lines. The Legislature
finds and declares that it is not possible to divide the
state into senatorial districts so as to achieve equality
of population as near as is practicable as required by
the United States supreme court and other federal
courts and at the same time adhere to all of these provisions of the West Virginia constitution; but that, in an effort to adhere as closely as possible to all of these provisions of the West Virginia constitution, the Legislature, in dividing the state into senatorial districts, as described and constituted in subsection (d) hereof, has:

(1) Adhered to the equality of population concept, while at the same time recognizing that from the formation of this state in the year one thousand eight hundred sixty-three, each constitution of West Virginia and the statutes enacted by the Legislature have recognized political subdivision lines and many functions, policies and programs of government have been implemented along political subdivision lines;

(2) Made the senatorial districts as compact as possible, consistent with the equality of population concept;

(3) Formed the senatorial districts of "contiguous territory" as that term has been construed and applied by the West Virginia supreme court of appeals;

(4) Deviated from the long-established state policy, recognized in subdivision (1) above, by crossing county lines only when necessary to ensure that all senatorial districts were formed of contiguous territory or when adherence to county lines produced unacceptable population inequalities and only to the extent necessary in order to maintain contiguity of territory and to achieve acceptable equality of population; and

(5) Also taken into account in crossing county lines, to the extent feasible, the community of interests of the people involved.

(d) The Senate shall be composed of thirty-four senators, one senator to be elected at the general election to be held in the year one thousand nine hundred ninety-two, and biennially thereafter for a four-year term from each of the senatorial districts hereinafter in this subsection described and constituted as follows:

(1) The counties of Brooke and Hancock and all of magisterial District One of Ohio county and voting
Ch. 85] LEGISLATURE 787

93 district EP 9, voting district EP 20, voting district EP 28, voting district EP 31, voting district EP 113, voting district EP 115, voting district EP 116, voting district EP 119, voting district EP 120, Block 302D and Block 320 of Block Group 3 in Census Tract 0002 contained in voting district EP 24, Block 405B, Block 422 and Block 499B of Block Group 4 in Census Tract 0002 contained in voting district EP 24, Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114 and Block 116 of Block Group 1 in Census Tract 0004 contained in voting district EP 24, Block 201 of Block Group 2 in Census Tract 0004 contained in voting district EP 24, Block 105, Block 106, Block 107, Block 109A and Block 110A of Block Group 1 in Census Tract 0004 contained in voting district EP 43, Block 209A, Block 210, Block 211 and Block 212 of Block Group 2 in Census Tract 0014 contained in voting district EP 43, and Block 327, Block 328 and Block 329 of Block Group 3 in Census Tract 0015 contained in voting district EP 43 of magisterial District Two of Ohio county, and all of magisterial District Three of Ohio county except voting district EP 87, voting district EP 95, voting district EP 100, voting district EP 103 and voting district EP 104 shall constitute the first senatorial district;

(2) The counties of Doddridge, Marshall, Ritchie, Tyler, Wetzel and that portion of the county of Ohio not included in the first senatorial district and voting district EP 66, voting district EP 70, voting district EP 72, voting district EP 74 and voting district EP 78 of the West Augusta magisterial district of the county of Marion shall constitute the second senatorial district;

(3) The counties of Calhoun, Pleasants, Wirt and Wood shall constitute the third senatorial district;

(4) The counties of Jackson, Mason, Putnam and Roane shall constitute the fourth senatorial district;

(5) The county of Cabell and voting district EP 12, voting district VTD 101, Block 103 of Block Group 1 in Census Tract 0202 contained in voting district EP 11, Block 199B of Block Group 1 in Census Tract 0
contained in voting district EP 59, and Block 101B and
Block 199E of Block Group 1 in Census Tract 0202
contained in voting district EP 21 in the Ceredo
magisterial district, and that portion of voting district
EP 59, voting district EP 63 and Block 101, Block 102,
Block 103, Block 104 and Block 105 of Block Group 1
in Census Tract 0051 contained in voting district EP 60
in the Westmoreland magisterial district of the county
of Wayne shall constitute the fifth senatorial district;

(6) The counties of McDowell and Mingo, voting
district EP 41, voting district EP 42, voting district EP
49, voting district EP 52, voting district EP 60, voting
district EP 61, Block 412B, Block 415, Block 416, Block
417B and Block 422B of Block Group 4 in Census Tract
9509 contained in voting district EP 46, Block 510 of
Block Group 5 in Census Tract 9509 contained in voting
district EP 46, Block 304B of Block Group 3 in Census
Tract 9510 contained in voting district EP 46, Block
405C, Block 412D, Block 414, Block 417, Block 418B,
Block 419B, Block 422, Block 423, Block 424 and Block
425 of Block Group 4 in Census Tract 9516 contained
in voting district EP 63 of magisterial District III in the
county of Mercer, and voting district EP 1, voting
6, voting district EP 17, voting district EP 18, voting
district EP 19, and Block 510 of Block Group 5 in
Census Tract 0204 contained in voting district EP 22,
and Block 219, Block 220, Block 221, Block 222, Block
224, Block 225, Block 228, Block 231 and Block 232 of
Block Group 2 in Census Tract 0206 contained in voting
district EP 22 of the Butler magisterial district in the
county of Wayne, and voting district EP 13, voting
district EP 15, voting district EP 20, Block 305A, Block
305C, Block 306A, Block 306C and Block 307 of Block
Group 3 in Census Tract 0052 contained in voting
district EP 11, Block 210A and Block 211A of Block
Group 2 in Census Tract 0201 contained in voting
district EP 11, Block 102, Block 104, Block 105, Block
106, Block 107, Block 108, Block 109, Block 110, Block
111, Block 112, Block 113, Block 114, Block 115, Block
116, Block 117, Block 118, Block 119, Block 120, Block
121 and Block 199A of Block Group 1 in Census Tract
0202 contained in voting district EP 11, Block 225 and Block 226 of Block Group 2 in Census Tract 0202 contained in voting district EP 11, and Block 218A of Block Group 2 in Census Tract 0203 contained in voting district EP 11, Block 101A, Block 102A, Block 103, Block 104, Block 120A, Block 122A, Block 122B, Block 124A, Block 156, Block 157 and Block 199A of Block Group 1 in Census Tract 0204 contained in voting district EP 11, voting district EP 16, Block 101B, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113B, Block 114, Block 115, Block 116, Block 117, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124 and Block 134 of Block Group 1 in Census Tract 0203 contained in voting district EP 21, Block 401, Block 402, Block 417 and Block 418 of Block Group 4 in Census Tract 0203 contained in voting district EP 21, Block 505, Block 520, Block 522 and Block 523 of Block Group 5 in Census Tract 0203 contained in voting district EP 21 of the Ceredo magisterial district in the county of Wayne, and voting district EP 30, voting district EP 31, voting district EP 34, voting district EP 36, voting district EP 37, and that portion of voting district EP 3 of the Stonewall magisterial district in the county of Wayne, and voting district EP 48, Block 318 of Block Group 3 in Census Tract 0206 contained in voting district EP 53, Block 144 and Block 145 of Block Group 1 in Census Tract 0207 contained in voting district EP 53, Block 255B of Block Group 2 in Census Tract 0207 contained in voting district EP 53, Block 464B of Block Group 4 in Census Tract 0206 contained in voting district EP 54, and Block 319B, Block 315B and Block 314B of Block Group 3 in Census Tract 0209 contained in voting district EP 54 of the Union magisterial district in the county of Wayne, and voting district EP 14, voting district EP 19, voting district EP 56, voting district EP 57, voting district EP 58, voting district EP 61, voting district EP 62 and Block 106 of Block Group 1 in Census Tract 0051 contained in voting district EP 60 of the Westmoreland magisterial district in the county of Wayne shall constitute the sixth senatorial district;
(7) The counties of Boone, Lincoln and Logan and that portion of the county of Wayne not included in the fifth or sixth senatorial districts shall constitute the seventh senatorial district;

(8) The county of Kanawha shall constitute the eighth senatorial district;

(9) The counties of Raleigh and Wyoming shall constitute the ninth senatorial district;

(10) The counties of Monroe and Summers and that portion of the county of Mercer not included in the sixth senatorial district, and voting district EP 68, voting district EP 72 and voting district EP 74 of the New Haven magisterial district of Fayette county, and voting district EP 3, voting district EP 4, voting district EP 5, voting district EP 9, voting district EP 10, voting district EP 11, voting district EP 12, voting district EP 14, voting district EP 19, voting district EP 23, voting district EP 24, Block 226A, Block 228A, Block 229 and Block 230 of Block Group 2 in Census Tract 0202 contained in voting district EP 8, Block 312A, Block 312B, Block 312C, Block 317A, Block 317B, Block 318, Block 319, Block 320A, Block 320B, Block 321, Block 322A, Block 322B, Block 323, Block 324, Block 325, Block 326, Block 327 and Block 328 of Block Group 3 in Census Tract 0202 contained in voting district EP 8, Block 401A, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414A, Block 415, Block 416 and Block 417 of Block Group 4 in Census Tract 0202 contained in voting district EP 8, Block 536, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547, Block 548, Block 552, Block 553, Block 554 and Block 555 of Block Group 5 in Census Tract 0202 contained in voting district EP 8, Block 330, Block 331, Block 334, Block 335, Block 337, Block 338, Block 339, Block 340, Block 342, Block 343, Block 344, Block 345, Block 346 and Block 347 of Block Group 3 in Census Tract 0203 contained in voting district EP 13, Block 101A, Block 101B, Block 102A, Block 102B, Block 103, Block 104, Block 105, Block 106, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 116, Block 117, Block 119, Block 120, Block...
(11) The counties of Clay, Greenbrier, Nicholas and Webster and that portion of the county of Fayette not included in the tenth senatorial district shall constitute the eleventh senatorial district;

(12) The counties of Braxton, Gilmer, Harrison and Lewis shall constitute the twelfth senatorial district;

LEGISLATURE

300 405, Block 406, Block 407, Block 408, Block 409, Block
301 410, Block 411, Block 412, Block 413A, Block 413B,
302 Block 414, Block 415, Block 416, Block 417, Block 418,
303 Block 419, Block 420, Block 421, Block 422, Block 423,
304 Block 424, Block 425 and Block 499 of Block Group 4
305 in Census Tract 0112 contained in voting district EP 48,
306 Block 501B, Block 502A, Block 502B, Block 502C, Block
307 503A, Block 503B, Block 503C, Block 504A, Block 504B,
308 Block 505A, Block 505B, Block 506, Block 507A, Block
309 507B, Block 508, Block 509A, Block 509B, Block 510,
310 Block 511, Block 512, Block 513, Block 514A, Block
311 514B, Block 515A, Block 515B, Block 516A, Block 516B,
312 Block 517, Block 518, Block 519A, Block 519B, Block
313 520A, Block 520B, Block 521A and Block 521B of Block
314 Group 5 in Census Tract 0112 contained in voting
315 district EP 48, Block 301, Block 302, Block 303, Block
316 304, Block 305, Block 306, Block 307, Block 308, Block
317 309, Block 311, Block 312, Block 313, Block 314, Block
318 315, Block 316, Block 317, Block 355A, Block 355B,
319 Block 357A, Block 357B, Block 358, Block 360, Block
320 362 and Block 399 of Block Group 3 in Census Tract
321 0115 contained in voting district EP 48 of the Western
322 magisterial district of Monongalia county, and that
323 portion of voting district EP 22, that portion of voting
325 36, voting district EP 39, voting district EP 76, voting
326 district EP 80, voting district EP 81, voting district EP
327 82, voting district EP 83, voting district EP 84, voting
328 district EP 86, that portion of voting district EP 87,
329 voting district EP 88, voting district EP 89, voting
330 district EP 91, Block 418B, Block 419C, Block 419D and
331 Block 421B of Block Group 4 in Census Tract 0108
332 contained in voting district EP 35, Block 101D, Block
333 102, Block 103, Block 105 and Block 110 of Block Group
334 1 in Census Tract 0109 contained in voting district EP
335 35, Block 731B, Block 732B, Block 733 and Block 734B
336 of Block Group 7 in Census Tract 0109 contained in
337 voting district EP 35, Block 801C, Block 802, Block 803,
338 Block 804, Block 805, Block 806B, Block 807, Block 811,
339 Block 812 and Block 813 of Block Group 8 in Census
340 Tract 0109 contained in voting district EP 35, Block
341 315B of Block Group 3 in Census Tract 0110 contained
in voting district EP 35, Block 599A of Block Group 5
in Census Tract 0116 contained in voting district EP 79,
Block 126, Block 127, Block 128, Block 132, Block 133,
Block 134, Block 135, Block 136, Block 137A, Block
137B, Block 138, Block 139, Block 140, Block 141, Block
142, Block 143, Block 144, Block 145, Block 146, Block
147, Block 148, Block 149, Block 150, Block 151, Block
152, Block 153, Block 154, Block 155, Block 156A, Block
156B, Block 157, Block 158, Block 159, Block 160, Block
161, Block 162, Block 163, Block 164, Block 165, Block
166, Block 167, Block 168, Block 169, Block 170, Block
171, Block 172, Block 173, Block 174, Block 175, Block
176, Block 177, Block 178, Block 179, Block 180, Block
181, Block 182, Block 183, Block 184, Block 185, Block
186, Block 187, Block 199A, Block 199B, Block 199F,
Block 199G, Block 199H and Block 199J of Block Group
1 in Census Tract 0117 contained in voting district EP
79, Block 613B of Block Group 6 in Census Tract 0110
contained in voting district EP 85, and Block 701, Block
702B and Block 703 of Block Group 7 in Census Tract
0110 contained in voting district EP 85 of the Eastern
magisterial district of Monongalia county shall consti-
tute the thirteenth senatorial district;
(14) The counties of Barbour, Preston, Taylor and
Tucker and that portion of the county of Monongalia not
included in the thirteenth senatorial district, and all of
the Union magisterial district of Grant county, and all
of magisterial District Two of Mineral county, and
voting district EP 2, voting district EP 3, voting district
EP 4, voting district EP 6, voting district EP 8, voting
district EP 27, voting district EP 28, voting district EP
29, voting district EP 30, voting district EP 31, voting
district EP 35 and that portion of voting district EP 5
in magisterial District One of Mineral county, and
voting district EP 10, voting district EP 12, voting
district EP 13, voting district EP 14, voting district EP
15, voting district EP 32 and that portion of voting
district EP 5 in magisterial District Three of Mineral
county shall constitute the fourteenth senatorial district;
(15) The counties of Hampshire, Hardy, Randolph,
Pendleton, Pocahontas and Upshur and that portion of
the county of Grant not included in the four
senatorial district, and that portion of the county of Mineral county not included in the fourteenth senatorial district shall constitute the fifteenth senatorial district;

(16) The counties of Berkeley, Jefferson and Morgan shall constitute the sixteenth senatorial district; and

(17) The county of Kanawha shall constitute the seventeenth senatorial district.

(e) The West Virginia constitution further provides, in section four, article VI thereof, that where a senatorial district is composed of more than one county, both senators for such district shall not be chosen from the same county, a residency dispersal provision which is clear with respect to senatorial districts which follow county lines, as required by such constitution, but which is not clear in application with respect to senatorial districts which cross county lines. However, in an effort to adhere as closely as possible to the West Virginia constitution in this regard, the following additional provisions, in furtherance of the rationale of such residency dispersal provision and to give meaning and effect thereto, are hereby established:

(1) With respect to a senatorial district which is composed of one or more whole counties and one or more parts of another county or counties, no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district;

(2) With respect to a senatorial district which does not contain any whole county but only parts of two or more counties, no more than one senator shall be chosen from the same part to represent such senatorial district; and

(3) With respect to superimposed senatorial districts which contain only one whole county, all senators shall be chosen from such county to represent such senatorial districts.

(f) Candidates for the Senate shall be nominated as provided in section four, article five, chapter three of this code, except that such candidates shall be nominated in accordance with the residency dispersal provisions specified in section four, article VI of the West Virginia constitution and the additional residency
dispersal provisions specified in subsection (e) hereof. Candidates for the Senate shall also be elected in accordance with the residency dispersal provisions specified in said section and the additional residency dispersal provisions specified in subsection (e) hereof. In furtherance of the foregoing provisions of this subsection, no person may file a certificate of candidacy for election from a senatorial district described and constituted in subsection (d) hereof if he or she resides in the same county and the same such senatorial district wherein also resides an incumbent senator, whether the senatorial district wherein such incumbent senator resides was described and constituted by chapter ninety-nine, acts of the Legislature, one thousand nine hundred eighty-two, or was described and constituted in subsection (d) of this section or its immediately prior reenactment. Any vacancy in a nomination shall be filled, any appointment to fill a vacancy in the Senate shall be made, and any candidates in an election to fill a vacancy in the Senate shall be chosen, so as to be consistent with the residency dispersal provisions specified in section four, article VI of the West Virginia constitution and the additional residency dispersal provisions specified in subsection (e) hereof.

(g) Regardless of the changes in senatorial district boundaries made by the provisions of subsection (d) hereof, all senators elected at the general election held in the year one thousand nine hundred eighty-eight and at the general election held in the year one thousand nine hundred ninety shall continue to hold their seats as members of the Senate for the term, and as representatives of the senatorial district, for which each thereof, respectively, was elected. Any appointment made or election held to fill a vacancy in the Senate shall be for the remainder of the term, and as a representative of the senatorial district, for which the vacating senator was elected or appointed, and any such election shall be held in the district as the same was described and constituted at the time the vacating senator was elected or appointed.

(h) The secretary of state may promulgate rules and regulations to implement the provisions of this section.
including emergency rules and regulations promulgated pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

(i) In amending and reenacting this section, it is not the intention of the Legislature to alter or change the arrangement of the senatorial districts and the apportionment of senators 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, nor does this reenactment alter or change such arrangement and apportionment. Rather, it is the intent of the Legislature in amending this section to incorporate all the necessary geographic areas which should have been included in each senatorial district, such amendment being the inclusion of two voting districts which were inadvertently omitted from one senatorial district, which inclusion does not alter or change the boundaries of that district.
CHAPTER 86
(H. B. 2429—By Delegates Browning and Prezioso)

[Passed March 25, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal article nine, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the legislative committee on pensions and retirement.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the legislative committee on pensions and retirement.

1 Article nine, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 87
(Com. Sub. for H. B. 2596—By Delegates Williams, Carper, Rutledge and Ashley)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, thirteen, fourteen, fifteen, seventeen and eighteen, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to suggestions on judgments; setting forth procedures for suggestion on a judgment creditor; requiring judgment creditor to furnish information, to the extent possible, identifying the judgment debtor; defining a suggestee's obligation when served with a summons on a suggestion filed by a judgment creditor; clarifying the effective date of a suggestee execution; and making certain technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections ten, thirteen, fourteen, fifteen, seventeen and
eighteen, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.**

§38-5-10. Suggestion on judgment; summons against person suggested.
§38-5-13. Contents of answer of person suggested; verification.
§38-5-14. Discharge of person suggested by payment of money or delivery of property; officer's receipt.
§38-5-17. Failure of person suggested to answer.
§38-5-18. Jury trial in suggestion proceedings; waiver of jury; right of appeal; costs.

§38-5-10. Suggestion on judgment; summons against person suggested.

(a) Upon a suggestion by the judgment creditor that a person is indebted or liable to the judgment debtor or has in the person's possession or control personal property belonging to the judgment debtor, which debt or liability could be enforced, when due, or which property could be recovered, when it became returnable, by the judgment debtor in a court of law, and which debt or liability or property is subject to the judgment creditor's writ of fieri facias, a summons against such person may be issued out of the office of the clerk of the circuit court of the county in which such person so indebted or liable, or so having such personal property, resides, or, if such person be a nonresident of the state, in the county in which the person may be found, upon an attested copy of such writ of fieri facias being filed with the clerk to be preserved in the clerk's office, requiring such person to answer the suggestion in writing and under oath. The return day of the summons shall be the next term of the court.

(b) The suggestion by the judgment creditor provided for herein shall include, to the extent possible, the present address and social security number of the judgment debtor, which information shall be made available to the person suggested for purposes of identifying the judgment debtor and facilitating a proper answer to the suggestion.
§38-5-13. Contents of answer of person suggested; verification.

The answer of the person suggested shall state, in addition to the matters required to be disclosed by the summons mentioned in section ten of this article, the nature and amount of liability or indebtedness to the judgment debtor at the time of service of the summons, or a description of the property of the judgment debtor held by the person suggested at the time of service of the summons, and whether the liability of the person, or any part thereof, is represented by a negotiable instrument, and, in the case of a bailee, whether there is outstanding any negotiable warehouse receipt, bill of lading, or other negotiable instrument for any of the personal property in the person's possession or under the person's control. The answer shall be verified in the manner prescribed for the verification of other pleadings.

§38-5-14. Discharge of person suggested by payment of money or delivery of property; officer's receipt.

A person suggested may, at any time before the return day of the summons mentioned in section ten of this article, deliver the property or pay the money for which the person is liable at the time of service of the summons, or a sufficiency thereof to satisfy the execution, and shall thereby be discharged from any further liability under the execution, and, as to the property so delivered and/or money so paid, the person shall be discharged from all liability whatsoever to the judgment debtor: Provided, That if the obligation upon which the person is indebted to the judgment debtor is evidenced by a negotiable instrument, the obligation shall not, as to a holder in due course, be discharged by the payment: Provided, however, That the right of a holder in due course, of a negotiable warehouse receipt, bill of lading, or other negotiable instrument for any property so delivered, shall not be impaired by the delivery. If any payment or delivery is made to the officer under the provisions of this section, the officer shall give a receipt for, and make a return of, what is so paid and delivered.

1 If it appears from the answer of the person suggested that, at the time the writ of fieri facias was delivered to the officer to be executed, or thereafter, and before the time of the service of the summons, or the return day of the writ of fieri facias, whichever comes first, the person was indebted or liable to the judgment debtor, or had in the person's possession or under the person's control any personal property belonging to the judgment debtor, and that the person had not, before notice of the delivery of the writ of fieri facias to the officer, paid the money or delivered the property to the judgment debtor, or upon the judgment debtor's order, and that the debt or liability to pay the money or deliver the property was not evidenced by a negotiable instrument, the court may order the person to pay the amount so due from the person and to deliver the property, or any part of the money or property, to such person as the court may designate as receiver: Provided, That if it shall appear from the answer of the person suggested, that the person's debt or liability to pay money or deliver property is evidenced by a negotiable instrument, the court may order the payment or delivery, but only upon condition that the holder of the negotiable instrument shall deliver the same to the person suggested simultaneously with the payment of the money or delivery of the property: Provided, however, That any person suggested holding property under a pledge or lien shall not be required to deliver up the property except upon payment to such person of the debt secured by the pledge or lien.

§38-5-17. Failure of person suggested to answer.

1 If any person suggested, summoned as provided in this article, fails to answer, the court may either compel the person to answer, or hear proof of the matters required by section fifteen of this article to be disclosed by the person's answer, concerning any debt or liability due by the person to, or personal property in the person's possession or under the person's control of, the judgment debtor at the time of service of the summons, and make
the orders in relation thereto as if what is so proved had appeared in the person's answer.

§38-5-18. Jury trial in suggestion proceedings; waiver of jury; right of appeal; costs.

When it is suggested by the judgment creditor in any case of suggestion that the person suggested has not fully disclosed the debts or liabilities due by the person to, or personal property in the person's possession or under the person's control of, the judgment debtor at the time of service of the summons, or has not delivered to the officer the property, or paid the money, for which the person was liable, the court shall cause a jury to be impaneled, without any formal pleadings, to inquire as to the debts or liabilities or property, or as to the payment or delivery, unless a trial by jury is waived by the parties, and if trial by jury be waived, the court shall proceed to hear and determine the questions at issue. Whether the issues of fact be found by the court or by a jury, the court shall proceed in respect to any fact so found, in the same manner as if they had been confessed by the person suggested, but either party shall be entitled to a writ of error or an appeal as in other cases. If the verdict or decision of the court be for the person suggested, the person shall have judgment for the person's costs against the judgment creditor, and if the judgment be against the person suggested, the person shall be adjudged liable for the costs of the suggestion proceeding.

CHAPTER 88

(S. B. 559—By Senator Wooton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the composition of the state lottery commission; relating to compensation of commission members.
and providing that two members of the lottery commission be appointed as vacancies occur from each of the new congressional districts.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§29-22-4. State lottery commission created; composition; qualifications; appointment; terms of office; chairman's removal; vacancies; compensation and expenses; quorum; oath and bond.

1 (a) There is hereby created a state lottery commission which shall consist of seven members, all residents and citizens of the state, one who shall be a lawyer, one who shall be a certified public accountant, one who shall be a computer expert, one who shall have not less than five years experience in law enforcement and one who shall be qualified by experience and training in the field of marketing. The two remaining members shall be representative of the public at large. The commission shall carry on a continuous study and investigation of the lottery throughout the state and advise and assist the director of the state lottery. The commission members shall be appointed by the governor, by and with the advice and consent of the Senate, no later than the first day of July, one thousand nine hundred eighty-five. The terms of members first appointed expire as designated by the governor at the time of appointment: One at the end of one year; two at the end of two years; one at the end of three years; two at the end of four years; and one at the end of five years. Upon the effective date of this section, as vacancies occur, appointments to fill vacancies shall be made so that at least two members are appointed from each congressional district existing as of the first day of January, one thousand nine hundred ninety-three. No more than four members of such commission shall belong to the same political party. Members serve overlapping terms of five years and are eligible for successive appointments to the commission.
On the first day of July of each year, the commission shall select a chairman from its membership. The governor may remove any commission member for cause, notwithstanding the provisions of section four, article six, chapter six of this code. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of the term. No person convicted of a felony or crime involving moral turpitude shall be eligible for appointment nor appointed as a commissioner.

(b) The board shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses incurred in the discharge of official duties: Provided, That the per mile rate to be reimbursed shall be the same rate as authorized for members of the Legislature. All such payments shall be made from the state lottery fund.

(c) At least one meeting per month shall be held by the commission. Additional meetings may be held at the call of the chairman, director or majority of the commission members.

(d) A majority of the members constitutes a quorum for the transaction of business, and all actions require a majority vote of the members present.

(e) Before entering upon the discharge of the duties as commissioner, each commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of the office. The executed oath and bond shall be filed in the office of the secretary of state.
AN ACT to amend and reenact section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, five, six, seven, nine, ten and eleven, article eleven-b of said chapter; and to further amend said article by adding thereto two new sections, designated sections seven-a and twelve, all relating to permitting magistrates to impose alternative sentences upon convicted offenders; authorizing circuit courts to order home confinement in lieu of jail; authorizing magistrates to order certain offenders confined to home for a period of electronically monitored home confinement as an alternative sentence to incarceration in jail; exception for electronic monitoring requirement in magistrate court cases; requirements for home confinement; specifying sole offenders for which offenders may not be sentenced to home confinement; home confinement fees; appointment and authority of home confinement supervisors; violations of terms and conditions of home confinement order and procedures for revocation of home confinement; penalties when home confinement revoked; information to be provided to certain law-enforcement agencies regarding offenders sentenced to home confinement; and vesting circuit judges with the authority of the board of probation and parole in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections four, five, six, seven, nine, ten and eleven, article eleven-b of said chapter be amended and reenacted; and that said article eleven-b be further amended by adding thereto two new sections, designated sections seven-a and twelve, all to read as follows:
ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

(a) Any person who has been convicted in a circuit court or in a magistrate court under any criminal provision of this code of a misdemeanor or felony, which is punishable by confinement in the county jail, may, in the discretion of the sentencing judge or magistrate, as an alternative to the sentence imposed by statute for such crime, be sentenced under one of the following programs:

(1) The weekend jail program under which persons would be required to spend weekends or other days normally off from work in jail;

(2) The work program under which sentenced persons would be required to spend the first two or more days of their sentence in jail and then, in the discretion of the court, would be assigned to a county agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, roads, including orphaned roads used by the general public, and public works within the county. Eight hours of such labor shall be credited as one day of the sentence imposed. Persons sentenced under this program may be required to provide their own transportation to and from the work site, lunch and work clothes; or

(3) The community service program under which persons sentenced would spend no time in jail but would be sentenced to a number of hours or days of community service work with tax supported agencies. Eight hours of service work shall be credited as one day of the sentence imposed. Persons sentenced under this program may be required to provide their own transportation to and from the work site, lunch and work clothes.

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.
(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court's sentencing order:

1. The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;

2. In circuit court cases, that the person sentenced is not a habitual criminal within the meaning of sections eighteen and nineteen, article eleven, chapter sixty-one of this code;

3. In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court's probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff; and

4. That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) Persons sentenced by the circuit court under the provisions of this article shall remain under the administrative custody and supervision of the court's probation officers or the county sheriff. Persons sentenced by a magistrate shall remain under the administrative custody and supervision of the county sheriff.

(e) Persons sentenced under the provisions of this section may be required to pay the costs of their incarceration, including meal costs, at the discretion of the court.

(f) Persons sentenced under the provisions of this section remain under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail: Provided, That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his deputies, a jailer or a guard, shall require the convicted
person to perform duties which would be considered detrimental to the convicted person's health as attested by a physician.

ARTICLE 11B. HOME CONFINEMENT ACT.


(a) As a condition of probation or bail or as an alternative sentence to another form of incarceration for any criminal violation of this code over which a circuit court has jurisdiction, a circuit court may order an offender confined to the offender's home for a period of electronically monitored home confinement: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that electronic monitoring is not necessary.

(b) The period of home confinement may be continuous or intermittent, as the circuit court orders, or continuous except as provided by section five of this article if ordered by a magistrate. However, the aggregate time actually spent in home confinement may not exceed the term of imprisonment or incarceration prescribed by this code for the offense committed by the offender.

(c) A grant of home confinement under this article constitutes a waiver of any entitlement to deduction

74 person to perform duties which would be considered
75 detrimental to the convicted person's health as attested
76 by a physician.

ARTICLE 11B. HOME CONFINEMENT ACT.

§62-11B-5. Requirements for order for home confinement.
§62-11B-6. Circumstances under which home confinement may not be ordered.
§62-11B-7a. Employment by county commission of home confinement supervisors; authority of supervisors.
§62-11B-10. Information to be provided law-enforcement agencies.


1 (a) As a condition of probation or bail or as an alternative sentence to another form of incarceration for any criminal violation of this code over which a circuit court has jurisdiction, a circuit court may order an offender confined to the offender's home for a period of electronically monitored home confinement: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that electronic monitoring is not necessary.

(b) The period of home confinement may be continuous or intermittent, as the circuit court orders, or continuous except as provided by section five of this article if ordered by a magistrate. However, the aggregate time actually spent in home confinement may not exceed the term of imprisonment or incarceration prescribed by this code for the offense committed by the offender.

(c) A grant of home confinement under this article constitutes a waiver of any entitlement to deduction

74 person to perform duties which would be considered
75 detrimental to the convicted person's health as attested
76 by a physician.
from a sentence for good conduct under the provisions of section twenty-seven, article five, chapter twenty-eight of this code.

§62-11B-5. Requirements for order for home confinement.

1 An order for home confinement of an offender under section four of this article shall include, but not be limited to, the following:

2 (1) A requirement that the offender be confined to the offender's home at all times except when the offender is:

3 (A) Working at employment approved by the circuit court or magistrate, or traveling to or from approved employment;

4 (B) Unemployed and seeking employment approved for the offender by the circuit court or magistrate;

5 (C) Undergoing medical, psychiatric, mental health treatment, counseling or other treatment programs approved for the offender by the circuit court or magistrate;

6 (D) Attending an educational institution or a program approved for the offender by the circuit court or magistrate;

7 (E) Attending a regularly scheduled religious service at a place of worship;

8 (F) Participating in a community work release or community service program approved for the offender by the circuit court, in circuit court cases; or

9 (G) Engaging in other activities specifically approved for the offender by the circuit court or magistrate.

10 (2) Notice to the offender of the penalties which may be imposed if the circuit court or magistrate subsequently finds the offender to have violated the terms and conditions in the order of home detention.

11 (3) A requirement that the offender abide by a schedule, prepared by the probation officer in circuit
court cases; or by the supervisor or sheriff in magistrate
court cases, specifically setting forth the times when the
offender may be absent from the offender's home and
the locations the offender is allowed to be during the
scheduled absences.

(4) A requirement that the offender is not to commit
another crime during the period of home confinement
ordered by the circuit court or magistrate.

(5) A requirement that the offender obtain approval
from the probation officer or supervisor or sheriff before
the offender changes residence or the schedule described
in subdivision (3) of this section.

(6) A requirement that the offender maintain:

(A) A working telephone in the offender's home;

(B) If ordered by the circuit court or as ordered by
the magistrate, an electronic monitoring device in the
offender's home, or on the offender's person, or both; and

(C) Electric service in the offender's home if use of
a monitoring device is ordered by the circuit court or
anytime home confinement is ordered by the magistrate.

(7) A requirement that the offender pay a home
confinement fee set by the circuit court or magistrate.
If a magistrate orders home confinement for an
offender, the magistrate shall follow a fee schedule
established by the supervising circuit judge in setting
the home confinement fee.

(8) A requirement that the offender abide by other
conditions set by the circuit court or by the magistrate.

§62-11B-6. Circumstances under which home confine-
ment may not be ordered.

(a) A circuit court or magistrate may not order home
confinement for an offender unless the offender agrees
to abide by all of the requirements set forth in the
court's order issued under this article.

(b) A circuit court or magistrate may not order home
confinement for an offender who is being held under a
detainer, warrant or process issued by a court of another
8 jurisdiction.

9 (c) A magistrate may order home confinement for an offender only with electronic monitoring and only if the county of the offender’s home has an established program of electronic monitoring that is equipped, operated and staffed by the county supervisor or sheriff for the purpose of supervising participants in a home confinement program: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that such electronic monitoring is not necessary.

19 (d) A magistrate may not order home confinement for an offender convicted of a crime of violence against the person.


1 All home detention fees ordered by the circuit court shall be paid to the circuit clerk, who shall monthly remit the fees to the sheriff. All home detention fees ordered by a magistrate shall be paid to the magistrate court clerk, who shall monthly remit the fees to the county sheriff. The county sheriff shall establish a special fund designated the home confinement services fund, in which the sheriff shall deposit all home confinement fees remitted by the clerks. The county commission shall appropriate money from the fund to administer a home confinement program, including the purchase of electronic monitoring devices and other supervision expenses, and may as necessary supplement the fund with additional appropriations.

§62-11B-7a. Employment by county commission of home confinement supervisors; authority of supervisors.

1 The county commission may employ one or more persons with the approval of the circuit court and who shall be subject to the supervision of the sheriff as a home confinement supervisor or may designate the county sheriff to supervise offenders ordered to undergo home confinement and to administer the county’s home confinement program. Any person so supervising shall
8 have authority, equivalent to that granted to a probation
9 officer pursuant to section ten, article twelve of this
10 chapter, to arrest a home confinement participant when
11 reasonable cause exists to believe that such participant
12 has violated the conditions of his or her home detention.
13 Unless otherwise specified, the use of the term “super-
14 visor” in this article shall refer to a home confinement
15 supervisor.


1 (a) If at any time during the period of home detention
2 there is reasonable cause to believe that a participant
3 in a home confinement program has violated the terms
4 and conditions of the circuit court's home confinement
5 order, he or she shall be subject to the procedures and
6 penalties set forth in section ten, article twelve of this
7 chapter.

8 (b) If at any time during the period of home confine-
9 ment there is reasonable cause to believe that a
10 participant sentenced to home confinement by the
11 circuit court has violated the terms and conditions of the
12 court's order of home confinement and said participant's
13 participation was imposed as an alternative sentence to
14 another form of incarceration, said participant shall be
15 subject to the same procedures involving revocation as
16 would a probationer charged with a violation of the
17 order of home confinement. Any participant under an
18 order of home confinement shall be subject to the same
19 penalty or penalties, upon the circuit court's finding of
20 a violation of the order of home confinement, as he or
21 she could have received at the initial disposition hearing:
22 Provided, That the participant shall receive credit
23 towards any sentence imposed after a finding of
24 violation for the time spent in home confinement.

25 (c) If at any time during the period of home confine-
26 ment there is reasonable cause to believe that a
27 participant sentenced to home confinement by a mag-
28 istrate has violated the terms and conditions of the
29 magistrate's order of home confinement as an alterna-
30 tive sentence to incarceration in jail, the supervi-
authority may arrest the participant upon the obtaining
of an order or warrant and take the offender before a
magistrate within the county of the offense. The
magistrate shall then conduct a prompt and summary
hearing on whether the participant’s home confinement
should be revoked. If it appears to the satisfaction of the
magistrate that any condition of home confinement has
been violated, the magistrate may revoke the home
confinement and order that the sentence of incarceration
be executed. Any participant under an order of home
confinement shall be subject to the same penalty or
penalties, upon the magistrate’s finding of a violation of
the order of home confinement, as the participant could
have received at the initial disposition hearing: Pro-
vided, That the participant shall receive credit towards
any sentence imposed after a finding of violation for the
time spent in home confinement.

§62-11B-10. Information to be provided law-enforcement agencies.

A probation department charged by a circuit court or
a supervisor or sheriff charged by a magistrate with
supervision of offenders ordered to undergo home
confinement shall provide all law-enforcement agencies
having jurisdiction in the place where the probation
department or the office of the supervisor or sheriff is
located with a list of offenders under home confinement
supervised by the probation department, supervisor or
sheriff. The list must include the following information
about each offender:

(1) The offender’s name, any known aliases, and the
location of the offender’s home confinement;

(2) The crime for which the offender was convicted;

(3) The date the offender’s home confinement expires;

and

(4) The name, address and telephone number of the
offender’s supervising probation officer or supervisor, as
the case may be, for home confinement.

The provisions of this article may be applied at the discretion of the circuit or magistrate court as an alternate means of confinement but shall not be considered an exclusive means of alternative sentencing.


Notwithstanding any provision of this code to the contrary, in any case where a person has been ordered to home confinement where that person is not in the custody or control of the division of corrections, the circuit court shall have the authority of the board of probation and parole regarding the release, early release, or release on parole of the person.

CHAPTER 90
(S. B. 75—By Senators Blatnik, Holliday and Boley)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the development of alternative transportation systems to mental health facilities or state hospitals for individuals as required by statute.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-10. Transportation for the mentally ill, mentally retarded or addicted.

(a) Whenever transportation of an individual is required under the provisions of article four or five of this chapter, it shall be the duty of the sheriff to provide immediate transportation to or from the appropriate mental health facility or state hospital: Provided, That
upon the written request of a person having a proper
interest in the individual’s hospitalization, the sheriff
may permit such person to arrange for the individual’s
transportation to the mental health facility or state
hospital by such means as may be suitable for that
person’s mental condition.

(b) Upon written agreement between the county
commission on behalf of the sheriff and the directors of
the local community mental health center and emer-
gency medical services, an alternative transportation
program may be arranged. The agreement shall clearly
define the responsibilities of each of the parties, the
requirements for program participation and the persons
bearing ultimate responsibility for the individual’s
safety and well-being.

(c) Nothing in this section is intended to alter security
responsibilities for the patient by the sheriff unless
mutually agreed upon as provided in subsection (b)
above.

CHAPTER 91

(H. B. 2807—By Delegates Staton, Collins, Reed, Linch,
Tribett, Whitman and Manuel)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]
reopen mine; certificate of approval for operator of mine; fees; revocation of certificate of approval; notice prior to revocation; effect of revocation; printing statutory provisions on permit; and district mine inspector’s inspections.

Be it enacted by the Legislature of West Virginia:

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

Chapter
22. Environmental Resources.
22A. Mines and Minerals

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. BOARD OF APPEALS.

§22-5-2. Powers transferred to the board of appeals.

1 (a) There are hereby transferred to the board of appeals all functions of the director of the office of miners’ health, safety and training relating to the review of orders and notices as set forth in section fifteen, article one-a, chapter twenty-two-a.

6 (b) There are hereby transferred to the board of appeals all functions of the director of the office of miners’ health, safety and training relating to the review of penalty assessments as set forth in subdivision (3), subsection (a), section nineteen, article one-a, chapter twenty-two-a of this code.

12 (c) Judicial review of decisions by the board of appeals shall be available and conducted in the same fashion as set forth in section seventeen, article one-a, chapter twenty-two-a of this code.

CHAPTER 22A. MINES AND MINERALS.
ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.


(a) (1) Any operator of a coal mine in which a violation occurs of any health or safety rule or regulation or who violates any other provisions of this law shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars, for each such violation. Each such violation shall constitute a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. Not later than the thirtieth day of June, one thousand nine hundred ninety-three, the director shall promulgate as a rule the procedure for assessing such civil penalties in effect as of the fifteenth day of January, one thousand nine hundred ninety-three, without regard to the provisions of chapter twenty-nine-a of this code: Provided, That any revisions to such rules after this date shall be promulgated as in the case of legislative rules in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule or regulation promulgated pursuant to this chapter shall be subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars for each occurrence of such violation.

(3) A civil penalty shall be assessed by the director only after the person charged with a violation under this chapter or rule or regulation promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which
is warranted, and incorporating, when appropriate, an
order therein requiring that the penalty be paid. Any
hearing under this section shall be of record.

(4) If the person against whom a civil penalty is
assessed fails to pay the penalty within the time
prescribed in such order, the director may file a petition
for enforcement of such order in any appropriate circuit
court. The petition shall designate the person against
whom the order is sought to be enforced as the
respondent. A copy of the petition shall forthwith be sent
by certified mail, return receipt requested, to the
respondent and to the representative of the miners at the
affected mine or the operator, as the case may be, and
thereupon the director shall certify and file in such
court the record upon which such order sought to be
enforced was issued. The court shall have jurisdiction to
enter a judgment enforcing, modifying, and enforcing as
so modified, or setting aside in whole or in part the
order and decision of the director or it may remand the
proceedings to the director for such further action as it
may direct. The court shall consider and determine de
novo all relevant issues, except issues of fact which were
or could have been litigated in review proceedings
before a circuit court under section eighteen of this
article, and upon the request of the respondent, such
issues of fact which are in dispute shall be submitted
to a jury. On the basis of the jury’s findings the court
shall determine the amount of the penalty to be imposed.
Subject to the direction and control of the attorney
general, attorneys appointed for the director may
appear for and represent him in any action to enforce
an order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or
safety provision of this chapter or health or safety rule
or regulation promulgated pursuant to this chapter, or
knowingly violates or fails or refuses to comply with any
order issued under section thirteen of this article, or any
order incorporated in a final decision issued under this
article, except an order incorporated in a decision under
subsection (a) of this section or subsection (b), section
twenty of this article, shall be assessed a civil penalty
by the director under subdivision (3), subsection (a) of this section, of not more than five thousand dollars, and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules or regulations promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty of this article, any director, officer or agent of such corporation who knowingly authorized, ordered or carried out such violation, failure or refusal, shall be subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by him under this chapter which certified him or authorized him to direct other persons in coal mining by operation of law and shall bar him from being issued any such license under this chapter, except a miner's certification, for a period of not less than one year or for such longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of such equipment, who willfully misrepresents such equipment as complying with the provisions of this law, or with any specification
or regulation of the director applicable to such equip-
ment, and which does not so comply, shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be
subject to the same fine and imprisonment that may be
imposed upon a person under subsection (d) of this
section.

(f) There is hereby created under the treasury of the
state of West Virginia a special health, safety and
training fund. All civil penalty assessments collected
under section nineteen of this article shall be collected
by the director and deposited with the treasurer of the
state of West Virginia to the credit of the special health,
safety and training fund. The fund shall be used by the
director and he is authorized to expend the moneys in
the fund for the administration of this chapter and
chapter twenty-two of this code.

ARTICLE 2. UNDERGROUND MINES.

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

(a) After the first day of July, one thousand nine
hundred seventy-one, no mine shall be opened or
reopened unless prior approval has been obtained from
the director of the division of health, safety and training,
which approval shall not be unreasonably withheld. The
operator shall pay for such approval a fee of ten dollars,
which payment shall be tendered with the application
for such approval: Provided, That mines producing coal
solely for the operator's use shall be issued a permit
without charge if coal production will be less than fifty
tons a year.

Within thirty days after the first day of January of
each year, the holder of such permit to open a mine shall
apply for the extension of such permit for an additional
year. Such permit, evidenced by a document issued by
the director, shall be granted as a matter of right and
without charge if, at the time such application is made,
the permit holder is in compliance with the provisions
of section seventy-seven of this article and has paid or
otherwise appealed all coal mine assessments issued to
the mine if operated by the permit holder and imposed
under article one-a, chapter twenty-two-a of this code.
Applications for extension of such permits not submitted
within the time required shall be processed as an
application to open or reopen a mine and shall be
accompanied by a fee of ten dollars.

(b) Permits issued pursuant to this section shall not
be transferable.

(c) If the operator of a mine is not the permit holder
as defined in subsection (a) above, then such operator
must apply for and obtain a certificate of approval to
operate the mine on which the permit is held prior to
commencing operations. An operator who is not the
permit holder operating such mine on the effective date
of this section must apply for a certificate of approval
on or before the first day of July, one thousand nine
hundred ninety-three. The operator shall pay a fee of ten
dollars, which payment shall be tendered with the
application for approval. Such approval, evidenced by a
certificate issued by the director, shall be granted if, at
the time such application is made, the applicant is in
compliance with the provisions of section seventy-seven
of this article and has paid or otherwise appealed all
coal mine assessments imposed on such applicant for the
certificate of approval under article one-a, chapter
twenty-two-a of this code.

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

(e) The provisions of this section shall be printed on the reverse side of every permit issued under subsection (a) and certificate of approval issued under subsection (d) herein.

(f) The district mine inspector shall be contacted for a pre-inspection of the area proposed for underground mining prior to issuance of any new opening permit approval.

CHAPTER 92
(S. B. 509—By Senators Sharpe, Ross, Helmick, Dalton, Boley and Minard)

[Passed April 10, 1993, in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to alternative fuels; regulating alternative fuel...
technology; providing for conversion to alternative fuels of a certain percentage of state-owned vehicles; reports; standards; exceptions; and related matters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. USE OF ALTERNATIVE FUELS IN STATE-OWNED VEHICLES.


§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.


§5A-2A-4. Prohibition of subsidies or incentive payments.


1 As used in this article, the following words and phrases shall have the meanings hereinafter ascribed to them:

(1) “Alternative fuels” include compressed natural gas, liquefied natural gas, liquefied petroleum gas, methanol, ethanol, fuel mixtures containing eighty-five percent or more by volume of methanol, ethanol and other alcohols with gasoline or other fuels, coal-derived liquid fuels and electricity (including electricity from solar energy).

(2) “Alternative fuel vehicle” means a motor vehicle that operates solely on one alternative fuel, a motor vehicle that is capable of operating on one or more alternative fuels, or a motor vehicle that is capable of operating on an alternative fuel and is capable of operating on gasoline or diesel fuel.

(3) “Compression and conversion equipment” means all equipment used in the compression, storage, transmission and decompression of natural gas for the purpose of powering motor vehicles.

(4) “Fleet” means fifteen or more motor vehicles that are centrally fueled or capable of being centrally fueled
Ch. 92]  

and are owned, operated, leased or otherwise controlled by or assigned to a state agency.

(5) "Secretary" means the secretary of administration.

§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

(a) After the first day of September, one thousand nine hundred ninety-three, the secretary may purchase or lease alternative fuel vehicles for use by any state agency.

(b) The secretary may acquire or be provided with equipment or refueling facilities necessary to operate alternative fuel vehicles by any of the following methods:

(1) Purchase or lease as authorized by law;

(2) Gift or loan of the equipment or facilities; or

(3) Gift or loan of the equipment or facilities or other arrangement pursuant to a service contract for the supply of alternative fuels.

(c) If such equipment or facilities are donated, loaned or provided through other arrangement with the supplier of alternative fuels, the supplier shall be entitled to recoup its actual cost of donating, loaning or providing the equipment or facilities through its fuel charges under the fuel supply contract.

(d) Of the total number of vehicles acquired or caused to be acquired by the secretary for use by any state agency vehicle fleet:

(1) Twenty percent in fiscal year one thousand nine hundred ninety-five;

(2) Thirty percent in fiscal year one thousand nine hundred ninety-six;

(3) Fifty percent in fiscal year one thousand nine hundred ninety-seven, shall be alternative fuel vehicles.
(e) The secretary shall review this alternative fuel use program on or before the thirty-first day of December, one thousand nine hundred ninety-seven, and if the secretary determines that the program is effective in reducing costs to the state, taking into consideration the cost of operating alternative fuel vehicles over the expected useful life of such vehicles, the secretary shall, of the total number of vehicles acquired in each fiscal year, acquire at least seventy-five percent alternative fuel vehicles for state agency fleets beginning the first day of September, one thousand nine hundred ninety-eight, and thereafter.

(f) The secretary shall, in the annual fiscal report to the Legislature, show the progress in achieving these percentage requirements by itemizing purchases, leases and conversions of motor vehicles and usage of alternative fuels.

(g) The secretary, in the development of the alternative fuel use program, shall consult with state agency fleet operators, vehicle manufacturers and converters, fuel distributors and others to delineate the vehicles to be covered, taking into consideration range, specialty uses, fuel availability, vehicle manufacturing and conversion capability, safety, resale values and other relevant factors. In order to maximize the savings to the state, the secretary shall attempt to the extent possible to convert first those vehicles that are used the most often for the most miles. The secretary may meet the percentage requirements of this section through purchase or lease of new vehicles, purchase or lease of used alternative fuel vehicles or the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws and standards, to use alternative fuels.

(h) The secretary may reduce any percentage specified or waive the requirements of subsection (d) of this section for any state agency upon a determination by the secretary that either of the following situations apply:
(1) The agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can reasonably be expected to establish a central refueling station for alternative fuels.

(2) The agency is unable to acquire or be provided equipment or refueling facilities necessary to operate alternative fuel vehicles at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied.

(i) The provisions of this section do not apply to:

(1) Vehicles operated by law-enforcement agencies;

(2) Emergency vehicles;

(3) Vehicles operated by public transit authorities;

(4) School buses; or

(5) Nonroad vehicles, including farm and construction vehicles.


The secretary of commerce, labor and environmental resources has the authority to regulate all activities related to the safety of compressed natural gas and shall establish by regulation minimum safety standards, in conformity with federal and industry standards, for compressed natural gas compression and conversion equipment including the installation of such equipment.

§5A-2A-4. Prohibition of subsidies or incentive payments.

Except as provided by section three-d, article thirteen-d, chapter eleven of this code, the state may not enter into any program providing subsidies or incentive payments for the production of compressed natural gas, liquefied natural gas, liquefied petroleum gas, methanol, ethanol or coal-derived liquid fuels.
CHAPTER 93
(Com. Sub. for H. B. 2120—By Delegates Warner, Michael, Johnson, Overington, Houvouras, D. Miller and Beane)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fourteen, article three, chapter seventeen-a of said code; and to amend and reenact section fourteen, article ten of said chapter, all relating to compensation and allowances for certain appointive state officers; appointment, qualifications, powers and salaries of such officers; increasing the salary for the administrator of the division of motor vehicles; special registration plates and fees; requirements for design of license plates; permitting special plates for certain individuals, officials and judges, national guardsmen, various classes of veterans, nonprofit charitable or educational organizations and emergency personnel; vanity plates; special ten-year registration for exempted persons and antique automobiles; plates for amateur radio station operators; and fees and rules to be promulgated by the commissioner.

Be it enacted by the Legislature of West Virginia:

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

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Anti-theft Provisions.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.
ARTICLE 7. COMPENSATION AND ALLOWANCES.
§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Notwithstanding any other provision of this code to the contrary, each of the following appointive state officers named in this subsection shall be appointed by the governor, by and with the advice and consent of the Senate. Each of the appointive state officers shall serve at the will and pleasure of the governor for the term for which the governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers shall hereafter be subject to the existing qualifications for holding each respective office and each shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Beginning on the first day of January, one thousand nine hundred ninety, the annual salary of each named appointive state officer shall be as follows:

Administrator, division of highways, sixty thousand dollars; administrator, division of health, fifty-seven thousand two hundred dollars; administrator, division of human services, forty-seven thousand eight hundred dollars; administrator, state tax division, forty-nine thousand nine hundred dollars; administrator, division of energy, sixty-five thousand dollars; administrator, division of finance and administration, forty-seven thousand eight hundred dollars; administrator, state tax division, forty-nine thousand nine hundred dollars; administrator, division of energy, sixty-five thousand dollars; administrator, division of finance and administration, forty-seven thousand eight hundred dollars; administrator, division of corrections, forty-five thousand dollars; administrator, division of corrections, forty-five thousand dollars; administrator, division of corrections, forty-five thousand dollars; administrator, division of corrections, forty-five thousand dollars; administrator, division of workers' compensation, forty-five thousand dollars; administrator, division of commerce, sixty-two thousand five hundred dollars; administrator, division of natural resources, forty-seven thousand eight hundred dollars; administrator, division of public safety, forty-four thousand six hundred dollars; administrator,
lottery division, sixty thousand dollars; director, public
employees insurance agency, fifty-five thousand dollars;
administrator, division of employment security, forty-five thousand dollars; administrator, division of banking, thirty-eight thousand three hundred dollars; administrator, division of insurance, thirty-six thousand seven hundred dollars; administrator, division of culture and history, thirty-eight thousand three hundred dollars; chairman, public service commission, fifty thousand dollars; members, public service commission, forty-six thousand two hundred dollars; administrator, alcohol beverage control commission, thirty-eight thousand three hundred dollars; administrator, division of motor vehicles, fifty-five thousand dollars; director, division of personnel, thirty-eight thousand three hundred dollars; adjutant general, thirty-five thousand seven hundred dollars; chairman, health care cost review authority, forty thousand dollars; members, health care cost review authority, thirty-six thousand five hundred dollars; director, human rights commission, forty thousand dollars; administrator, division of labor, thirty-five thousand seven hundred dollars; administrator, division of veterans affairs, thirty-two thousand dollars; administrator, division of emergency services, thirty-two thousand dollars; administrator, nonintoxicating beer commission, thirty-two thousand dollars; members, board of probation and parole, twenty-eight thousand three hundred dollars; members, employment security review board, seventeen thousand dollars; members, workers' compensation appeal board, seventeen thousand eight hundred dollars.

Prior to the first day of January, one thousand nine hundred ninety, each of the officers named in subsection (a) of this section shall continue to receive the annual salaries they were receiving as of the last day of March, one thousand nine hundred eighty-nine.

(b) Notwithstanding any other provisions of this code to the contrary, each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and shall be paid an annual salary as follows, except that any increase in salary over
and above the salary being received by any of the following state officers as of the last day of March, one thousand nine hundred eighty-nine, shall not become effective until the first day of January, one thousand nine hundred ninety:

Chancellor, board of regents, seventy thousand dollars; state superintendent of schools, seventy thousand dollars; administrator, division of risk and insurance management, forty-two thousand dollars; director, division of rehabilitation services, fifty-five thousand dollars; executive director, educational broadcasting authority, forty-seven thousand five hundred dollars; secretary, library commission, forty-seven thousand five hundred dollars; director, geologic and economic survey, forty-seven thousand five hundred dollars; executive director, water development authority, fifty-four thousand two hundred dollars; executive secretary, teacher's retirement system, forty-seven thousand two hundred dollars; executive secretary, public employees retirement system, forty thousand one hundred dollars; director, air pollution control commission, forty-four thousand eight hundred dollars; executive director, public legal services council, forty-seven thousand five hundred dollars; director, commission on aging, forty thousand dollars; commissioner, oil and gas conservation commission, forty thousand dollars; director, farm management commission, thirty-two thousand five hundred dollars; state fire administrator, twenty-five thousand two hundred dollars; executive secretary, municipal bond commission, thirty thousand two hundred dollars; director, railroad maintenance authority, thirty-two thousand five hundred dollars; executive secretary, women's commission, thirty thousand one hundred dollars; executive director, regional jail authority, forty-two thousand six hundred dollars; director, hospital finance authority, twenty-five thousand eight hundred dollars.

(c) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless the appointive state officer shall have first filed with the state auditor and the legislative auditor a
sworn statement, on a form to be prescribed by the attorney general, certifying that the spending unit is in compliance with any general law providing for a salary increase for his or her employees. The attorney general shall prepare and distribute the form to the affected spending units: Provided, That no decrease in salary shall be effective for any current appointive state officer appointed prior to the first day of January, one thousand nine hundred eighty-nine: Provided, however, That decreases shall take effect at such time as any appointive office is vacated.

CHAPTER 17A.
MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE,
AND ANTI-THEFT PROVISIONS.

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

10. Fees for Registration, Licensing, Etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The commissioner shall promulgate rules in
accordance with the provisions of chapter twenty-nine-
a of this code regarding the orderly distribution of the
plates: Provided, That for purposes of this subdivision,
the registration plates requested and issued shall
include all plates bearing the numbers two through two
(C) An annual fee of fifteen dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

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

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

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

(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

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

(A) Upon appropriate application, there shall be issued to any disabled veteran, who is exempt from the payment of registration fees under the provisions of this chapter, a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red, and also the regular identification numerals in red.
(B) Special registration plates issued pursuant to this subdivision are not transferrable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

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

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished purple heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the commissioner of motor vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the purple heart. All letterings shall be in purple where practical.

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

(C) Special registration plates issued pursuant to this subdivision are not transferrable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

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

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

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.
(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

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

(A) Nonprofit charitable and educational organizations may design a logo or emblem for inclusion on a special registration plate and submit the logo or emblem to the commissioner for approval and authorization. Upon the approval and authorization, the nonprofit charitable and educational organizations may market the special registration plate to organization members and the general public.

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

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

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

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

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

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

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

(d) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the proper forms to be used in
(e) Nothing in this section shall be construed to require a charge for a free prisoner of war license plate or a free recipient of the congressional medal of honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code: Provided, That the registration plates are not transferable to any person, and the registration plates terminate upon the death of the registered owner of the special registration plate.

(f) Special ten-year registration plates may be issued as follows:

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

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

(3) Special registration plates issued pursuant to this subsection are not transferable to any other person. Any special registration issued under this subsection terminates upon the death of the registered owner of the special registration plate.

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

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

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-14. Registration plate for amateur radio station operators; fees; rules and forms.

(a) Any owner of a motor vehicle who is a resident of the state of West Virginia, and who holds an unrevoked and unexpired official amateur radio station license and/or amateur class operators’ license issued by the federal communications commission, may apply for a special registration plate for a Class A motor vehicle which, in lieu of the registration numbers required by this article, shall be inscribed with the official amateur radio call letters of the applicant as assigned by the federal communications commission.

(b) Each application shall be accompanied by proof of ownership of the amateur radio station license; proof of compliance with the motor vehicle laws of the state relative to registration and licensing of motor vehicles; payment of the registration, license and other fees required by law; and payment of a special initial
application fee in the amount of ten dollars, which is in addition to all other fees required by law. This special fee shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensating the division of motor vehicles for additional costs and services required in the issuing of the licenses.

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

CHAPTER 94

(S. B. 508—By Senators Sharpe, Ross, Helmick, Dalton, Boley and Minard)

[Passed April 10, 1983; in effect September 1, 1983. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto new article, designated article twenty-seven-a, relating to intergovernmental relations alternative fuel vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27A. INTERGOVERNMENTAL RELATIONS—ALTERNATIVE FUEL VEHICLES.


§8-27A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

§8-27A-3. Prohibition of subsidies or incentive payments.


1 The following terms, whenever used or referred to in this article, shall have the following meaning, as u
3 different meaning clearly appears from the context:

4 (a) “Alternative fuels” include compressed natural
5 gas, liquified natural gas, liquified petroleum gas,
6 methanol, ethanol, fuel mixtures containing eighty-five
7 percent or more by volume of methanol, ethanol and
8 other alcohols with gasoline or other fuels, coal-derived
9 liquid fuels and electricity (including electricity from
10 solar energy).

11 (b) “Alternative fuel vehicle” means a motor vehicle
12 that operates solely on one alternative fuel, a motor
13 vehicle that is capable of operating on one or more
14 alternative fuels or a motor vehicle that is capable of
15 operating on an alternative fuel and is capable of
16 operating on gasoline or diesel fuel.

17 (c) “Fleet” means fifteen or more motor vehicles that
18 are centrally fueled or capable of being centrally fueled
19 and are owned, operated, leased or otherwise controlled
20 by or assigned to an agency of a political subdivision.

21 (d) “Political subdivision” means a county, municipal-
22 ity and any other unit of local government authorized
23 by law to perform governmental functions, but does not
24 include school boards or school districts.

§8-27A-2. Purchase or lease of fleet vehicles; use of
alternative fuels.

1 (a) After the first day of September, one thousand
2 nine hundred ninety-three, a political subdivision may
3 purchase or lease alternative fuel vehicles for use by any
4 agency of the political subdivision as follows:

5 (1) Any agency of a political subdivision may acquire
6 or be provided with equipment or refueling facilities
7 necessary to operate alternative fuel vehicles by any of
8 the following methods:

9 (A) Purchase or lease as authorized by law;
10 (B) Gift or loan of the equipment or facilities; or
11 (C) Gift or loan of the equipment or facilities or other
12 arrangement pursuant to a service contract for the
13 supply of alternative fuels.
(2) If the equipment or facilities are donated, loaned or provided through other arrangement with the supplier of alternative fuels, the supplier shall be entitled to recoup its actual cost of donating, loaning or providing the equipment or facilities through its fuel charges under the fuel supply contract.

(b) Of the total number of fleet vehicles acquired by each political subdivision for use by any agency of each political subdivision:

(1) Twenty percent in fiscal year one thousand nine hundred ninety-five;

(2) Thirty percent in fiscal year one thousand nine hundred ninety-six; and

(3) Fifty percent in fiscal year one thousand nine hundred ninety-seven shall be alternative fuel vehicles.

(c) The governing authority of each political subdivision shall review this alternative fuel use program on or before the thirty-first day of December, one thousand nine hundred ninety-seven, and if the governing authority determines that the program is effective in reducing costs to the political subdivision, taking into consideration the cost of operating alternative fuel vehicles over the expected useful life of the vehicles, the governing authority shall, of the total number of vehicles acquired in each fiscal year, acquire at least seventy-five percent alternative fuel vehicles for fleets of the agencies of the political subdivision beginning the first day of September, one thousand nine hundred ninety-eight, and thereafter.

(d) The governing authority of each political subdivision, in the development of the alternative fuel use program, shall consult with agency fleet operators, vehicle manufacturers and converters, fuel distributors and others to delineate the vehicles to be covered, taking into consideration range, specialty uses, fuel availability, vehicle manufacturing and conversion capability, safety, resale values and other relevant factors. In order to maximize the savings to the political subdivision, the governing authority of each political subdivision...
attempt to the extent possible to convert first those vehicles that are used the most often for the most miles. The governing authority may meet the percentage requirements of this section through purchase or lease of new vehicles, purchase or lease of used alternative fuel vehicles or the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws and standards, to use alternative fuels.

(e) The governing authority of each political subdivision may reduce any percentage specified or waive the requirements of subsection (b) of this section for any agency upon a determination by the governing authority, in its sole discretion, that either of the following situations apply:

(1) The agency’s vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can reasonably be expected to establish a central refueling station for alternative fuels; or

(2) The agency is unable to acquire or be provided equipment or refueling facilities necessary to operate alternative fuel vehicles at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplies.

(f) The provisions of this section shall not apply to:

(1) Vehicles operated by law-enforcement agencies;

(2) Emergency vehicles;

(3) Vehicles operated by public transit authorities;

(4) School buses; or

(5) Nonroad vehicles, including farm and construction vehicles.

§8-27A-3. Prohibition of subsidies or incentive payments.

Except as provided by section three-d, article thirteen-d, chapter eleven of this code, a political subdivision shall not enter into any program providing subsidies or
incentive payments for the production of compressed natural gas, liquified natural gas, liquified petroleum gas, methanol, ethanol or coal-derived liquid fuels.

CHAPTER 95
(Com. Sub. for H. B. 2230—By Delegates Williams, Carper, Phillips, H. White, Rutledge and Harrison)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notification of the towing, preservation and storage of an abandoned or junked motor vehicle to the owner or lienholder of such motor vehicle; charges and fees; and exemptions.

Be it enacted by the Legislature of West Virginia:

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

§17-24-8. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

(a) The enforcement agency which takes into custody and possession an abandoned motor vehicle or junked motor vehicle shall, within seven days after taking custody and possession thereof, notify the last known registered owner of such motor vehicle and all lienholders of record that such motor vehicle has been taken into custody and possession, such notification to be by registered or certified mail, return receipt requested. The notice shall:

(1) Contain a description of such motor vehicle, including the year, make, model, manufacturer's serial
or identification number or any other number which
may have been assigned to such motor vehicle by the
commissioner of motor vehicles and any distinguishing
marks;

(2) Set forth the location of the facility where such
motor vehicle is being held and the location where such
motor vehicle was taken into custody and possession;

(3) Inform the owner and any lienholders of record of
their right to reclaim such motor vehicle within ten days
after the date notice was received by the owner or
lienholders, upon payment of all towing, preservation
and storage charges resulting from taking and placing
such motor vehicle into custody and possession; and

(4) State that the failure of the owner or lienholders
of record to exercise their right to reclaim such motor
vehicle within such ten-day period shall be deemed a
waiver by the owner and all lienholders of record of all
right, title and interest in such motor vehicle and of
their consent to the sale or disposal of the abandoned
motor vehicle or junked motor vehicle at a public
auction or to a licensed salvage yard or demolisher.

(b) If the identity of the last registered owner of the
abandoned motor vehicle or junked motor vehicle cannot
be determined, or if the certificate of registration or
certificate of title contains no address for the owner, or
if it is impossible to determine with reasonable certainty
the identity and addresses of all lienholders, notice shall
be published as a Class I legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county wherein such motor
vehicle was located at the time such enforcement agency
took custody and possession thereof, and such notice
shall be sufficient to meet all requirements of notice
pursuant to this article. Any notice by publication may
contain multiple listings of abandoned motor vehicles
and junked motor vehicles. The notice shall be published
within seven days after such motor vehicle is taken into
custody and possession and shall have the same contents
required for a notice pursuant to subsection (a) of this
section, except that the ten-day period shall run from
the date such notice is published as aforesaid.

(c) An enforcement agency which hires any person or
entity to take into custody and possession an abandoned
or junked motor vehicle pursuant to this section shall
notify such person or entity of the name and address of
the registered owner of the motor vehicle, if known, and
all lienholders of record, if any, within seven days after
the vehicle is taken into custody and possession: 
Provided, That the requirements of this subsection shall
not apply to motor vehicles for which the registered
owner thereof cannot be ascertained by due diligence or
investigation.

(d) The person or entity hired by an enforcement
agency to take into custody or possession an abandoned
or junked motor vehicle shall, within fifteen days after
such possession, notify the registered owner of such
vehicle and all lienholders of record, if any, as identified
by the enforcement agency pursuant to subsection (c)
herein, by registered mail, return receipt requested, of
the location of the facility where the motor vehicle is
being stored and of such owner's liability for all towing,
preservation and storage charges for such motor vehicle.
Upon the issuance of such notice, the identified owner
of the motor vehicle shall be liable and responsible for
all costs for towing, preservation and storage of the
motor vehicle: Provided, That failure to issue the notice
required by this subsection within fifteen days after
possession of the motor vehicle shall relieve the identi-
fied owner of the motor vehicle of any liability for
charges for towing, preservation and storage in excess
of the sum of the first five days of such charges:
Provided, however, That the requirements of this
subsection shall not apply to motor vehicles for which
the registered owner thereof cannot be ascertained by
due diligence or investigation.
AN ACT to amend and reenact section four, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the perfection of deferred purchase money liens or encumbrances upon motor vehicles; applications for certificates of title reflecting lien; time for filing; effective date of lien; duty of motor vehicle dealer to collect and transmit title registration tax and record lien; and providing fees for services.

Be it enacted by the Legislature of West Virginia:

That section four, article four-a, 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-4A-4. Deferred purchase money lien or encumbrance may be filed within sixty days after purchase; effective date of lien; dealer to record lien; fees.

(a) A deferred purchase money lien or encumbrance upon any motor vehicle may be perfected by recording the name and address of the lienholder upon the face of the certificate of title for such motor vehicle. If an application for such a certificate of title is filed with the division of motor vehicles within sixty days after the date of purchase of the motor vehicle, the effective date of the lien or encumbrance shall be the date the lien or encumbrance was created. If an application for such a certificate of title is not filed within such sixty-day period, the lien shall be perfected from the date it was filed with the division of motor vehicles.

(b) In all transactions involving a deferred purchase money lien or encumbrance upon a motor vehicle, the motor vehicle dealer shall collect and remit to the
division of motor vehicles the title, tax and registration fees required under section four, article three of this chapter and file and record with the division of motor vehicles any lien created as a result of such transaction:

Provided, That a motor vehicle dealer may remit the title, tax and registration fees through any license service that is licensed by the division of motor vehicles.

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

CHAPTER 97

(Com. Sub. for S. B. 112—By Senators Minard, Sharpe, Helmick, Dittmar, Bailey, Wiedebusch, Craigo, Brackenrich, Anderson and Manchin)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-c, relating to automobile auction business; license certificate; application; prohibited acts; reassignment of title; exemption from privilege tax; bonds; insurance; established place of business; license fee; investigation for license; information confidential; refusal of license certificate; licensing period, renewal and expiration; display of license; changes in business; investigation for suspension or revocation of license and notice of same; grounds for suspension or revocation; temporary registration plates and markers; class AA special plates, records and expiration; required records; inspections; violations; penalties; injunctive relief; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6C. AUTOMOBILE AUCTION BUSINESSES.

§17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.

§17A-6C-2. Bonds and insurance.

§17A-6C-3. Established place of business requirements.

§17A-6C-4. Fee required for license certificate.

§17A-6C-5. Investigation prior to issuance of license certificate; information confidential.

§17A-6C-6. Refusal of license certificate.

§17A-6C-7. Licensing period, renewal and expiration.

§17A-6C-8. Form and display of license certificate; certified copies of license.

§17A-6C-9. Changes in business; action required.

§17A-6C-10. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.

§17A-6C-11. Temporary registration plates or markers.

§17A-6C-12. Use of special plates; records to be maintained by automobile auction business; operation of vehicles under special plates; expiration of special plate.

§17A-6C-13. Records must be kept and maintained.

§17A-6C-14. Notice of refusal, or suspension or revocation of license certificate or of suspension of right to issue temporary registration plates or markers or of suspension of an automobile auction special plate or plates; relinquishing license certificate, dealer special plate or plates and temporary plates or markers.

§17A-6C-15. Inspections; violations and penalties.

§17A-6C-16. Injunctive relief.

§17A-6C-17. Promulgation of rules.

§17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.

(a) A person, partnership or corporation may not engage in, represent or advertise that he, she or it is in the business of conducting automobile auctions without first obtaining a license certificate from the office of the commissioner. The commissioner shall provide an application form for applicants seeking a license certificate. The applicant shall provide full information required by the commissioner on the application form. The applicant, if a person, shall verify the information on the form by oath or affirmation. If the applicant is
a partnership or corporation, the oath or affirmation
shall be made by a partner or an officer of the
corporation.

(b) For the purposes of this article, the term “auto-
mobile auction” means an auction or other sale where
twenty or more used motor vehicles are offered for sale
by auction within a license year, but does not include
a sale or auction of surplus vehicles by an agency of this
state, a municipality of this state or of the federal
government or a sale or auction of repossessed vehicles
by a financial institution or a sale or auction by a
licensed motor vehicle dealer of vehicles owned by said
dealer. For purposes of this definition, a used motor
vehicle does not mean a vehicle for which a salvage
certificate has been issued.

(c) The automobile auction may auction or sell
vehicles owned by the auction or may auction vehicles
which are owned by others, but the automobile auction
may not sell or auction a vehicle for which a salvage
certificate has been issued.

(d) When the transferee of a vehicle is an automobile
auction which holds the same for resale and lawfully
operates the same under Class AA plates, such automo-
bile auction shall not be required to obtain a new
registration of said vehicle or be required to forward the
certificate of title to the division, but upon transfer of
title or interest to another person the automobile auction
shall execute and acknowledge an assignment and
warranty of title upon the certificate of title and deliver
the same not later than sixty days from date of sale to
the person to whom such transfer is made.

(e) The tax imposed by section four, article three of
this chapter does not apply to the titling of vehicles
purchased for resale by an automobile auction.

§17A-6C-2. Bonds and insurance.

(a) An application for a license certificate must be
accompanied by a bond, issued by a surety corporation
authorized to issue bonds in this state, in the penal sum
of twenty-five thousand dollars, to ensure that the
licensee will not make fraudulent representations to the
detriment of any purchaser, seller, financial institution
or the state of West Virginia. The bond shall be effective
on the date the license certificate is issued. A licensee
shall keep the bond in full force and effect at all times.
The aggregate liability of the surety in no event shall
exceed the principal sum of the bond. The surety of the
bond shall have the right to cancel upon giving thirty
days' notice to the commissioner and shall be relieved
of liability for any breach of condition occurring after
the effective date of the cancellation.

(b) An application for a license certificate must also
be accompanied by 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 using any vehicle or vehicles owned by, or
in the possession of, the applicant with the expressed or
implied permission of the applicant, against loss from
the liability imposed by law for damages arising out of
the ownership, possession, operation, maintenance or use
of such 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 said limit for one person, forty thousand
dollars because of bodily injury to or death of two or
more persons in any one accident and ten thousand
dollars because of injury to or destruction of property
of others in any one accident.

(c) The liability insurance policy shall run concur-
rently with the license year and shall remain in full
force and effect at all times.

(d) All persons conducting business at or through an
automobile auction business in this state must obey all
division of motor vehicles laws and rules.

(e) Automobile auction businesses shall report any
violations of law or any scheme designed to deceive or
defraud the automobile buying public and assist in
prosecuting those involved in such acts.
§17A-6C-3. Established place of business requirements.

1 Each automobile auction shall:

2 (a) Be located at a permanent site which is owned or
3 leased by the licensee.

4 (b) Have no other class of dealership operating from
5 the automobile auction location.

6 (c) Have office space of at least one hundred forty-five
7 square feet, with necessary office furniture, heating and
8 lighting facilities, restroom facilities and a telephone
9 listed in the name of the automobile auction.

10 (d) Maintain parking space for at least one hundred
11 vehicles.

12 (e) Display at least one permanent sign that is clearly
13 visible from the nearest street or highway. The sign
14 shall state that automobile auctions are conducted at
15 that site.

§17A-6C-4. Fee required for license certificate.

1 (a) The initial application fee for a certificate to
2 engage in the automobile auction business is two
3 hundred fifty dollars. The renewal fee is one hundred
4 dollars.

5 (b) The fee entitles the licensee to one special plate
6 known as the Class AA special plate.

7 (c) A licensee is also entitled to additional Class AA
8 special plates for a fee of twenty-five dollars each based
9 on the following formula:

<table>
<thead>
<tr>
<th>ANNUAL VEHICLE SALES</th>
<th>ADDITIONAL AA PLATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-239</td>
<td>2</td>
</tr>
<tr>
<td>240-499</td>
<td>4 (Additional)</td>
</tr>
<tr>
<td>500-999</td>
<td>4 (Additional)</td>
</tr>
<tr>
<td>1000-More</td>
<td>4 Plates per 500</td>
</tr>
<tr>
<td></td>
<td>vehicles sold.</td>
</tr>
</tbody>
</table>

§17A-6C-5. Investigation prior to issuance of license certificate; information confidential.
(a) Upon receipt of a completed application, the required bond, certificate of insurance and the application fee, the commissioner may investigate to determine the accuracy of the application and any facts relevant to the application. The commissioner may withhold issuance or refusal of a license for up to twenty days after an application is received.

(b) An application for a license certificate under the provisions of this article and any information submitted are confidential. No person may divulge any information contained in any application or any information submitted except in response to a valid subpoena or subpoena duces tecum.

§17A-6C-6. Refusal of license certificate.

The commissioner shall deny an application if he or she finds that the applicant:

(a) Has failed to furnish the required bond;

(b) Has failed to furnish the required certificate of insurance;

(c) Has knowingly made a false statement of a material fact in the application;

(d) Has habitually defaulted on financial obligations;

(e) Has been convicted of a felony within five years immediately preceding receipt of the application by the commissioner;

(f) Has been refused, or has had revoked, an automobile auction license in any other state or jurisdiction within five years immediately preceding receipt of the application by the commissioner;

(g) So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state;

(h) Has been convicted of any fraudulent act in connection with the business of an automobile auction; or

(i) Has committed any act or has failed or refused to
§17A-6C-7. Licensing period, renewal and expiration.

(a) A license certificate may not be issued prior to the first day of July, one thousand nine hundred ninety-three. Applicants shall apply at least thirty days in advance. License certificates expire on the thirtieth day of June each year.

(b) License certificates are renewable by the payment of fees by a licensee in good standing with the commissioner. A license certificate may not be transferred, or used by any person other than the licensee, except as provided in section nine of this article.

§17A-6C-8. Form and display of license certificate; certified copies of license.

(a) The commissioner shall prescribe the form of the license certificate for an automobile auction business. Each license certificate shall have the seal of the division, the location of each place of business of the licensee, the year for which the license is issued, the serial number and other information the commissioner may prescribe printed on it. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts business at more than one location, he or she shall obtain from the commissioner one certified copy of the license certificate for each place of business for a fee of one dollar each. Each licensee shall keep either his or her license certificate or a certified copy conspicuously posted at each place of business.

(c) In the event of the loss or destruction of a license certificate or a certified copy, the licensee shall immediately make application for a certified copy of the lost license certificate. The fee for a replacement copy is three dollars.

§17A-6C-9. Changes in business; action required.

Every automobile auction business shall notify the commissioner immediately when any of the
changes in the business occur:

(a) A change of the location of any place of business;

(b) A change of the name or trade name under which the licensee engages or will engage in the business;

(c) The death of the licensee or any partner or partners thereof;

(d) A change in any partners, officers or directors;

(e) A change in ownership of the business;

(f) A change in the type of legal entity by and through which the licensee engages or will engage in the business; or

(g) The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

When any change specified in subdivision (a), (b), (c), (d), (e) or (f) occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, That when a subdivision (c) change is involved, an application for a new license certificate need not be filed during the balance of the license year if a member of the family of the deceased person succeeds to the interest in the business.

Upon receipt and review of the application, a new license certificate shall be issued incorporating the changes. No additional fee for the balance of the license year shall be required for the issuance of any new license certificate issued as a result of any change specified in subdivision (a), (b), (c), (d), (e) or (f).

No new license certificate is required for any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, receiver or master, appointed pursuant to law, who takes charge of or operates such business for the purpose of winding up the affairs of such business or protecting the interests of the creditors of such business.
§17A-6C-10. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.

1. (a) The commissioner may investigate whether any provisions of this article have been violated by a licensee. Any investigation conducted by the commissioner shall be confidential and the confidentiality of the investigation shall be maintained by the commissioner, the division, the licensee, any complainant and all other persons until the commissioner suspends or revokes the license certificate of the licensee involved.

2. (b) The commissioner may suspend or revoke a license certificate if the commissioner finds that the licensee:

   1. Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and requiring notices of transfers; or

   2. Has failed or refused to comply with the provisions of this article and the rules promulgated hereunder.

3. (c) The commissioner shall suspend or revoke a license certificate if the commissioner finds that the licensee:

   1. Has knowingly made a false statement of a material fact in his or her application for the license certificate then issued and outstanding;

   2. Has habitually defaulted on financial obligations;

   3. Has been guilty of any fraudulent act in connection with the automobile auction business;

   4. Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

   5. Has committed fraud in the registration of a
vehicle;

(6) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(7) Has advertised by any means, with intent to defraud, any material misrepresentation or misleading or deceptive statement of fact, relating to the conduct of the licensed business;

(8) Has a license certificate to which he is not lawfully entitled; or

(9) Has committed an act for which a certificate could have been refused.

(d) If a licensee fails or refuses to keep the bond or liability insurance required by section two of this article in effect, the license certificate of the licensee shall automatically be suspended unless and until the required bond and certificate of insurance is furnished to the commissioner, in which event the suspension shall be vacated.

(e) If the commissioner refuses to issue a license certificate, or suspends or revokes a license certificate, or suspends the right of a licensee to issue temporary plates or markers under the provisions of section eleven, article six of this chapter, he or she shall make and enter an order to that effect and shall cause a copy of this order to be served in person or by certified mail, return receipt requested, on the applicant or licensee.

(f) Suspensions continue until the cause of suspension is eliminated or corrected. If a license certificate and the right of a licensee to issue temporary registration plates or markers is suspended or revoked, the commissioner shall, in the order of suspension or revocation, direct the licensee to return to the division his or her license certificate and any temporary registration plates or markers in the licensee's possession and issued in conjunction with the issuance of an automobile auction certificate. If a licensee fails or refuses to comply with any order of the commissioner, the commissioner shall proceed as provided in section seven, article nine of this chapter.
(g) Any applicant whose request for a license certificate is refused, and any licensee whose license certificate is suspended or revoked, may appeal the suspension or revocation in accordance with the rules promulgated by the commissioner pursuant to this article.

(h) Revocation of a license certificate shall not preclude application for a new license certificate, which shall be processed in the same manner. The license certificate shall be issued or denied on the same grounds as any other application for a license certificate, except that any previous suspension and revocation may be considered in deciding whether to issue or refuse the license certificate.

§17A-6C-11. Temporary registration plates or markers.

(a) In order to permit a vehicle which is to be titled and registered to be operated on the streets and highways pending receipt of the annual registration plate, the commissioner may, subject to the following limitations, deliver temporary vehicle registration plates or markers to persons engaged in the automobile auction business for issuance to applicants for title and registration of vehicles.

(b) An application by an automobile auction business to the commissioner for temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner and shall be accompanied by a fee of three dollars for each temporary registration plate or marker. No refund or credit of fees paid by automobile auction businesses to the commissioner for temporary registration plates or markers is allowed, except in the event the commissioner discontinues the issuance of temporary plates or markers. Automobile auction businesses returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit.

(c) Every automobile auction business applying for and receiving temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to the licensee, a record of all temporary registration
plates or markers issued and a record of any other
information pertaining to the receipt or the issuance of
temporary registration plates or markers which the
commissioner may require. Each record shall be kept
for a period of at least three years from the date issued.
Every automobile auction business issuing a temporary
registration plate or marker shall send to the division
a copy of the temporary registration plate or marker
certificate properly executed by the automobile auction
business and the purchaser within five working days
after the issuance of the plate or marker. No temporary
registration plates or markers may be delivered to any
automobile auction business until the business has fully
accounted to the commissioner for the temporary
registration plates or markers last delivered by showing
the number issued to purchasers and the number
remaining to be issued.

(d) An automobile auction business may not issue,
assign or deliver a temporary registration plate or
marker to anyone other than the bona fide applicant for
title and registration of the vehicle to be registered. Not
more than one temporary registration plate or marker
may be issued to the same bona fide applicant for the
same vehicle. An automobile auction business may not
issue a temporary registration or marker to anyone
possessing an annual registration plate for a vehicle
which has been sold or exchanged, except an automobile
auction business may issue a temporary registration
plate or marker to the bona fide applicant who possesses
an annual registration plate of a different class and it
may make application to the division to exchange the
annual registration plate of a different class in accor-
dance with the provisions of section one, article four of
this chapter. An automobile auction business may not
lend to anyone or use on any vehicle which it may own,
a temporary registration plate or marker. It is unlawful
for any automobile auction business to issue any
temporary registration plate or marker which contains
a misstatement of fact or false information.

(e) Every automobile auction business issuing tem-
porary registration plates or markers shall affix or
insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance, the date of expiration and the make, model and serial number of the vehicle.

(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by an automobile auction business, the commissioner may suspend the right of the automobile auction business to issue temporary registration plates or markers.

(g) A temporary registration plate or marker expires upon the receipt of the annual registration plate from the division, or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of sixty days from the date of issuance, whichever event occurs first.

§17A-6C-12. Use of special plates; records to be maintained by automobile auction business; operation of vehicles under special plates; expiration of special plate.

(a) Class AA special plates may be used by the automobile auction business receiving them only for the purpose of transporting or moving consigned or owned motor vehicles to and from the automobile auction in the normal course of business or for purposes of demonstrating vehicles owned by the auction which are offered for sale: Provided, That under no circumstances may a Class AA special plate be used on any work or service vehicle owned by the automobile auction business on any vehicle being operated for personal reasons or on any vehicle sold by or through it to a purchaser.

(b) Every automobile auction business entitled to and issued a special plate or plates under the provisions of this article shall keep a written record of the location of each plate. Every record shall be open to inspection by the commissioner, his or her representative or any law-enforcement officer, when acting in an official capacity.

(c) An automobile auction business licensee who
on consignment a vehicle or vehicles of the type required to be registered under this chapter may operate or move the same upon the streets and highways without registering each vehicle if the vehicle displays a special plate issued as provided in this article.

(d) Every special plate or plates shall expire at midnight on the thirtieth day of June. A new plate or plates for the ensuing year may be obtained as specified in section four of this article.

§17A-6C-13. Records must be kept and maintained.

In addition to all other records required to be kept and maintained, the licensee shall keep and maintain a record of the following on forms and for the period of time proscribed by the commissioner:

(a) Every vehicle which is sold at auction by a licensee or received or accepted by the licensee for sale at auction;

(b) The name and address of the person from whom the vehicle was acquired and the date thereof, the name and address of the person to whom the vehicle was sold or auctioned, the date thereof, and a description of each vehicle with name and identifying numbers sufficient to identify it; and

(c) Records as the commissioner may require by reasonable rules promulgated pursuant to this article.

All records required to be kept and maintained shall be kept for a period of at least three years from the date of the making and shall be open to inspection by the commissioner, his or her representative or any law-enforcement officer while acting in an official capacity.

§17A-6C-14. Notice of refusal, or suspension or revocation of license certificate or of suspension of right to issue temporary registration plates or markers or of suspension of an automobile auction special plate or plates; relinquishing license certificate, dealer special plate or plates and temporary plates or markers.
(a) If the commissioner refuses to issue a license certificate, or suspends or revokes a license certificate, or suspends the right of an automobile auction business to issue temporary plates or markers under the provisions of section fifteen of this article, or suspends a Class AA special plate or plates, he or she shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, on the applicant or licensee.

(b) If a license certificate is suspended or revoked, the commissioner shall, in the order of suspension or revocation, direct the licensee to return to the department his or her license certificate and any special Class AA plates and temporary registration plates or markers issued in conjunction with the issuance of the license certificate of the business. If the right of an automobile auction business to issue temporary registration plates or markers is suspended or a Class AA special plate or plates are suspended, the commissioner shall in the order of suspension direct the licensee to return to the department all temporary registration plates or markers issued in conjunction with the business. It is the duty of the licensee to comply with an order. If a licensee fails or refuses to comply with any order, the commissioner shall proceed as provided in section seven, article nine of this chapter.

§17A-6C-15. Inspections; violations and penalties.

(a) The commissioner and law-enforcement officers of the state, acting at the commissioner's request, are hereby authorized to inspect the place of business and pertinent records, documents and papers of any person required to be licensed under the provisions of this article to the extent deemed reasonably necessary to determine compliance with the provisions of this article. For the purpose of making an inspection, the commissioner and law-enforcement officers are authorized, at reasonable times, to enter the place of business.

(b) Any person who violates any provision of this article or any final order of the commissioner is guilty of a misdemeanor and is subject to the provisions of article eleven of this chapter.
§17A-6C-16. Injunctive relief.

(a) If it appears to the commissioner that any person or licensee has violated any provision of this article or any final order of the commissioner, the commissioner may petition, in the name of the state, the circuit court of the county in which the violation or violations occurred, for an injunction against such person or licensee. A violation or violations resulting in prosecution or conviction under the provisions of article eleven of this chapter shall not prohibit injunctive relief.

The circuit court may, by mandatory or prohibitory injunction, compel compliance with the provisions of this article and all final orders of the commissioner. The court may also issue temporary injunctions.

(b) The judgment by the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

§17A-6C-17. Promulgation of rules.

The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code in order to effect the provisions of this article. Any reference in this article to rules shall be construed to mean rules promulgated in accordance with said chapter.

CHAPTER 98

(Com. Sub. for S. B. 133—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter seventeen-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 twelve, all relating to motor vehicles; mandatory suspension for fraudulent use of driver's license; and procedures.
Be it enacted by the Legislature of West Virginia:

That section six, article three, chapter seventeen-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 twelve, all to read as follows:

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

§17B-3-12. Mandatory suspension for fraudulent use of driver’s license.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

(a) The division is hereby authorized to suspend the driver’s license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of a driver’s license is required upon conviction;

2. Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;

3. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

4. Is an habitually reckless or negligent driver of a motor vehicle;

5. Is incompetent to drive a motor vehicle;

6. Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;

7. Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures or penalties imposed by a magistrate court or municipal...
within ninety days, as required by section two-a, article three, chapter fifty or section two-a, article ten, chapter eight of this code;

(8) Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a of this article; or

(9) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily from a secondary school, as provided in section eleven, article eight, chapter eighteen of this code.

(b) The driver's license of any person having his or her license suspended shall be reinstated if:

(1) The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures or penalties imposed by the applicable court has been made; or

(2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section, and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged.

(c) Any reinstatement of a license under subdivision (1) or (2), subsection (b) of this section shall be subject to a reinstatement fee designated in section nine of this article.

(d) Upon suspending the driver's license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the
production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license.

§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

(a) The commissioner shall suspend for a period of one year the driver's license of any person upon receipt of a sworn affidavit from any law-enforcement officer or employee of the division of motor vehicles stating that the person committed any one of the following acts:

1. Displayed or caused or permitted to be displayed to any law-enforcement officer or employee of the division of motor vehicles or have in his or her possession any canceled, revoked, suspended, fictitious or fraudulently altered driver's license;

2. Loaned or gave his or her driver's license to any other person or knowingly permitted the use thereof by another for an unlawful or fraudulent purpose;

3. Displayed or represented as one's own any driver's license not issued to him or her; or

4. Used a false or fictitious name or birth date on any application for a driver's license or knowingly made a false statement, knowingly concealed a material fact or otherwise committed a fraud in making application for a driver's license.

(b) For the purposes of this section, "driver's license" means any permit, camera card, identification card or driver's license issued by this state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon.

(c) No person shall have his or her driver's license suspended under any provision of this section unless he or she shall first be given written notice of such suspension sent by certified mail, return receipt
requested, at least twenty days prior to the effective date of the suspension. Within ten days of the receipt of the notice of suspension, the person may submit a written request by certified mail for a hearing and request a stay of the suspension pending the results of the hearing. Upon receipt of the request for a hearing and request for a stay of the suspension, the commissioner shall grant a stay of the suspension pending the results of the hearing. If the commissioner shall after hearing make and enter an order affirming the earlier order of suspension, the person affected shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code and, pending the appeal, the court may grant a stay or supersedeas of such order. If the person does not appeal the suspension or the suspension is affirmed by the court, the person shall surrender his or her driver's license or have the license impounded in the manner set forth and subject to the imposition of fees as provided in section nine of this article.

(d) The suspended driver's license shall be reinstated following the period of suspension and upon compliance with the conditions set forth in this chapter.

CHAPTER 99
(H. B. 2680—By Delegates Riggs and Fealy)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

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, relating to motorcycle passengers; designating the number of passengers to be carried; permitting factory produced sidecars; restrictions; and safety belt requirements.

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
ARTICLE 15. EQUIPMENT.

§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 windsoscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by 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 person shall ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory produced sidecar provided that there is one passenger per seat. Passengers riding in a sidecar shall be restrained by safety belts.

(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.

(f) 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.

CHAPTER 100

(Com. Sub. for H. B. 2098—By Mr. Speaker, Mr. Chambers, and Delegates Burk and Kessel)

[Passed March 16, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-nine, relating to the mandatory
use of safety belts in the front seat of passenger vehicles; mandating the use of safety belts for all passengers in the back seat of passenger vehicles who are under the age of eighteen years; defining the term "passenger vehicle" for purposes of said section; creating exceptions for certain disabled persons and United States rural postal service carriers; providing a penalty for a violation of said section; limiting the enforcement of such violation to a secondary action when the driver of a motor vehicle has been detained for probable cause of violating another section of this code; providing that evidence of a violation of this section is not admissible to prove negligence, contributory negligence or comparative negligence or to mitigate damages; exception; when certain damages may be mitigated; establishing procedure for reducing certain damages; prohibiting the entry of points on a driver's record for a violation of this section; mandating the governor's highway safety program, in cooperation with other governmental agencies, to initiate and conduct safety courses and educational programs encouraging compliance with safety belt usage laws; and clarifying the effect of this section on existing provisions governing the use of child passenger safety devices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-49. Operation of vehicles with safety belts; exception; penalty; civil actions; educational program by division of public safety.

1 (a) Effective the first day of September, one thousand nine hundred ninety-three, a person may not operate a passenger vehicle on a public street or highway of this state unless the person, any passenger in the back seat of the passenger vehicle, or any passenger in the front seat of the passenger vehicle, is seated in a lane designated for passenger vehicles, and the person, any passenger in the back seat of the passenger vehicle, or any passenger in the front seat of the passenger vehicle, is properly restrained by a seat belt or seat belt system, as defined in the code of West Virginia, one thousand ninety-two, as amended.

2 (b) No penalty shall be imposed for a violation of this section if the person, any passenger in the back seat of the passenger vehicle, or any passenger in the front seat of the passenger vehicle, is properly restrained by a seat belt or seat belt system, as defined in the code of West Virginia, one thousand ninety-two, as amended.

3 (c) No penalty shall be imposed for a violation of this section if the person, any passenger in the back seat of the passenger vehicle, or any passenger in the front seat of the passenger vehicle, is properly restrained by a seat belt or seat belt system, as defined in the code of West Virginia, one thousand ninety-two, as amended.

4 (d) The division of public safety shall conduct an educational program to inform the public of the importance of using safety belts and to encourage compliance with the requirements of this section.

5 (e) The division of public safety shall report annually to the governor and the legislature on the effectiveness of the educational program conducted pursuant to this section.
under eighteen years of age, and any passenger in the
front seat of such passenger vehicle is restrained by a
safety belt meeting applicable federal motor vehicle
safety standards. For the purposes of this section, the
term "passenger vehicle" means a motor vehicle which
is designed for transporting ten passengers or less,
including the driver, except that such term does not
include a motorcycle, a trailer, or any motor vehicle
which is not required on the date of the enactment of
this section under a federal motor vehicle safety
standard to be equipped with a belt system. The
provisions of this section shall apply to all passenger
vehicles manufactured after the first day of January,
one thousand nine hundred sixty-seven, and being 1968
models and newer.

(b) The required use of safety belts as provided herein
does not apply to a duly appointed or contracted rural
mail carrier of the United States postal service who is
actually making mail deliveries or to a passenger or
operator with a physically disabling condition whose
physical disability would prevent appropriate restraint
in such safety belt if the condition is duly certified by
a physician who shall state the nature of the disability
as well as the reason such restraint is inappropriate. The
division of motor vehicles shall adopt rules, in accor-
dance with the provisions of chapter twenty-nine-a of
this code, to establish a method to certify the physical
disability and to require use of an alternative restraint
system where feasible or to waive the requirement for
the use of any restraint system.

(c) Any person who violates the provisions of this
section shall be fined not more than twenty-five dollars.
No court costs or other fees shall be assessed for a
violation of this section. Enforcement of this section
shall be accomplished only as a secondary action when
a driver of a passenger vehicle has been detained for
probable cause of violating another section of this code.

(d) A violation of this section is not admissible as
evidence of negligence or contributory negligence or
comparative negligence in any civil action or proceeding
for damages, and shall not be admissible in mitigation of damages: Provided, That the court may, upon motion of the defendant, conduct an in camera hearing to determine whether an injured party's failure to wear a safety belt was a proximate cause of the injuries complained of. Upon such a finding by the court, the court may then, in a jury trial, by special interrogatory to the jury, determine (1) that the injured party failed to wear a safety belt and (2) that the failure to wear the safety belt constituted a failure to mitigate damages. The trier of fact may reduce the injured party's recovery for medical damages by an amount not to exceed five percent thereof. In the event the plaintiff stipulates to the reduction of five percent of medical damages, the court shall make the calculations and the issue of mitigation of damages for failure to wear a safety belt shall not be presented to the jury. In all cases, the actual computation of the dollar amount reduction shall be determined by the court.

(e) Notwithstanding any other provision of this code to the contrary, no points may be entered on any driver's record maintained by the division of motor vehicles as a result of a violation of this section.

(f) Commencing the first day of July, one thousand nine hundred ninety-three, the governor's highway safety program, in cooperation with the division of public safety and any other state departments or agencies and with county and municipal law-enforcement agencies, shall initiate and conduct an educational program designed to encourage compliance with safety belt usage laws. This program shall be focused on the effectiveness of safety belts, the monetary savings and the other benefits to the public from usage of safety belts and the requirements and penalties specified in this law.

(g) Nothing contained in this section shall be construed to abrogate or alter the provisions of section forty-six of this article relating to the mandatory use of child passenger safety devices.
AN ACT to amend article six-a, chapter twenty-four-a 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 the registration and identification of motor vehicles operating in West Virginia under authority of the interstate commerce commission; implementing a single state registration system; providing for the promulgation of rules; and authorizing the public service commission to employ additional persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE COMMISSION AUTHORITY AND IDENTIFICATION OF VEHICLES TO BE OPERATED THEREUNDER.

§24A-6A-14. Participation in the single state registration system.

(a) Notwithstanding any other provision of this article to the contrary, on or before the thirty-first day of December, one thousand nine hundred ninety-three, the commission shall promulgate rules implementing a single state registration system, in lieu of the identification stamp and cab card system provided in this article, for motor carriers operating within the borders of this state pursuant to authority granted, or exempt status conferred, by the interstate commerce commissions. The single state registration system shall be instituted pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, as implemented by the interstate commerce commission.
(b) The commission is further authorized to employ ten persons, who shall be in the classified exempt service, to facilitate enforcement of duties imposed upon the commission in this chapter.

CHAPTER 102
(H. B. 2685—By Delegates Kiss, S. Cook, Farris, Rutledge and P. White)

[Passed April 10, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a separate classification of business activity for aerospace services' purposes of determining municipal business and occupation privilege tax liability.

Be it enacted by the Legislature of West Virginia:

That section five, article thirteen, 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 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) Authorization to impose tax. — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July one, one thousand nine hundred eighty-seven, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.
(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification and refurbishing services to any aircraft or to an engine or other component part of any aircraft as a separate business activity.

(b) Maximum tax rates. — In no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent.

(c) Effective date of local tax. — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: Provided, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: Provided, however, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least sixty days prior to the effective date of said tax or revision thereof.

(d) Exemptions. — A municipality shall not impose its
business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July one, one thousand nine hundred eighty-seven, and determined without regard to any annual or monthly monetary exemption also specified therein.

(e) Activity in two or more municipalities. — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the tax commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection (e) shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) Administrative provisions. — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessor-
ment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June thirtieth, one thousand nine hundred seventy-eight, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

CHAPTER 103

(S. B. 96—By Senators Claypole, Humphreys, Wagner and Wiedebusch)

[Passed March 22, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing members of fire departments to participate in political activities; setting forth exceptions thereto; establishing the misdemeanor offense of discriminating against employees lawfully engaged in political activities; and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


(a) No member of any paid fire department may:

(1) Solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred;

(2) Use any official authority or influence, including, but not limited to, the wearing by a member of a paid
fire department of his or her uniform, for the purpose of interfering with or affecting the nomination, election or defeat of any candidate or the passage or defeat of any ballot issue: Provided, That this subdivision shall not be construed to prohibit any member of a paid fire department from casting his or her vote at any election while wearing his or her uniform;

(3) Coerce or command anyone to pay, lend or contribute anything of value to a party, committee, organization, agency or person for the nomination, election or defeat of a ballot issue;

(4) Be a candidate for or hold any other public office;

or

(5) Be a candidate or delegate to any state or national political party convention or a member of any national, state or local committee of a political party, or serve as a financial agent or treasurer within the meaning of sections three, four or five-e, article eight, chapter three of this code.

(b) Other types of partisan or nonpartisan political activities not inconsistent with the provisions of subsection (a) of this section are permissible political activities for members of paid fire departments.

(c) Any member of a paid fire department who violates the provisions of this section shall have his or her appointment vacated and shall be removed, in accordance with the provisions of section twenty-five of this article.

(d) No person shall be appointed or promoted to or demoted or dismissed from any position in a paid fire department or in any way favored or discriminated against because of his or her engagement in any political activities authorized by the provisions of this section. Any elected or appointed official who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by the penalties contained in section twenty-six, article fifteen, chapter eight of this code.
CHAPTER 104
(H. B. 2266—By Delegates Nicol, Evans and Love)

[Passed March 26, 1993; 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 permitting the killing of deer or other wildlife causing damage to cultivated crops, trees, commercial nurseries, homeowners' shrubbery and vegetable gardens; weapon restrictions.

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, trees, commercial nurseries, homeowners' shrubbery and vegetable gardens; weapon restrictions.

(a) Whenever it shall be found that deer or other wildlife are causing damage to cultivated crops, fruit trees, commercial nurseries, homeowners' trees, shrubbery or vegetable gardens, 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 restric-
tions 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 105
(Com. Sub. for H. B. 2116—By Delegate Love)

[Passed April 6, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section one-d, relating to natural resources; authorizing
the awarding of his or her service revolver to a
conservation officer upon his or her retirement under
specified conditions; and requiring the division of
natural resources to furnish upon request uniforms for
burial of certain deceased conservation officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1d. Awarding service revolver upon retirement;
furnishing uniform for burial.

(a) Upon the retirement of any full-time salaried
conservation officer, the chief conservation officer shall
award to the retiring conservation officer his or her
service revolver, without charge, upon determining:

(1) That the conservation officer is retiring honorably
with at least twenty-five years of recognized law-
forcement service as determined by the chief conserv-
ation officer; or

(2) That such conservation officer is retiring with less
than twenty-five years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of subsection (a) of this section, the chief conservation officer shall not award a service revolver to any conservation officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief conservation officer, constitutes a danger to any person or the community.

(c) Upon the death of any current or honorably retired conservation officer, the chief conservation officer shall, upon request of the deceased officer's family, furnish a full uniform for burial of the deceased officer.

CHAPTER 106
(H. B. 2661—By Delegates D. Miller and Collins)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of natural resources to amend legislative rules previously filed in the code of state regulations relating to revising the fee schedule for water pollution control permits for facilities that discharge stormwater and for aquaculture facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§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 which
would not be rejected as incomplete.”

On page 15, section 6.03(c)(1) in the first full sentence,
after the word “cease”, strike the remainder of the
sentence and insert in lieu thereof the words “within
fifteen (15) days of receipt of an order of suspension” and
in the second sentence strike the word “recommence”
and insert the words “continue beyond fifteen (15) days”;
(c)(2) in the first full sentence, after the word “cease”
by striking out the remainder of the sentence and insert
in lieu thereof the words “immediately upon receipt of
an order of revocation.”

(c) The legislative rules filed in the state register on
the twenty-sixth day of September, one thousand nine
hundred eighty-four, relating to the department of natural resources (public use of state parks, forests, hunting and fishing areas), are authorized.

(d) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (surface mining reclamation), are authorized.

(e) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (coal refuse disposal), are authorized.

(f) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (transfer of the state national pollutant discharge elimination system program), are authorized with the 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 nine hundred eighty-five, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management), are authorized.

(m) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-six, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management regulations), are authorized.
(n) The legislative rules filed in the state register on the seventh day of August, one thousand nine hundred eighty-six, relating to the director of the department of natural resources (procedures for transporting and dealing in furbearing animals), are authorized.

(o) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (WV/NPDES program for coal mines and preparation plants, and the refuse and waste therefrom), are authorized with the amendments set forth below:

On page four, §1.9.1.a by inserting the words “five thousand dollars or” after the words “‘significant portion of income’ means.”

And,

On page four, §1.9.1.a by inserting the words “whichever is less,” after the words “ten percent or more of gross personal income for a calendar year.”

(p) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management), are authorized.

(q) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred eighty-seven, relating to the department of natural resources (WV/NPDES regulations for coal mining facilities), are authorized.

(r) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (outfitters and guides), are authorized.

(s) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations),
156 are authorized.
157 (t) The legislative rules filed in the state register on
158 the fifth day of March, one thousand nine hundred
159 eighty-seven, relating to the department of natural
160 resources (hazardous waste management regulations,
161 series 35), are authorized.
162 (u) The legislative rules filed in the state register on
163 the seventh day of December, one thousand nine
164 hundred eighty-seven, relating to the department of
165 natural resources (hazardous waste management regu-
166 lations, series 35), are authorized.
167 (v) The legislative rules filed in the state register on
168 the sixteenth day of December, one thousand nine
169 hundred eighty-seven, modified by the department of
170 natural resources to meet the objections of the legislative
171 rule-making review committee and refiled in the state
172 register on the fourteenth day of January, one thousand
173 nine hundred eighty-eight, relating to the department of
174 natural resources (solid waste management), are
175 authorized.
176 (w) The legislative rules filed in the state register on
177 the twenty-eighth day of July, one thousand nine
178 hundred eighty-seven, modified by the director of the
179 department of natural resources to meet the objections
180 of the legislative rule-making review committee and
181 refiled in the state register on the seventh day of
182 August, one thousand nine hundred eighty-seven,
183 relating to the director of the department of natural
184 resources (boating regulations), are authorized with the
185 amendment set forth below:
186 On page 16, section 6.2, line 3 by inserting following
187 the period “This regulation does not apply to licensed
188 outfitters and guides.” These rules were proposed by the
189 director of the department of natural resources pursu-
190 ant to section seven, article one and section twenty-two,
191 article seven, chapter twenty of this code.
192 (x) The legislative rules filed in the state register on
193 the second day of September, one thousand nine
194 hundred eighty-eight, modified by the department
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
### Natural Resources

<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</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(gallons per day)</td>
<td></td>
</tr>
<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 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.
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
ine 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-
On page four, section five, subsection 5.1, after the word “requirements” by striking out the remainder of the subsection and inserting in lieu thereof, the following:

“of Title 47, Series 37 (Underground Storage Tank Fee Assessments); Title 47, Series 36, Section 4 (Notification Requirements); and Title 47, Series 37A, Section 5 (Capitalization Fees) of the Code of State Regulations and the owner or operator presents proof of the certification to the carrier.”

(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)."

(uu) The Legislature hereby authorizes and directs the division of natural resources to amend its rules relating to water pollution control permit fee schedules which were filed in the code of state regulations (47 CSR 26) on the thirteenth day of April, one thousand nine hundred ninety-two, with the following amendments set forth below:

On page nine, after section 7.5, by inser
following:

"7.6. Facilities Discharging Stormwater. The annual permit fee for a facility that discharges stormwater only shall be determined through the use of Table F of these regulations.

7.7. Aquaculture facilities. The annual permit fees for aquaculture facilities that are subject to the provisions of the water pollution control regulations shall be determined by Table G of these regulations."

And after Table E, on page ten, by inserting Table F, designated "Schedule of Annual Permit Fees For Facilities Discharging Stormwater," and inserting Table G, designated "Schedule of Annual Permit Fees For Aquaculture Facilities" to read as follows:

"TABLE F

SCHEDULE OF ANNUAL PERMIT FEES FOR FACILITIES DISCHARGING STORMWATER

Average Discharge Volume (gallons per day) Annual Permit Fee
less than 5,001 .................................................. $ 50
5,001 to 15,000 .................................................. $ 125
15,001 to 50,000 .................................................. $ 250
50,001 to 100,000 .................................................. $ 500
greater than 100,000 .................................................. $ 750"

and

"TABLE G

SCHEDULE OF ANNUAL PERMIT FEES FOR AQUACULTURE FACILITIES

#Feed/Month Annual Fee Application Fee
(Initial and Reissuance)
5,000 to 9,999 $ 250 $ 250
10,000 to 14,999 $ 500 $ 250
15,000 to 19,999 $ 750 $ 250
AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physician assistant-midwives.

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, who has attained a baccalaureate or master's degree, etc.
the national certification examination and is qualified to
perform direct patient care services under the supervi-
sion of a physician;

(2) "Physician assistant-midwife" means a physician
assistant who meets all qualifications set forth under
subdivision (1) above and fulfills the requirements set
forth in subsection (d); is subject to all provisions of this
section; and assists in the management and care of a
woman and her infant during the prenatal, delivery and
postnatal periods;

(3) "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;

(4) "Approved program" means an educational
program for physician assistants approved and accred-
dited by the committee on allied health education and
accreditation on behalf of the American Medical
Association; and

(5) "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 (l) of this section those categories of drugs submitted to it in the job description required by subsection (g) 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 shall license as a physician assistant-midwife any person who meets the standards set forth under subsection (c) of this section and, in addition thereto, the following standards:

1. He or she is a graduate of a school of midwifery accredited by the American college of nurse-midwives;
2. He or she has passed an examination approved by the board;
3. He or she practices midwifery under the supervi-
sion of a board certified obstetrician, gynecologist or a
board certified family practice physician who routinely
practices obstetrics.

(e) The board may license as a physician assistant any
person who files an application and furnishes satisfac-
tory 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.

(f) 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 (g) 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.
(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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 (g) 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.

(m) 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.

(n) Each application for licensure submitted by a licensed supervising physician under this section st.
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.

(o) 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 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.

(p) It is unlawful for any person who is not licensed by the board as a physician assistant to use the title of "physician assistant" or to represent to any other person that he or she is a physician assistant. Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars.

(q) It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. Any person who violates the provisions of this subsection is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.
(r) All physician assistants holding valid certificates issued by the board prior to the first day of July, one thousand nine hundred ninety-two, shall be considered to be licensed under this section.

CHAPTER 108
(S. B. 416—By Senator Lucht)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five and twelve, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eight-a, all relating to social workers; providing for the licensure of independent clinical social workers; defining clinical social work practice; adding an independent clinical social worker to the board of social work examiners; reducing the number of certified social workers on the board from two to one; changing compensation of the board; clarifying certain fee schedules of the board; requiring the board to establish standards and requirements for the practice of social work; requirements for issuance of a license for independent clinical social work; including independent clinical social workers in provisions related to privileged communication; and requiring reporting of certain actions and behavior of licensees.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five and twelve, article thirty, 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 eight-a, all to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-2. Definitions.
§30-30-3. Board of social work examiners.
§30-30-2. Definitions.

(a) “Board” means the state board of social work examiners established by this article.

(b) “Social work” means the profession that provides the formal knowledge base, theoretical concepts, specific functional skills and essential social values which are used to implement society’s mandate to provide safe, effective and constructive social services through the professional activities of helping individuals, groups or communities enhance or restore their capacity for social functioning, and preventing or controlling social problems and altering societal conditions as a means towards enabling people to attain their maximum potential.

(c) “Social worker” means a person who represents himself or herself to the public by the title “social worker”, and under this title offers to render or renders services involving the application of principles, methods and procedures of the profession of social work to individuals, families, corporations or the public for financial compensation: Provided, That social workers as defined by this article does not mean any person who may voluntarily serve in an advisory capacity in situations dealing with social and family matters while not holding himself or herself out to the public as a social worker.

(d) “Social work practice” means the professional application of social work values, principles and techniques to one or more of the following ends: Enhancing the developmental, problem-solving and coping capacities of people; promoting the effective and humane operations of systems that provide resources and services to people; linking people with systems that provide them with resources, services and opportunities; contributing to the development and improvement of social policy; engaging in research related to these ends.
and principles; and organizations or agencies engaged in such practice. Such social work interventions are provided to individuals, families, small groups, organizations, neighborhoods and communities. The practice of social work is guided by knowledge of social resources, social systems, human behavior and social, economic and cultural institutions and the interaction of all such factors.

(e) "Clinical social work practice" means the professional application of social work theory and methods to the diagnosis, treatment and prevention of psychological dysfunction, disability or impairment, including emotional and mental disorders and developmental disabilities. Clinical social work practice is based on knowledge of one or more theories of biological, psychological and social development, normal human behavior, psychopathology, the causes and effects of physical illness and disability, unconscious motivation, interpersonal relationships, family dynamics, environmental stress, social systems and cultural diversity with particular attention to the person existing as a combination of biological, psychological and social elements in his or her environment. Clinical social work includes interventions directed to interpersonal interactions, intrapsychic dynamics and life-support and management issues. Clinical social work services consist of assessment, diagnosis, treatment, including psychotherapy and counseling, client-centered advocacy, consultation and evaluation. The process of clinical social work is undertaken within the objectives of the social work profession and the principles and values of its code of ethics.

§30-30-3. Board of social work examiners.

(a) For the purpose of carrying out the provisions of this article, there is hereby created a West Virginia board of social work examiners, consisting of seven members who shall be appointed by the governor, subject to the following requirements:

(1) No person may be excluded from serving on the board by reason of race, sex or national origin;
(2) One member shall be an independent clinical social worker, two members shall be certified social workers, one member shall be a graduate social worker and two members shall be social workers. All such members must be licensed under the provisions of this article in accordance with their respective titles. In addition, there shall be one member of the board chosen from the general public: Provided, That those members who are appointed by the governor to serve as the first board after the effective date of this article shall be persons eligible for the licensing required under this article: Provided, however, That the member from the general public shall never be required to be eligible for licensing;

(3) The members of the first board to serve after the effective date of this article shall be appointed within ninety days thereof;

(4) The term of office for each member of the board shall be three years: Provided, That one of the members of the first board to serve after the effective date of this article shall serve a term of two years, three of them shall serve a term of three years and the remaining three shall serve a term of four years; and

(5) The governor shall, whenever there is a vacancy on the board due to circumstances other than the expiration of the term of a member, appoint another member with the same qualifications as the member who has vacated to serve the duration of the unexpired term.

For the purpose of accepting nominations for the replacement of a member, the governor shall cause a notice of the vacancy to be published at least thirty days prior to an announcement of the replacement member, as a Class I-0 legal advertisement, in accordance with the provisions of section two, article three, chapter fifty-nine of this code. The publication area shall be statewide.

If the governor fails to make appointment in ninety days after expiration of any term, the board shall make
the necessary appointment. Each member shall hold
office until the expiration of the term for which such
member is appointed and until a successor shall have
been duly appointed and qualified.

(b) Any members of the board may be removed from
office for cause, in accordance with procedures set forth
in this code for the removal of public officials from
office.

c) The board shall pay each member the same
compensation as is paid to members of the Legislature
for their interim duties as recommended by the citizens
legislative compensation commission and authorized by
law for each day or portion thereof engaged in the
discharge of official duties and shall reimburse each
member for actual and necessary expenses incurred in
the discharge of official duties: Provided, That such
compensation and such expenses shall not exceed the
amount received by the board from licensing fees and
penalties imposed under subdivision (4), subsection (e)
of this section.

d) The board shall hold an annual election for the
purpose of electing a chairman, vice chairman and
secretary. The requirements for meetings and manage-
ment of the board shall be established in regulations
promulgated by the board as required by this article.

e) In addition to the duties set forth in other
provisions of this article, the board shall:

(1) Recommend to the Legislature any proposed
modifications to this article;

(2) Report to county prosecutors any suspected
violations of this article: Provided, That no report shall
be made until the board has given the suspected violator
ninety days written notice of the suspected violation and
the violator has, within such ninety-day period, been
afforded an opportunity to respond to the board with
respect to the allegation;

(3) Publish an annual report and a roster listing the
names and addresses of all persons who have been
(4) Establish a fee schedule for the initial examination, license fee, the annual license renewal, license replacement, reciprocal license, license classification change, continuing education provider approval and monitoring, mailing lists and requests for information and reports; fees for requests for information and reports shall not be greater than the cost of personnel, time and supplies incurred by the board and shall not be applied to the annual report;

(5) Establish standards and requirements for continuing education. In establishing these requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article and the board shall consider recognized staff development programs, continuing education programs offered by colleges and universities having social work programs approved or accredited by the council on social work education, and continuing education programs offered by recognized state and national social work bodies: Provided, That such standards and requirements for continuing education shall not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(6) Establish standards and requirements for the practice of social work and the differentiation of qualifications, education, training, experience, supervision, responsibilities, rights, duties and privileges at the independent clinical social worker, certified social worker, graduate social worker and social worker license levels. In establishing these standards and requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article. Standards and requirements may include, but are not limited to, practice standards, practice parameters, quality indicators, minimal standards of acceptance, advanced
Provided, That such standards and requirements for practice may not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(7) Conduct its proceedings in accordance with provisions of article nine-a, chapter six of this code; and

(8) Employ, direct and define the duties of an administrative clerical support staff person.

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 board of social work examiners be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the social work board of examiners shall continue to exist until the first day of July, one thousand nine hundred ninety-five.

§30-30-4. License required; penalties; exceptions.

(a) After twenty-four months have passed from the effective date of this article, no person may represent that he or she is a social worker by using such titles as independent clinical social worker, certified social worker, graduate social worker, social worker or any other title that includes a facsimile of such words unless he or she is duly licensed under the provisions of this article or specifically exempted hereunder; nor may any person represent himself or herself to be a certified social worker, graduate social worker or other type of social worker by adding the letters ICSW, CSW, GSW, SW or any other letters, words or insignia which induce or tend to induce the belief that the person is qualified to engage in the practice of social work unless the person is licensed in accordance with the provisions of this article.

(b) After twenty-four months have passed from the effective date of this article, no person may represent that he or she is a social worker by using such titles as independent clinical social worker, certified social worker, graduate social worker, social worker or any other title that includes a facsimile of such words unless he or she is duly licensed under the provisions of this article or specifically exempted hereunder; nor may any person represent himself or herself to be a certified social worker, graduate social worker or other type of social worker by adding the letters ICSW, CSW, GSW, SW or any other letters, words or insignia which induce or tend to induce the belief that the person is qualified to engage in the practice of social work unless the person is licensed in accordance with the provisions of this article.
the private, independent practice of social work unless he or she is already licensed under this article.

(e) Any person violating the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail for a term not to exceed one year, or both fined and imprisoned.

(d) Nothing in this article shall be construed to prevent duly licensed physicians, surgeons, psychologists, attorneys, members of the clergy or any other professional from working within the standards and ethics of their respective professions and fulfilling their professional responsibilities: Provided, That no such professional may represent to the public, either by title or training, that he or she is engaged in the practice of social work: Provided, however, That any student enrolled in a recognized program of study leading to a social work degree may practice only under the supervision of a social worker duly licensed in accordance with the provisions of this article. Nothing in this article shall be construed to prevent any person from volunteering his or her services in a manner as defined in subsection (c), section two of this article.

§30-30-5. License classification; qualification.

The board shall issue a license as an independent clinical social worker, certified social worker, graduate social worker or social worker.

(a) The board shall issue a license as an independent clinical social worker to an applicant who:

(1) Has a doctorate or master's degree from a school of social work accredited by the council on social work education that included a concentration of clinically oriented course work as defined by the board; and

(2) Has completed a supervised clinical field placement at the graduate level, or post-master's clinical training that is found by the board to be equivalent;
(3) Has practiced clinical social work for at least two years in full-time employment, or three thousand hours under the supervision of an independent clinical social worker, or clinical supervision that is found by the board to be equivalent; and

(4) Has passed an examination approved by the board for certification purposes; or

(5) Has received certification as a “diplomat in clinical social work” by the national association of social workers, or as a “board certified diplomat in clinical social work” by the American board of examiners in clinical social work; and

(6) Has satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude.

(b) The board shall issue a license as a certified social worker to an applicant who:

(1) Has a doctorate or master’s degree from a school of social work accredited by the council on social work education;

(2) Has completed a minimum of two years experience in the practice of social work after having received a master’s degree in social work;

(3) Has received certification by the academy of certified social workers or has passed an examination approved by the board for certification purposes;

(4) Has satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude; and

(5) In lieu of the foregoing requirements, any person
who has been continuously employed for seven years as a social worker under the supervision of any certified social worker; has satisfactorily completed fifty-six hours of graduate social work study as accredited by the council on social work education; has passed an examination approved by the board for certification purposes; and has satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating that he or she has never been convicted of a felony involving moral turpitude, may be licensed by the board as a certified social worker: Provided, That the board may exempt any applicant for licensing from specific hours of social work curriculum where the applicant has demonstrated to the satisfaction of the board a proficient knowledge of the subject matter contained in the particular course of social work curriculum to be exempted.

(c) The board shall issue a license as a graduate social worker to an applicant who:

(1) Has a master's degree in social work from a school of social work accredited by the council on social work education;

(2) Has passed an examination approved by the board;

(3) Has satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant and a sworn statement from the applicant indicating he or she has never been convicted of a felony involving moral turpitude; and

(4) In lieu of the foregoing requirements, any person who has been continuously employed for five years as an apprentice social worker under the supervision of any certified social worker; has satisfactorily completed forty-five graduate hours of social work study as accredited by the council on social work education; has passed an examination approved by the board; and has satisfied the board that he or she merits the public trust
by providing the board with three letters of recommen-
dation from persons not related to the applicant and a
sworn statement from the applicant indicating he or she
has never been convicted of a felony involving moral
turpitude, may be licensed by the board as a graduate
social worker: Provided, That the board may exempt
any applicant for licensing from specific hours of social
work curriculum where the applicant has demonstrated
to the satisfaction of the board a proficient knowledge
of the subject matter contained in the particular course
of social work curriculum to be exempted.

(d) The board shall issue a license as a social worker
to an applicant who:

(1) Has a baccalaureate degree in social work from
a program accredited by the council on social work
education;

(2) Has passed an examination approved by the board;

(3) Has satisfied the board that he or she merits the
public trust by providing the board with three letters
of recommendation by persons not related to the
applicant and a sworn statement from the applicant
indicating he or she has never been convicted of a felony
involving moral turpitude; and

(4) In lieu of the foregoing requirements, any person
who has been continuously employed for four years as
a social worker under the supervision of any certified
social worker; has satisfactorily completed thirty-six
hours of social work study as accredited by the council
on social work education; has passed an examination
approved by the board; and has satisfied the board that
he or she merits the public trust by providing the board
with three letters of recommendation from persons not
related to the applicant and a sworn statement from the
applicant indicating he or she has never been convicted
of a felony involving moral turpitude, may be licensed
by the board as a social worker: Provided, That the
board may exempt any applicant for licensing from
specific hours of social work curriculum where the
applicant has demonstrated to the satisfaction of the
board a proficient knowledge of the subject matter contained in the particular course of social work curriculum to be exempted.

§30-30-8a. Reporting unethical conduct and unlicensed practice.

A person who has knowledge of any conduct constituting grounds for disciplinary action relating to licensure or the unlicensed practice of the profession of social work under this article may report the violation to the board.

Institutions, professional societies, licensed professionals, insurers authorized to sell insurance within this state, and courts in this state shall report to the board any of the following actions taken by the agency, institution, organization, professional society, insurer, court administrator, judge or other court of competent jurisdiction:

(a) Revocation, suspension, restriction or other condition a licensee’s privilege to practice or treat patients or clients, or as part of the organization, or any other disciplinary action for conduct that might constitute grounds for disciplinary action;

(b) Termination, revocation or suspension of membership or any other disciplinary action taken against a licensee;

(c) Conduct that the licensed health professional reasonably believes constitutes grounds for disciplinary action under this chapter by any licensee, including conduct that the licensee may be medically incompetent, or may be medically or physically unable to engage safely in the provision of services;

(d) Malpractice settlements or awards made by an insurer to a plaintiff where the settlement or award involved a licensee or unlicensed practitioner claiming to be a social worker; and

(e) Judgments or other determinations of the court that adjudges or includes a finding that a licensee is
mentally ill, mentally incompetent, guilty of a felony, guilty of a violation of federal or state narcotics laws or controlled substances acts, or guilty of an abuse or fraud under medicare or medicaid, or that appoints a guardian of the licensee, or commits a licensee to involuntary treatment, probation or prison.

Any person, official, society, licensed professional, insurer or institution participating in good faith in any act permitted or required by this section is immune from any civil or criminal liability that otherwise might result by reason of the action or actions.

§30-30-12. Privileged communications.

(a) No person licensed under this statute or an employee of the licensee may disclose any confidential information he or she may have acquired from persons consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or persons, or in the case of death or disability, of his or her personal representative, other person authorized to sue or the beneficiary of an insurance policy on his or her life, health or physical condition;

(2) When a communication reveals the contemplation of a crime or harmful act;

(3) When the person waives the privilege by initiating formal charges against the independent clinical social worker, certified social worker, graduate social worker or social worker;

(4) When the person is a minor under the laws of this state and the information acquired by the independent clinical social worker, certified social worker, graduate social worker or social worker indicates that the minor has been the victim or subject of a crime, and the independent clinical social worker, certified social worker, graduate social worker or social worker may be required to testify fully in any examination, trial or other proceeding in which the commission of a crime is the subject of inquiry; or
(5) Where otherwise required by law.

(b) Nothing in this section shall be construed, however, to prohibit any board licensee from testifying in juvenile proceedings concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children.

CHAPTER 109
(Com. Sub. for H. B. 2565—By Delegates Ryan, Mezzatesta and Nicol)

[Passed April 9, 1993; 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-three, relating to regulating the tattoo studio business; definitions; outlining standards for sanitation, facilities, operation, procedures and equipment; requiring informed consent of patrons; requiring consent of parent or guardian for tattooing of minors; disposing of waste; requiring registration and inspection of tattoo studios by local or regional boards of health; requiring operating permits; authorizing fees; providing for disposition of fees; and establishing criminal penalties for certain violations.

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-three, to read as follows:

ARTICLE 33. TATTOO STUDIO BUSINESS.

§30-33-1. Definitions.
§30-33-2. Studio sanitation.
§30-33-3. Operation standards.
§30-33-4. Facilities and equipment.
§30-33-5. Disposal of waste.
§30-33-6. Registration requirements; inspections by local or regional boards of health; permit fees.
§30-33-7. Violations and penalties.
§30-33-1. Definitions.

(a) “Adequate ventilation” means a free and unrestricted circulation of fresh air throughout the tattoo studio and the expulsion of foul or stagnant air.

(b) “Minor” means any person under the age of eighteen years.

c) “Tattoo” means to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

d) “Tattoo studio” means any room or space where tattooing is practiced or where the business of tattooing or any part thereof is conducted.

(e) “Antibacterial solution” means any solution used to retard the growth of bacteria approved for application to human skin and includes all products so labeled.

(f) “Germicidal solution” means any solution which destroys germs, and is so labeled.

(g) “Sterilization” means holding in an autoclave for twenty-five minutes at fifteen pounds pressure at a temperature of two hundred fifty degrees Fahrenheit or one hundred twenty-one degrees Celsius.

§30-33-2. Studio sanitation.

(a) The tattoo artist’s hands shall be washed and then air blown or dried by single use towel prior to beginning work on each person or when interrupted in the process of working on a person. In addition, disposable latex examination gloves shall be worn by the tattoo artist during the tattooing process. The gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, each time the gloves become torn or punctured, or whenever the ability of the gloves to function as a barrier is compromised.

(b) Cabinets for the storage of instruments, dyes, pigments, single use articles, carbon, stencils and other utensils shall be provided for each operator and shall be maintained in a sanitary manner.
(c) Bulk single use articles shall be commercially packaged and handled in such a way as to protect them from contamination. Storage of single use articles shall not be in toilet rooms or in vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(d) Work tables and chairs or benches shall be provided for each tattoo artist. The surface of all work tables and chairs or benches shall be constructed of material which is smooth, light colored, nonabsorbent, corrosive-resistant, and easily sanitized. The work tables and chairs or benches shall be sanitized with a germicidal solution after each tattoo application. All existing tattoo studios on the effective date of the administrative regulation shall be exempt from the required color of the work table.

(e) All materials applied to human skin shall be from single use articles or transferred from bulk containers to single use containers and shall be disposed of after each use.

(f) No pets, including working dogs, guide dogs or security dogs from a certified trainer, may be permitted in a tattoo studio workroom as defined in subsection (b) of section four of this article.

§30-33-3. Operation standards.

(a) Records.

(1) Proper records of tattoos administered shall be maintained for each patron by the holder of the studio registration.

(2) A record shall be prepared for each patron prior to any procedure being performed and shall include the patron’s name and signature, address, age, date tattooed, design of the tattoo, location of the tattoo on the patron’s body, and the name of the tattoo artist who performed the work.

(3) Record entries shall be in ink or indelible pencil and shall be available for examination by the inspecting authorities provided in section six of this article.

(4) Before tattoo administration, the owner or tattoo
Ch. 109] PROFESSIONS AND OCCUPATIONS 919

15 artist shall discuss with the patron the risks involved in
16 the tattoo requested and the possible complications,
17 which shall be entered in the record.
18
19 (5) All records required by this section shall be kept
20 on file for five years by the holder of the studio
21 registration for the studio in which the tattoo was
22 performed.
23
22 (b) Consent.
23
24 (1) Prior written consent for tattooing of minors shall
25 be obtained from one parent or guardian.
26
25 (2) All written consents shall be kept on file for five
26 years by the holder of the studio registration for the
27 tattoo studio in which the tattoo was performed.
28
28 (3) The person receiving the tattoo shall attest to the
29 fact that he or she is not intoxicated or under the
30 influence of drugs or alcohol.
31
31 (c) Tattooing procedures.
32
32 (1) Printed instructions on the care of the skin after
33 tattooing shall be given to each patron as a precaution
34 to prevent infection.
35
35 (2) A copy of the printed instructions shall be posted
36 in a conspicuous place, clearly visible to the person
37 being tattooed.
38
38 (3) Each tattoo artist shall wear a clean outer
39 garment, i.e., apron, smock, T-shirt, etc.
40
40 (4) Tattoo artists who are experiencing diarrhea,
41 vomiting, fever, rash, productive cough, jaundice,
42 draining or open skin infections such as boils which
43 could be indicative of more serious conditions such as,
44 but not limited to, impetigo, scabies, hepatitis-b, HIV or
45 AIDS shall refrain from tattooing activities until such
46 time as they are no longer experiencing or exhibiting
47 the aforementioned symptoms.
48
48 (5) Before working on each patron, the fingernails and
49 hands of the tattoo artist shall be thoroughly washed and
50 scrubbed with hot running water, antibacterial soap,
51 and an individual hand brush that is clean and in good
(6) The tattoo artist's hands shall be air blown dried or dried by a single use towel. In addition, disposable latex examination gloves shall be worn during the tattoo process. The gloves shall be changed each time there is an interruption in the tattoo application, the gloves become torn or punctured, or whenever their ability to function as a barrier is compromised.

(7) Only sterilized or single use, disposable razors shall be used to shave the area to be tattooed.

(8) Immediately prior to beginning the tattoo procedure the affected skin area shall be treated with an antibacterial solution.

(9) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, the acetate stencil shall be thoroughly cleaned and rinsed in a germicidal solution for at least twenty minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use.

(10) If a paper stencil is used by a tattoo artist for transferring the design to the skin, the paper stencil shall be single use and disposable.

(11) If the design is drawn directly onto the skin, the design shall be applied with a single use article only.

(d) Dyes or pigments.

(1) Only nontoxic sterile dyes or pigments shall be used and shall be prepared in sterilized or disposable single use containers for each patron.

(2) After tattooing, the unused dye or pigment in the single use containers shall be discarded along with the container.

(3) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(e) Sterilization of needles.

(1) A set of individual, sterilized needles shall be used
(2) No less than twenty-four sets of sterilized needles and tubes shall be on hand for the entire day or night operation. Unused sterilized instruments shall be resterilized at intervals of no more than six months from the date of the last sterilization.

(3) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(4) If used instruments are ultrasoniced prior to being placed in the used instrument container, they shall be ultrasoniced and then rinsed under running hot water prior to being placed in the used instrument container.

(5) The ultrasonic unit shall be sanitized daily with a germicidal solution.

(6) If used instruments are not ultrasoniced prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(7) All nondisposable instruments including the needle tubes shall be sterilized and shall be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave sterilization, and shall include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents.

(8) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization, shall be utilized during the autoclave sterilization process.

(9) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them.

(10) No rusty, defective or faulty instruments shall be kept in the studio.
(f) After care of tattoo.

The completed tattoo shall be washed with a single use towel saturated with an antibacterial solution.

§30-33-4. Facilities and equipment.

(a) General physical environment.

(1) Tattoo studios shall have at least fifty footcandles of light and adequate ventilation. Walls and ceilings shall be painted a light color.

(2) The floor of the tattoo workroom shall be constructed of impervious material. The floor shall be swept and wet mopped daily. Floors, walls, or ceilings shall not be swept or cleaned while tattooing is in operation.

(3) Convenient, clean, and sanitary toilet and hand-washing facilities shall be made accessible to customers.

(4) The building and equipment shall be maintained in a state of good repair at all times. The studio premises shall be kept clean, neat and free of litter and rubbish.

(b) Workroom.

(1) Each tattoo studio shall have a workroom separate from a waiting room or any room or rooms used for any other purpose. The workroom shall not be used as a corridor for access to other rooms. Patrons or customers shall be tattooed only in the workroom.

(2) The workroom shall be equipped with hot and cold running water, with one sink or basin per artist operating at the same time.

(3) The sinks and basins shall be for the exclusive use of the tattoo artists for washing their hands and preparing customers for tattooing. They shall be equipped with foot, wrist or single lever action controls, soap, a germicidal solution, single use towels and individual hand brushes clean and in good repair for each tattoo artist. All plumbing shall be in compliance with industry standards.

(4) Persons may not consume any food or drink nor
Ch. 109) PROFESSIONS AND OCCUPATIONS 923

§30-33-5. Disposal of waste.

1 The tattoo studio operator shall comply with rules promulgated by the commissioner of the bureau of public health regarding the disposal of medical wastes.

§30-33-6. Registration requirements; inspections by local or regional boards of health; permit fees.

1 (a) Tattoo studios in West Virginia shall obtain a West Virginia business registration certificate and shall register with their local or regional board of health.

4 (b) Each local or regional board of health shall conduct annual inspections of each tattoo studio to determine compliance with this article. Every person, firm or corporation operating a tattoo studio in West Virginia shall apply to their local or regional board of health for such inspection. The local or regional boards of health shall attempt to conduct such inspections within ten days of the receipt of the request for inspection: Provided, That if it is impracticable for the local or regional board of health to conduct the investigation within ten days after receiving such application, the boards may issue to such applicant a temporary operating permit which shall be valid for thirty days or until a regular inspection is made, whichever occurs first.

19 (c) Upon a determination by the inspecting authority that any tattoo studio is not in compliance with the provisions of this article, the inspection authority shall have the power to order the tattoo studio to cease operations until such time as the inspecting authority determines that said studio is in compliance.

25 (d) Upon a determination by the inspecting authority that the tattoo studio is in compliance with the provisions of this article, there shall be issued to said studio an operating permit that shall be posted in a conspicuous place, clearly visible to the general public.

30 (e) The fee for the issuance of an operating permit issued pursuant to this article shall be two hundred
§30-33-7. Violations and penalties.

Any owner of a tattoo studio who does not obtain a West Virginia business registration certificate, who does not register with their local or regional board of health, or who fails to request an inspection pursuant to section six of this article shall be guilty of a misdemeanor, and, upon conviction thereof, for a first offense, the owner may have all of the tattoo equipment and paraphernalia confiscated and shall be fined one hundred dollars. For a second offense, which is a misdemeanor, the owner may have all of the tattoo equipment and paraphernalia confiscated and shall be fined not less than five hundred dollars nor more than one thousand dollars or be jailed for not less than ten days nor more than one year, or in the discretion of the court, by both such fine and imprisonment. For a third offense, which is a misdemeanor, the owner shall have all the tattoo equipment and paraphernalia confiscated, shall be fined not less than one thousand dollars nor more than five thousand dollars, or be jailed not less than thirty days nor more than one year, or, in the discretion of the court, by both such fine and imprisonment.

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen and twenty-three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the real estate brokers licensing; changing compensation of commission members; changing secretary to director; requiring
continuing legal education to be real estate related; changing fees; adding violations; amending purchase agreements; and requiring education to have been completed during preceding five years.

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

That sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen and twenty-three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.**

§47-12-1. Title of article; broker's or salesperson's license required.

§47-12-2. Definitions and exceptions.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records; termination of commission.

§47-12-4. Qualifications for licenses.

§47-12-5. Applications for licenses.

§47-12-6. Licensing nonresidents; reciprocity; consent to service of process, etc.; manner of service; judgment by default; bond.

§47-12-7. Written examinations required; exceptions; requirements for reissuance of revoked license; reexamination after failure; examination where applicant a partnership, etc.; issuance of license.

§47-12-7a. Continuing education; license renewal.

§47-12-8. Place of business; display of certificates of registration; notice of change of address; branch offices; change of employer or employment by real estate salespersons.

§47-12-9. License fees, annual registration; fee for additional offices, charge for change of location and for duplicate or transfer of license.

§47-12-10. Disposition of fees; real estate license fund; expenditures by commission.

§47-12-11. Procedure and grounds for refusal, suspension or revocation of license.

§47-12-12. Notice of hearing on complaint; conduct of hearing.

§47-12-13. Appeals.

§47-12-14. Real estate courses for licensee; assisting studies, surveys, etc.

§47-12-15. Executive director's bond.

§47-12-17. Actions for commissions; revocation of broker's license as suspending salesperson's licenses; listing agreements; broker or salesperson to disclose agency status; purchase agreements.

§47-12-18. Trust fund accounts; records.

§47-12-23. Duration of existing licenses.
§47-12-1. Title of article; broker's or salesperson's license required.

This article shall be known, and may be cited, as the real estate brokers license act of one thousand nine hundred fifty-nine, and from and after the effective date of this article it shall be unlawful for any person, partnership, association or corporation to engage in or carry on, directly or indirectly, or to advertise or hold himself, herself, itself or themselves out as engaging in or carrying on the business or act in the capacity of a real estate broker or a real estate salesperson within this state without first obtaining a license as a real estate broker or real estate salesperson as provided for in this article.

§47-12-2. Definitions and exceptions.

(a) The term "real estate broker" within the meaning of this article includes all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents, manages, leases or auctions any real estate or the improvements thereon, including options, or who negotiates or attempts to negotiate any such activity; or who advertises or holds himself, herself, itself or themselves out as engaged in such activities; or who directs or assists in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots, or other parcels of real estate, at a stated salary or upon a fee, commission or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell, manage, exchange, lease, offer, attempt or agree to negotiate the sale, exchange or lease of any such lot or parcel of real estate.

(b) The term "real estate" as used in this article includes leaseholds as well as any and every interest or estate in land, whether corporeal or incorporeal,
freehold or nonfreehold, and whether said property is
situated in this state or elsewhere.

(c) The term "associate broker" means any person who
for compensation or other valuable consideration is
employed by a broker to perform all the functions
authorized by a broker's license only for and on behalf
of such employing broker including, but not limited to,
authority to supervise other salespersons employed by a
broker and manage an office on behalf of a broker.

(d) The term "real estate salesperson" means and
includes any person employed or engaged by or on
behalf of a licensed real estate broker to do or deal in
any activity as included in this section, for compensation
or otherwise.

(e) One act in consideration of or with the expectation
or intention of or upon the promise of receiving
compensation by fee, commission or otherwise, in the
performance of any act or activity contained in this
section, constitutes such persons, partnerships, associa-
tion or corporation, a real estate broker and make him
or her, them or it subject to the provisions and
requirements of this article.

(f) The term "real estate broker" or "real estate
salesperson" shall not include any person, partnership,
association or corporation, who, as a bona fide owner or
lesser, performs any aforesaid act:

(1) With reference to property owned or leased by him
or her to the regular employees thereof, where such acts
are performed in the regular course of or as an incident
to the management of, such property and the investment
therein;

(2) Nor shall this article be construed to include
attorneys-at-law, except that attorneys-at-law shall be
required to submit to the written examination required
under section seven of this article in order to qualify for
a broker's license: Provided, That an attorney-at-law
who is licensed as a real estate broker prior to the
effective date of this section is exempt from the written
examination required under section seven of this article;
(3) Nor any person holding in good faith a duly executed power of attorney from the owner authorizing the final consummation and execution for the sale, purchase, lease or exchange of real estate;

(4) Nor to the acts of any person while acting as a receiver, trustee, administrator, executor, guardian, or under the order of any court or while acting under authority of a deed of trust or will;

(5) Nor shall this article apply to public officers while performing their duties as such;

(6) Nor shall this article apply to the acquisition or disposition of coal, oil or gas leasehold or coal, oil or gas interests.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records; termination of commission.

There shall be a commission known as the “West Virginia Real Estate Commission”, which commission shall be a corporation and as such may sue and be sued, may contract and be contracted with and shall have a common seal. The commission shall consist of three persons to be appointed by the governor by and with the advice and consent of the Senate. Two of such appointees each shall have been a resident and a citizen of this state for at least six years prior to his or her appointment and whose vocation for at least ten years shall have been that of a real estate broker or real estate salesperson and the third shall be a representative of the public generally. Members in office on the date this section becomes effective shall continue in office until their respective terms expire. The term of the members of said commission shall be for four years and until their successors are appointed and qualify. No more than two members of such commission shall belong to the same political party. No member shall be a candidate for or hold any other public office or be a member of any political committee.
while acting as such commissioner. In case any commis-

er be a candidate for or hold any other public office

or be a member of any political committee, his or her

office as such commissioner shall ipso facto be vacated.

Members to fill vacancies shall be appointed by the

governor for the unexpired term. No member may be

removed from office by the governor except for official

misconduct, incompetency, neglect of duty, gross

immorality or other good cause shown and then only in

the manner prescribed by law for the removal by the

governor of state elective officers. The governor shall

designate one member of the commission as the chair-

man thereof and the members shall choose one of the

members thereof as secretary. Two members of the

commission shall constitute a quorum for the conduct of

official business.

(a) The commission shall do all things necessary and

convenient for carrying into effect the provisions of this

article and may from time to time promulgate reasona-

ble, fair and impartial rules and regulations in accor-

dance with the provisions of article three, chapter

twenty-nine-a of this code. The board shall pay each

member the same compensation as is paid to members

of the Legislature for their interim duties as recom-

mended by the citizens legislative compensation com-

mission and authorized by law for each day or portion

thereof engaged in the discharge of official duties and

shall reimburse each member for actual and necessary

expenses incurred in the discharge of official duties.

(b) The commission shall employ an executive director

and such clerks, investigators and assistants as it shall

deem necessary to discharge the duties imposed by the

provisions of this article and to effect its purposes, and

the commission shall determine the duties and fix the

compensation of such executive director, clerks, inves-

tigators and assistants, subject to the general laws of the

state.

(c) The commission shall adopt a seal by which it shall

authenticate its proceedings. Copies of all records and

papers in the office of the commission, duly certified and

authenticated by the seal of said commission, shall be
received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this article shall be open to public inspection under reasonable rules and regulations as shall be prescribed by the commission.

(d) After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the West Virginia real estate commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the West Virginia real estate commission shall continue to exist until the first day of July, one thousand nine hundred ninety-four.

§47-12-4. Qualifications for licenses.

(1) Licenses shall be granted only to persons who are trustworthy, of good character and competent to transact the business of a real estate broker or real estate salesperson in such manner as to safeguard the interests of the public. Every applicant for a license as a real estate broker shall be of the age of eighteen years or over, a citizen of the United States and shall have served a bona fide apprenticeship as a licensed real estate salesperson for two years or shall produce to the real estate commission satisfactory evidence of real estate experience. No broker's license shall be issued to a partnership, association or corporation unless each member or officer thereof who will actively engage in the real estate business be licensed as a real estate salesperson or associate broker, when and after said broker shall have been granted a broker's license.

(2) A broker’s or salesperson’s license may be issued to any person who is either a high school graduate or the holder of a certificate of high school equivalency.

(3) Applicants for a broker’s license shall show evidence satisfactory to the commission that they have completed at least one hundred eighty clock-hours (twelve credit hours) of formal instruction in a real estate course or courses approved by the commission.
Such courses must cover real estate principles, real estate law, real estate appraising and real estate finance and such other topics approved by the commission. Any applicant for a broker's license who is licensed as a salesperson at the time a broker's application is submitted to the commission shall only be required to show evidence satisfactory to the commission that they have completed the additional ninety clock-hours (six credit hours) of formal instruction in a real estate course or courses approved by the commission. The applicant shall satisfactorily pass an examination or examinations covering the material taught in each such course.

(4) Applicants for a salesperson's license shall show evidence satisfactory to the commission that they have completed at least ninety clock-hours (six credit hours) of formal instruction in a real estate course or courses approved by the commission. Such courses must cover real estate principles, real estate law, real estate appraising and real estate finance, and such other topics approved by the commission. The applicant shall satisfactorily pass an examination covering the material taught in each such course.

(5) Effective the first day of July, one thousand nine hundred ninety-four, any applicant for either a broker's or salesperson's license must have completed the required education course or courses during the five-year period preceding the date of application.

(6) Subsections (3) and (4) of this section do not apply to any applicant who holds a valid broker's or salesperson's license issued prior to the first day of July, one thousand nine hundred eighty. Each such applicant shall complete at least ninety clock-hours (six credit hours) of instruction as specified in subsection (3) of this section if he or she has not completed the broker's examination required under section seven of this article by the first day of July, one thousand nine hundred eighty-two.

(7) The commission, pursuant to this section, shall publish a list of real estate courses which are approved and shall update such list yearly. Additionally, the
§47-12-5. Applications for licenses.

1 Every applicant for a real estate broker's license shall apply therefor in writing upon blanks prepared by the commission which shall contain such data and information as the commission shall require.

2 (a) Such application for broker's license shall be accompanied by the recommendation of at least two citizens who are property owners at the time of signing said application and have been property owners for at least twelve months preceding such application, who have known the applicant for two years and are not related to the applicant, certifying that the applicant bears a good reputation for honesty and trustworthiness, and recommending that a license be granted to the applicant.

3 (b) Every applicant for a salesperson's license shall apply therefor in writing upon blanks prepared by the commission which shall contain such data and information as the commission may require. The application shall be accompanied by a sworn statement by the broker in whose employ the applicant desires to enter, certifying that, in his or her opinion, the applicant is honest and trustworthy, and recommending the license be granted to the applicant.

§47-12-6. Licensing nonresidents; reciprocity; consent to service of process, etc.; manner of service; judgment by default; bond.

1 A nonresident of this state may become a real estate broker by conforming to all the provisions of this article, except that such nonresident broker regularly engaged in the real estate business as a vocation and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, shall not be required to maintain a place of business in this state. The commis-
9 sion shall recognize the license issued to a real estate
to broker or salesperson by another state as satisfactorily
qualifying him or her for license as a broker or
salesperson: Provided, That said nonresident broker or
salesperson has qualified for license in his or her own
state by written examination and also that said other
state permits license to be issued to licensed brokers or
salespersons in this state without examination. Every
nonresident applicant shall file an irrevocable written
consent that suits and actions may be commenced
against such applicant in the proper court of any county
of the state in which a cause of action growing out of
a real estate transaction may arise, in which the
plaintiff may reside, by the service of any process or
pleading authorized by the laws of this state, on any
member of the commission, or the executive director,
said consent stipulating and agreeing that such service
of such process or pleading shall be taken and held in
all courts to be as valid and binding as if due service
had been made upon said applicant in this state. Said
consent shall be duly acknowledged and if made by a
corporation shall be authenticated by the seal of such
corporation. Any service of process or pleading shall be
by duplicate copies, one of which shall be filed in the
office of the commission and the other immediately
forwarded by registered mail to the last-known main
office of the applicant against whom said process or
pleading is directed; and no default in any such
proceeding or action shall be taken except upon
certification of the commission or the executive director
that a copy of said process or pleading was mailed to
the defendant as herein required; and no judgment by
default shall be taken in any such action or proceeding
until after twenty days from the date of mailing of such
process or pleading to the nonresident defendant.

(a) Before a license as a real estate broker shall be
issuance to any person who does not have his or her
principal place of business in the state of West Virginia,
he or she shall file with the commission a bond in the
penalty of two thousand dollars, in form and with
security to be approved by the commission and condi-
tioned so as to be for the benefit of and to indemnify
any person in the state who may have any cause of action against the principal.

(b) Before a license as a real estate salesperson shall be issued to any person who is not a bona fide resident of this state, whether he or she be an employee of a resident or a nonresident real estate broker, such applicant shall file with the commission a bond such as is herein required to be filed by a nonresident broker.

§47-12-7. Written examinations required; exceptions; requirements for reissuance of revoked license; reexamination after failure; examination where applicant a partnership, etc.; issuance of license.

In addition to proof of honesty, trustworthiness, good character and good reputation of any applicant for a license, the applicant shall submit to a written examination to be conducted by the commission which shall include reading, writing, spelling, elementary arithmetic, a general knowledge of the statutes of this state relating to real property, deeds, mortgages, agreements of sale, agency contract, leases, ethics, appraisals and the provisions of this article: Provided, That any person who has been actively engaged in the real estate business as a real estate broker or real estate salesperson within the year preceding the effective date of this article and is thus engaged in this state at the time this article goes into effect, may secure a license as a real estate broker or a salesperson without an examination: Provided, however, That such person shall make application to the commission for registration within ninety days after the effective date of this article. The examination for a broker’s license shall differ from the examination for a salesperson’s license in that it shall be of a more exacting nature and require higher standards of knowledge of real estate. The commission shall conduct examinations at such times and places as it shall determine.

(a) In event the license of any real estate broker or salesperson shall be revoked by the commission, subsequent to the enactment of this article, no new license
shall be issued to such person unless he or she complies
with the provisions of this article.

(b) No person shall be permitted or authorized to act
as a real estate broker until he or she has qualified by
examination, except as hereinbefore provided. Any
individual who fails to pass the examination upon two
occasions shall be ineligible for a similar examination
until after the expiration of three months from the time
such individual took the last examination and then only
upon making application as in the first instance.

(c) If the applicant is a partnership, association or
corporation, said examination shall be submitted to on
behalf of said partnership, association or corporation by
the member or officer thereof who is designated in the
application as the person to receive a license by virtue
of the issuing of a license to the partnership, association
or corporation.

(d) Upon satisfactorily passing such examination and
upon complying with all other provisions of law and
conditions of this article, a license shall thereupon be
issued to the successful applicant and upon receiving
such license is authorized to conduct the business of a
real estate broker or real estate salesperson in this state.
A person who has qualified for a real estate license as
provided above is considered to be a professional in his
or her trade.

§47-12-7a. Continuing education; license renewal.

In addition to other provisions of this article, begin-
nning the first day of July, one thousand nine hundred
ninety, and every year thereafter, every real estate
broker and salesperson shall complete seven actual
hours of continuing education, with each hour equaling
fifty minutes of instructions. The commission shall
establish the continuing education program by rules and
shall approve all courses, seminars and lectures:
Provided, That real estate related continuing legal
education courses approved by the West Virginia state
bar shall be approved by the commission. If approved
in advance by the real estate commission, correspon-
dence courses and audio or video tapes may be used to
satisfy the continuing education requirement.

 Upon application for renewal of a real estate license in each year following one thousand nine hundred ninety, such real estate broker or salesperson must furnish satisfactory evidence, as established by the commission, that he or she has completed the required number of continuing education hours: \textit{Provided, That} a real estate broker or salesperson holding a license on the first day of July, one thousand nine hundred sixty-nine, and continuously thereafter, shall be exempt from continuing education requirements. When a real estate broker or salesperson in an inactive status reverts to an active status, he or she will obtain seven hours continuing education each year without being required to complete additional hours of education resulting from his or her inactive status.

\section*{§47-12-8. Place of business; display of certificates of registration; notice of change of address; branch offices; change of employer or employment by real estate salespersons.}

Every person, partnership, association or corporation licensed as a real estate broker shall be required to have and maintain a definite place of business within this state, which shall be a room or rooms used for the transaction of the real estate business, or such business and any allied business. The certificate of registration as broker and the certificate of each real estate salesperson employed by such broker shall be prominently displayed in said office. The said place of business shall be designated in the license and no license issued under the authority of this article shall authorize the licensee to transact business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before said removal or within ten days after said removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period, if said new location is satisfactory, upon return to the commission of the license previously issued.
(a) Each and every branch office owned or operated by a duly licensed broker shall be supervised and operated by a licensed broker or licensed salesperson.

(b) All licenses issued to a real estate salesperson shall designate the employer of such salesperson. Prompt notice in writing, within ten days, shall be given to the commission by any real estate salesperson of a change of employer, and of the licensed broker into whose employ the salesperson is about to enter, and a new license shall thereupon be issued by the commission to such salesperson for the unexpired term of the original license, upon return to the commission of the license previously issued. The change of employer or employment by any licensed real estate salesperson, without notice to the commission, as aforesaid, shall automatically cancel the license to him or her theretofore issued. Upon termination of salesperson's employment, the broker's employer shall forthwith return the salesperson's license to the commission for cancellation. It shall be unlawful for any real estate salesperson to perform any of the acts contemplated by this article either directly or indirectly after his or her employment has been terminated and license as a salesperson has been returned for cancellation until said license has been reissued by the commission.

§47-12-9. License fees, annual registration; fee for additional offices, charge for change of location and for duplicate or transfer of license.

To pay for the maintenance and operation of the office of the commission and the enforcement of this article, the commission shall charge the following fees:

(a) Examination fee — twenty-five dollars, with no additional fee for second examination.

(b) Investigation fee — ten dollars.

(c) Broker's license — eighty dollars.

(d) Salesperson's license — forty dollars.

(e) Broker's renewal fee — eighty dollars.
the thirtieth day of June of each year.  

(f) Salesperson's renewal fee — forty dollars, payable by the thirtieth day of June of each year.  

(g) Branch office fee — eighty dollars.  

(h) Renewal of branch office license — eighty dollars.  

(i) Transfer of salesperson's license — ten dollars.  

(j) Duplicate license or certification — ten dollars.  

(k) Change of name — ten dollars.  

(l) Change of office — ten dollars.  

Willful failure to pay any of the fees is just cause for revocation of or refusal to issue or renew a license.  

§47-12-10. Disposition of fees; real estate license fund; expenditures by commission.  

All fees charged and collected under this article shall be paid by the executive director at least once a month into the treasury of the state to credit of a fund to be known as the "real estate license fund", which is hereby created. All moneys which shall be paid into the state treasury and credited to the "real estate license fund" are hereby appropriated to the use of the commission in carrying out the provisions of this article, including the payment of salaries and expenses and the printing of an annual directory of licensees and for educational purposes.  

The amount paid to or expended by the commission shall not exceed the revenues derived under the provisions of this article as hereinbefore provided.  

§47-12-11. Procedure and grounds for refusal, suspension or revocation of license.  

The commission may upon its own motion and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license. The commission shall have full power to refuse a license for reasonable cause or to revoke or suspend a license if the
licensee:

(1) Obtains, renews or attempts to obtain or renew a license through the submission of any application or other writing that contains false or fraudulent information;

(2) Makes any substantial misrepresentation;

(3) Makes any false promises or representations of character likely to influence, persuade or induce a person involved in a real estate transaction;

(4) Pursues a continued or flagrant course of misrepresentation or makes false promises or representations through agents or salespersons or any medium of advertising or otherwise;

(5) Uses misleading or false advertising or uses any trade name or insignia of membership in any real estate organization, in which the licensee is not a member;

(6) Acts for more than one party in a transaction without the knowledge of all parties for whom he or she acts;

(7) Fails, within a reasonable time, to account for or to remit any moneys coming into his or her possession belonging to others, or commingles moneys belonging to others with his or her own funds;

(8) Displays a “for sale” or “for rent” sign on any property without an agency therefor or without the owner’s consent;

(9) Fails to disclose in writing to all parties to a real estate transaction, on the form promulgated by the commission, whether the licensee is representing the seller, the buyer or both;

(10) Fails to voluntarily furnish copies of a notice of agency disclosure, and all listing agreements, sales contracts, and lease agreements to all parties executing the same;

(11) Pays or receives any rebate, profit, compensation or commission as a result of a real estate transaction from any person other than his or her principal;
(12) Induces any party to a contract, sale or lease to enter into another contract, in lieu thereof, for the personal gain of the licensee;

(13) Accepts a commission or other valuable consideration as a real estate salesperson for the performance of any of the acts specified in this article, from any person, other than his or her employer, who must be a licensed real estate broker;

(14) Pays a commission or other valuable consideration to any person for acts or services performed either in violation of this article or the real estate licensure laws of any other state;

(15) Engages in the unlawful or unauthorized practice of law as defined by the supreme court of appeals of West Virginia;

(16) Procures an attorney for any customer or solicits legal business for any attorney-at-law;

(17) Engages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing;

(18) Has been convicted in a court of competent jurisdiction in this or in any other state of forgery, embezzlement, obtaining money under false pretense, extortion, conspiracy to defraud or of any other like offense; or

(19) Has been convicted in a court of competent jurisdiction in this or any other state of a felony.

As used in this section:

(1) The words "convicted in a court of competent jurisdiction" mean a plea of guilty or nolo contendere entered by a person or a verdict of guilt returned against a person at the conclusion of a trial;

(2) A certified copy of a guilty verdict or plea entered in such court is sufficient evidence to demonstrate a person has been convicted in a court of competent jurisdiction.
§47-12-12. Notice of hearing on complaint; conduct of hearing.

Upon complaint initiated by the commission or filed with it, the licensee shall be given ten days' written notice of hearing upon the charges filed, together with a copy of the complaint. The applicant or licensee shall have an opportunity to be heard thereon in person, to offer testimony in his or her behalf and to examine the witnesses, appearing in connection with the complaint. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code, and all rights, procedures and duties contained therein shall be observed.

§47-12-13. Appeals.

Any applicant or licensee, or person aggrieved, shall have the right of appeal from any adverse ruling, order or decision of the commission to the circuit court of the county where the hearing was held within thirty days from the service of notice of the action of the commission upon the parties in interest.

(a) Notice of appeal shall be filed in the office of the clerk of the circuit court wherein the hearing was held, who shall issue a writ of certiorari directed to the commission, commanding it, within ten days after service thereof, to certify to such court, its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard, in due course, by said court, which shall review the record and make its determination of the cause between the parties.

(b) In the event an appeal is taken by a licensee or applicant, such an appeal shall not stay enforcement of the commission's order or decision or act as a supersedeas thereof unless otherwise ordered by the circuit court.

(c) Any person taking an appeal shall post a satisfactory bond in the amount of two hundred dollars for the payment of any costs which may be adjudged against him or her.

(d) Appeal may be taken from the circuit court to
§47-12-14. Real estate courses for licensees; assisting studies, surveys, etc.

(a) The commission is authorized to conduct or hold or to assist in conducting or holding real estate courses or institutes. The commission may incur and pay the necessary expenses in connection therewith. Such courses or institutes are open to any licensee.

(b) The commission is authorized to assist libraries, real estate institutes and foundations with financial aid or otherwise, in providing texts, sponsoring studies, surveys and programs for the benefit of real estate and the elevation of the real estate business.

(c) The commission may provide correspondence courses for applicants for brokers' and salespersons' licenses sufficient to meet the educational requirements contained in subsections (3) and (4), section four of this article as an alternative means of meeting said educational requirements.

§47-12-15. Executive director's bond.

The executive director appointed by the commission shall give bond in such sum with surety as the commission may direct and approve.

§47-12-17. Actions for commissions; revocation of broker's license as suspending salesperson's licenses; listing agreements; broker or salesperson to disclose agency status; purchase agreements.

(a) No real estate salesperson shall have the right to
institute suit in his or her own name for the recovery of a fee, commission or compensation for the services as a real estate salesperson, but any such action shall be instituted and brought by the broker employing such salesperson: Provided, That a real estate salesperson shall have the right to institute suit in his or her own name for the recovery of a fee, commission or compensation for services as a real estate salesperson due him or her from the broker by whom he or she is employed.

(b) The revocation of a broker's license shall automatically suspend every salesperson's license granted to any person by virtue of his or her employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge if granted during the same year in which the original license was granted.

(c) A broker or salesperson who obtains a listing shall, at the time of securing such listing, give the person or persons signing such listing a true, legible copy thereof. Every listing agreement, exclusive or nonexclusive, shall have set forth in its terms a definite expiration date; it shall contain no provision requiring the party signing such listing to notify the broker of his or her intention to cancel such listing after such definite expiration date: Provided, That an exclusive listing agreement may provide that upon the expiration of the exclusive feature the listing shall continue to a definite expiration date as a nonexclusive listing only. No provision shall be inserted in any listing agreement which would obligate the person, partnership, association or corporation signing such listing to pay a commission or other valuable consideration to the broker after such expiration date if the property is then listed by a different broker: Provided, however, That if there is a currently enforceable offer to purchase pending on the listed property at the time of the listing's expiration, the first broker may still be entitled to a commission or other valuable consideration.

(d) A broker or salesperson shall promptly, or at least prior to any purchaser signing a written offer to purchase, disclose in writing to all parties to a r
estate transaction, on a form promulgated by the commission, whether the broker or salesperson represents the seller, the buyer, or both.

(e) A broker or salesperson shall promptly tender to the seller every written offer to purchase obtained on the property involved and, upon obtaining a proper acceptance of the offer to purchase, shall promptly deliver true executed copies of same, signed by the seller and purchaser, to both purchaser and seller; all brokers and salespersons shall make certain that all of the terms and conditions of the real estate transaction are included in such offer to purchase.

§47-12-18. Trust fund accounts; records.

Every person, partnership or corporation holding a broker's license under provisions of the real estate license law who does not immediately place all funds entrusted to him or her by his or her principal or others in a neutral escrow depository or in the hands of principals, shall maintain a trust fund account with some bank or recognized depository and place all such entrusted funds therein upon receipt.

Said trust fund account shall designate him or her as trustee and all such trust fund accounts must provide for withdrawal of the funds without previous notice.

Every broker required to maintain such trust fund account shall keep records of all funds deposited therein, which records shall clearly indicate the date and from whom he or she received the money, date deposited, date of withdrawals and other pertinent information concerning the transaction, and shall clearly show for whose account the money is deposited and to whom the money belongs.

All such records and funds shall be subject to inspection by the commission.

§47-12-23. Duration of existing licenses.

All licenses issued either to a real estate broker or real estate salesperson preceding the effective date of this article, shall be valid until the thirtieth day of June,
§5-10-22b. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually shall receive, upon application, a supplemental benefit, prospectively, under this section from the public employees retirement fund: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-nine, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, “effective date of retirement” means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for
retirement prior to the aforesaid effective date. Any
annuitant retired pursuant to the disability provisions
of this article shall be considered to have had ten years
or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental
benefit an increased annual amount which is the
product of the sum of eighteen dollars multiplied by his
years of credited service: Provided, That the total
annuity of any annuitant affected by the provisions of
this section, together with any of the other provisions of
this article, shall not exceed seven thousand five
hundred dollars annually.

Any annuitant receiving the supplemental benefit
provided for herein for the annuity payment period just
prior to the first day of July, one thousand nine hundred
eighty-five, or any annuitant made newly eligible for
receipt of such supplemental benefit on such date, shall
receive a nineteen percent increase in the amount of
such supplemental benefit prior received or newly
calculated, effective on and after the first day of July,
one thousand nine hundred eighty-five, and irrespective
of the maximum total annuity proviso and limitation of
seven thousand five hundred dollars annually. In any
fiscal year in which pay increases are granted by the
Legislature to active public employees, there may also
be given an increase in retirement benefits for retired
public employees, if funding is available for this
purpose.

For the purpose of calculating the supplemental
benefit provided in this section, fractional parts of a
service credit year are to be disregarded unless in excess
of one half of a credited service year, in which event the
same shall constitute a full year of service credit.

For the purpose of computation for determination of
eligibility and for the amount of any supplemental
benefit hereunder, separate computation shall be made
of a retirant's own benefit and that which may be
receivable as beneficiary of another, under the provi-
sions of this article, with each such benefit being eligible
for the supplemental benefit herein provided.
§5-10-22d. Supplemental benefits for certain annuitants.

1 Beginning on the first day of January, one thousand nine hundred ninety-one, as an additional supplement to other retirement allowances provided, any annuitant who is receiving a retirement annuity on the effective date of this section shall receive a supplemental benefit, prospectively, if the effective date of retirement for such annuitant was prior to the first day of January, one thousand nine hundred eighty-one. Each such annuitant shall receive as his or her supplemental benefit an increased annual amount which is the product of the sum of six dollars multiplied by his or her years of credited service. Nothing in this or any other section of this code shall be construed to require any appropriation of state general revenue funds for the payment of any benefit provided for in this section.

CHAPTER 112
(S. B. 471—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to division of public safety; and creating a grievance procedure recommendation board and its duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-6. Division appeals boards; appeal procedures.

1 (a) On or before the first day of July, one thousand nine hundred ninety-three, the superintendent shall
establish a grievance procedure recommendation board which shall be composed of seven members of the division of public safety. Two members of the board shall be selected by the superintendent. Three members of the board shall be elected at large by all the membership of the division of public safety, and two members of the board shall be chosen by the trade or professional organization which has the largest number of members of the division within its membership. The grievance procedure recommendation board shall meet as directed by the superintendent for the purpose of recommending proposed changes or amendments, if any, to existing procedures and other guidelines for the administration of grievances brought by members of the division of public safety as set forth in subsection (b) of this section. Any changes or amendments recommended by the grievance procedure recommendation board shall be reviewed by the superintendent and, after the superintendent's approval, shall be promulgated as legislative rules in accordance with the provisions of article one, chapter twenty-nine-a of this code. After the effective date of said legislative rules, the procedures outlined in subsection (b) of this section shall cease to be of any force or effect and shall be void: Provided, That following promulgation of the rules as contemplated in this section, the board will continue to exist for one full year and shall meet at the direction of the superintendent to assess or make recommendations regarding the division's grievance procedure.

(b) Appeals of transfers, suspensions, demotions in rank and discharges shall be heard by boards of appeals convened pursuant to the provisions of this section. The boards shall each consist of seven members and five members shall constitute a quorum. A new board shall be convened to hear and determine each new appeal filed by a member of the department. There may be more than one board in existence at the same time meeting on different appeals. A member of the retirement board is eligible to serve on an appeals board.

The members of a board shall be one member of the
department who is of the rank of trooper and six
members of the department who are of one of each of
the six consecutive ranks above trooper, all of whom
shall be chosen by lot by the superintendent with each
member to be so chosen from among all members of
each of the seven ranks. No department member may
serve on an appeals board if he is a member of the same
detachment as the member making the appeal. Within
ten days after he has been notified of his selection and
assignment to serve on a board, a member may for cause
request to be relieved of such assignment. The superin-
tendent shall determine whether the reasons alleged by
the member are sufficient cause to relieve the member
of such assignment. If such request is granted by the
superintendent, a new board member shall be selected
by lot from the same rank to replace the member who
has been relieved of such assignment.

A chairman shall be selected by the members of the
board. Each member of a board shall be reimbursed for
all reasonable and necessary expenses actually incurred
in attending meetings of a board. All expenses of a
board shall be paid from appropriations to the
department.

Within fifteen days after a member of the department
has received a notice of transfer or a statement of
charges and an order of suspension, demotion in rank
or discharge by the superintendent, he may appeal the
transfer or order to an appeals board by filing a written
notice of appeal with the superintendent. The superin-
tendent shall promptly record and file each appeal,
select a board, notify each new board member of his
selection, and furnish to each board member a copy of
the notice or order appealed from and the notice of
appeal. A hearing by a board of appeals shall be held
within thirty days after the superintendent has received
a member's notice of appeal. At least fifteen days prior
to the hearing date, the board shall notify the superin-
tendent and the member making the appeal of the date,
time and place of the hearing.

Any member of the department who makes
appeal, as aforesaid, may be represented by an attorney or by any member of the department or retired member who is receiving benefits from the death, disability and retirement fund. The superintendent may be represented by counsel of his choice. In the appeal of a transfer, the superintendent has the burden of proof that the transfer is for the purpose of the operational needs of the department. In any other appeal the superintendent has the burden of proof as to the charges alleged.

The procedure in any hearing before the board shall be informal and without adherence to the technical rules of evidence required in proceedings in courts of record. All evidence submitted to the board shall be submitted under oath. The chairman, or any member of the board, shall have authority to administer oaths to witnesses, subpoena witnesses and compel the production of books and papers pertinent to any appeal or hearing authorized by this section.

If any person subpoenaed to appear at any appeal or hearing shall refuse to appear, or shall refuse to answer inquiries propounded at the appeal or hearing or shall fail or refuse to produce books and papers which have been subpoenaed which are pertinent to any appeal or hearing authorized by this section, the board shall report the facts to the circuit court of Kanawha county or the circuit court of any county in which the hearing is being conducted and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance. A person giving testimony at an appeal or hearing authorized by this section shall not be liable for such testimony given in good faith and without malicious intent.

The board shall designate a reporter for any such hearing who shall record and transcribe all of the proceedings. Upon his demand, the member making the appeal shall have a public hearing on the charges and in the absence of such demand, the board may determine whether or not the hearing should be public. Any hearing may be continued, recessed or adjourned by the board.
The superintendent shall provide reasonable space for the conduct of hearings. The charges of the reporter shall be paid by the superintendent from available appropriations. At the conclusion of the hearing, the board shall determine whether or not the superintendent’s order shall be sustained. The board’s decision shall be issued in writing, with copies thereof being sent by the board to the superintendent and to the appealing member by certified mail, return receipt requested. A hearing shall be conducted by at least five members of the board and the decision of the board shall be made by a majority vote of all the members of the board.

Either party aggrieved by a decision of a board of appeals may appeal the decision to the circuit court of Kanawha county within sixty days of receipt of a copy of the board’s decision.

The court shall hear the appeal upon the record and determine all questions submitted to it on appeal.

In the event any decision sustaining the superintendent’s order or notice is reversed upon judicial review, which reversal is final, the superintendent shall return the member to his status prior to the superintendent’s order or notice without any acts or action of reprisal or reprimand, with full payment of any compensation withheld and with full credit for service between the date the superintendent issued his order or notice and the date of the final judicial decision reversing the decision of the board.

CHAPTER 113

(H. B. 2234—By Mr. Speaker, Mr. Chambers, and Delegate Rowe)

(Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to age qualifications for members of the division of public safety.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in division; civilian employees.

(a) The superintendent shall establish within the division of public safety a cadet selection board which shall be representative of commissioned and noncommissioned officers within the division.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than twenty-one years of age, of sound constitution and good moral character; shall be required to pass any mental and physical examination and meet other requirements as may be provided for in rules promulgated by the cadet selection board: Provided, That a former member may, at the discretion of the superintendent, be reenlisted.

(d) No person may be barred from becoming a member of the division because of his religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in article eleven, chapter five of this code, and shall take positive steps to encourage applications for division membership from females and minority groups within the state.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the division at a grade or rank above the grade of trooper.
(g) The superintendent shall appoint such civilian employees as may be necessary, and all such employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of article six, chapter twenty-nine of this code.

CHAPTER 114

(H. B. 2293—By Mr. Speaker, Mr. Chambers, and Delegates Martin and Mezzatesta)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the superintendent of the division of public safety; and authorizing the sale of surplus real property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.

(a) The West Virginia division of public safety shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state’s public streets, roads and highways.

(b) The superintendent and each of the officers and members of the division are hereby empowered:

1. To make arrests anywhere within the state of any persons charged with the violation of any law of this
state, or of the United States, and when a witness to the
perpetration of any offense or crime, or to the violation
of any law of this state, or of the United States, may
arrest without warrant; to arrest and detain any persons
suspected of the commission of any felony or misdemea-
or whenever complaint is made and warrant is issued
thereon for such arrest, and any person so arrested shall
be forthwith brought before the proper tribunal for
examination and trial in the county where the offense
for which any such arrest has been made was
committed;

(2) To serve criminal process issued by any court or
magistrate anywhere within this state (they shall not
serve civil process); and

(3) To cooperate with local authorities in detecting
crime and in apprehending any person or persons
engaged in or suspected of the commission of any crime,
misdemeanor or offense against the law of this state, or
of the United States, or of any ordinance of any
municipality in this state; and to take affidavits in
connection with any application to the division of
highways, division of motor vehicles and division of
public safety of West Virginia for any license, permit
or certificate that may be lawfully issued by these
divisions of state government.

(c) Members of the division of public safety are hereby
created forest patrolmen and game and fish wardens
throughout the state to do and perform any duties and
exercise any powers of such officers, and may appre-
hend and bring before any court or magistrate having
jurisdiction of such matters, anyone violating any of the
provisions of chapters twenty, sixty and sixty-one of this
code, and the division of public safety shall at any time
be subject to the call of the West Virginia alcohol
beverage control commissioner to aid in apprehending
any person violating any of the provisions of said
chapter sixty of this code. They shall serve and execute
warrants for the arrest of any person and warrants for
the search of any premises issued by any properly
constituted authority, and shall exercise all of the
powers conferred by law upon a sheriff. They shall not
serve any civil process or exercise any of the powers of such officer in civil matters.

(d) Any member of the division of public safety knowing or having reason to believe that anyone has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such offender, execute the same and bring such person before the proper tribunal having jurisdiction. He shall make return on all such warrants to such tribunals and his official title shall be “member of the division of public safety.” Members of the division of public safety may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before such tribunal and make return thereon as provided by law, and any return by a member of the division of public safety showing the manner of executing such warrant or process shall have the same force and effect as if made by a sheriff.

(e) Each member of the division of public safety, when called by the sheriff of any county, or when the governor by proclamation so directs, shall have full power and authority within such county, or within the territory defined by the governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, game and fish warden, and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When so called, any officer or person shall, during the time his assistance is required, be for all purposes a member of the division of public safety and subject to all the provisions of this article.

(f) The superintendent may also assign members of the division to perform police duties on any turnpike or toll road, or any section thereof, operated by the West Virginia parkways, economic development and tourism authority: Provided, That such authority shall reimburse the division of public safety for salaries paid to such members, and shall either pay directly or reimburse the division for all other expenses of such group
of members in accordance with actual or estimated costs
determined by the superintendent.

(g) The division of public safety may develop propos-
als for a comprehensive county or multicounty plan on
the implementation of an enhanced emergency service
telephone system and for causing a public meeting on
such proposals, all as set forth in section six-a, article
six, chapter twenty-four of this code.

(h) The superintendent may also assign members of
the division to administer tests for the issuance of
commercial drivers' licenses, operator and junior
operator licenses as provided for in section seven, article
two, chapter seventeen-b of this code: Provided, That the
division of motor vehicles shall reimburse the division
of public safety for salaries and employee benefits paid
to such members, and shall either pay directly or
reimburse the division for all other expenses of such
group of members in accordance with actual costs
determined by the superintendent.

(i) The superintendent shall be reimbursed by the
division of motor vehicles for salaries and employee
benefits paid to members of the division of public safety,
and shall either be paid directly or reimbursed by the
division of motor vehicles for all other expenses of such
group of members in accordance with actual costs
determined by the superintendent, for services per-
formed by such members relating to the duties and
obligations of the division of motor vehicles set forth in
chapters seventeen, seventeen-a, seventeen-b, seventeen-
c and seventeen-d of this code.

(j) By the first day of July, one thousand nine hundred
ninety-three, the superintendent shall establish a
network to implement reports of the disappearance of
children by local law-enforcement agencies to local
school division superintendents and the state registrar
of vital statistics. The network shall be designed to
establish cooperative arrangements between local law-
enforcement agencies and local school divisions concern-
ing reports of missing children and notices to law-
enforcement agencies of requests for copies of the
cumulative records and birth certificates of missing children. The network shall also establish a mechanism for reporting the identities of all missing children to the state registrar of vital statistics.

(k) The superintendent may at his discretion and upon the written request of the West Virginia alcohol beverage control commissioner assist the commissioner in the coordination and enforcement of the alcohol beverage control act and the general law concerning nonintoxicating beer and wine.

(l) Notwithstanding the provisions of article one-a, chapter twenty of this code, the superintendent of the division of public safety may sell any surplus property to which the division of public safety or its predecessors retain title, and deposit the net proceeds into a special revenue account to be utilized for the purchase of additional real property and for repairs to or construction of detachment offices or other facilities required by the division of public safety. There is hereby created a special revolving fund in the state treasury which shall be designated as the “surplus real property proceeds fund.” The fund shall consist of all money received from the sale of surplus real property owned by the division of public safety. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

CHAPTER 115
(Com. Sub. for S. B. 53—By Senator Wooton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]
ment agencies; providing for mutual assistance in law enforcement among certain law-enforcement agencies; providing for the integration of law-enforcement agency to function on a multijurisdictional basis; term of agreements; withdrawal; and filing requirement.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen 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, to read as follows:

**ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.**

§15-10-1. Short title.
§15-10-2. Legislative findings.
§15-10-3. Definitions.

§15-10-1. Short title.

This article shall be known as the “West Virginia Law-Enforcement Mutual Assistance Act”.

§15-10-2. Legislative findings.

The Legislature hereby finds and declares that the commission of various crimes against the peace and dignity of the state of West Virginia quite often crosses county and municipal boundaries, affecting the citizenry of this state and making difficult the tasks of detecting and preventing crime by law-enforcement agencies due to restrictions imposed by municipal and county boundaries; that many county and municipal law-enforcement agencies do not, by themselves, have sufficient resources in personnel, equipment and particular areas of expertise to adequately prevent or detect those crimes or criminal activities which cross such county and municipal boundaries; that it is in the best interest of the citizens of this state for law-enforcement agencies to share resources and to provide mutual assistance to each other; and that, therefore, the Legislature finds and declares that the various law-enforcement agencies within the state should be permitted and empowered to share resources and provide mutual assistance for the prevention and detection of crime.
§15-10-3. Definitions.

1 In this article, unless a different meaning plainly is required:

3 (1) “Criminal justice enforcement personnel” means those persons within the state criminal justice system who are actually employed as members of the division of public safety, state conservation officers, chiefs of police and police of incorporated municipalities, and county sheriffs and their deputies, and whose primary duties are the investigation of crime and the apprehension of criminals.

11 (2) “Head of a law-enforcement agency” means the superintendent of the division of public safety, the chief conservation officer of the division of natural resources, a chief of police of an incorporated municipality or a county sheriff.


1 (a) The head of any law-enforcement agency as defined in section three of this article may temporarily provide assistance and cooperation to another agency of the state criminal justice system or to a federal law-enforcement agency in investigating crimes or possible criminal activity if requested to do so in writing by the head of another law-enforcement agency or federal law-enforcement agency. Such assistance may also be provided upon the request of the head of the law-enforcement agency or federal law-enforcement agency without first being reduced to writing in emergency situations involving the imminent risk of loss of life or serious bodily injury. The assistance may include, but is not limited to, entering into a multijurisdictional task force agreement to integrate federal, state, county and municipal law-enforcement agencies or any combination thereof, for the purpose of enhancing interagency coordination, intelligence gathering, facilitating multijurisdictional investigations, providing criminal justice enforcement personnel of the law-enforcement agency to
work temporarily with personnel of another agency, including in an undercover capacity, and making available equipment, training, technical assistance and information systems for the more efficient investigation, apprehension and adjudication of persons who violate the criminal laws of this state or the United States, and to assist the victims of such crimes. When providing the assistance under the provisions of this article, a head of a law-enforcement agency shall comply with all applicable statutes, ordinances, rules, policies or guidelines officially adopted by the state or the governing body of the city or county by which he is employed, and any conditions or restrictions included therein.

(b) While temporarily assigned to work with another law-enforcement agency or agencies, criminal justice enforcement personnel shall have the same jurisdiction, powers, privileges and immunities, including those relating to the defense of civil actions, as such criminal justice enforcement personnel would enjoy if actually employed by the agency to which they are assigned, in addition to any corresponding or varying jurisdiction, powers, privileges and immunities conferred by virtue of their continued employment with the assisting agency.

(c) While assigned to another agency or to a multi-jurisdictional task force, criminal justice enforcement personnel shall be subject to the lawful operational commands of the superior officers of the agency or task force to which they are assigned, but for personnel and administrative purposes, including compensation, they shall remain under the control of the assisting agency. These assigned personnel shall continue to be covered by all employee rights and benefits provided by the assisting agency, including workers’ compensation, to the same extent as though such personnel were functioning within the normal scope of their duties.

(d) No request or agreement between the heads of law-enforcement agencies made or entered into pursuant to the provisions of this article shall remain in force and effect for a period of more than twelve months unless renewed in writing by the parties thereto nor
shall any request or agreement made or entered into pursuant to the provisions of this article have force or effect until a copy of said request or agreement is filed with the office of the circuit clerk of the county or counties in which the law-enforcement agencies involved operate. Upon filing, the requests or agreements may be sealed, subject to disclosure pursuant to an order of a circuit court directing disclosure for good cause. Nothing in this article shall be construed to limit the authority of the head of a law-enforcement agency to withdraw from any agreement at any time.

(e) Nothing contained in this article shall be construed so as to grant, increase, decrease or in any manner affect the civil service protection or the applicability of civil service laws as to any criminal justice enforcement personnel or agency operating under the authority of this article, nor shall this article in any way reduce or increase the jurisdiction or authority of any criminal justice enforcement personnel or agency, except as specifically provided herein.

CHAPTER 116

(Com. Sub. for H. B. 2206—By Mr. Speaker, Mr. Chambers, and Delegates Houvouras, Schoonover and Tribett)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to locomotive power units; requiring railroad crew-controlled units to be operated by at least two persons; exceptions; requiring an engineer to be part of the crew; restricting selection of the crew; definitions; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-b, to read as follows:
ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-1b. Locomotive power units; helper units; one person crew prohibited; engineer requirement; restrictions on selection of crew; definitions; promulgation of rules.

(a) Except for operation in its yards or terminals, and except where a train is being moved as an actual movement into or from another state not having a requirement of at least two persons controlling a locomotive as is required in this state pursuant to this section, no railroad may permit or require any crew-controlled locomotive power unit, including helper units, that is not attached to a train to be operated by a crew of fewer than two persons. At least one crew member shall be a federal railroad administration certified and licensed locomotive engineer within the meaning of applicable federal statutes and regulations. The second crew member shall be selected from either train service or engine service personnel: Provided, That the selection does not violate federal statutes or regulations or local collective bargaining agreements.

(b) As used in this section:

(1) "Crew-controlled locomotive" means a locomotive power unit, single or in multiple, which is operated by on-board personnel, but does not include units controlled by radio or other remote control by a crew on another locomotive power unit.

(2) "Helper unit" means a locomotive power unit placed at some point in a train for the purpose of supplementing the power available from the locomotive power unit controlling a train.

(c) It is unlawful to institute any disciplinary action or other adverse administrative action against any person who reports a violation of or acts to enforce the provisions of this section or this article. The person's remedies under this section are in addition to any other remedies that may be otherwise available.

(d) The public service commission shall, on or before the first day of July, one thousand nine hundred ninety-three, promulgate rules to implement the provisions of this section.
AN ACT to amend and reenact sections one, three, five and six, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to limiting the liability of landowners; permitting landowners to collect money for the annual use of land without incurring liability for other than willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity; defining terms; limiting the liability of landowners who allow their property to be used for military training purposes; and providing for certain insurance policy requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.
§19-25-3. Limiting duty of landowner who leases land to state, counties, municipalities or agencies.

§19-25-1. Purpose.

1 The purpose of this article is to encourage owners of land to make available to the public land and water areas for military training or recreational or wildlife propagation purposes by limiting their liability toward
§19-25-3. Limiting duty of landowner who leases land to state, counties, municipalities or agencies.

Unless otherwise agreed in writing, an owner of land leased to the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who leases land to the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes shall not by giving a lease: (a) Extend any assurance to any person using the land that the premises are safe for any purpose; or (b) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise.


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

(1) "Charge" means:

(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion but not including an amount of money not to exceed fifty dollars a year for an individual for the annual use of land;
(B) For purposes of limiting liability for military training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;

(2) "Land" includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(3) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

(4) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational purposes: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites, or otherwise using land for purposes of the user;

(5) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface mining activities, as governed by article three, chapter twenty-two-a of this code, or from the use of surface in the conduct of underground coal mining as governed by articles one, two and three of said chapter, and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of natural resources and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that the premises has the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures
or impoundments shall not be removed without the joint
consent of the director and the owner; and

(6) "Military training" includes, but is not limited to,
training, encampments, instruction, overflight by
military aircraft, parachute drops of personnel or
equipment or other use of land by a member of the army
national guard or air national guard, a member of a
reserve unit of the armed forces of the United States or
a person on active duty in the armed forces of the United
States, acting in that capacity.

§19-25-6. Limiting duty of landowner for use of land for
civilian purposes.

Notwithstanding the provisions of section four of this
article to the contrary, an owner of land owes no duty
of care to keep the premises safe for entry or use by
others for military training purposes, regardless of
whether any charge is made therefor, or to give any
warning of a dangerous or hazardous condition, use,
structure or activity on the premises to persons entering
for those purposes.

Notwithstanding the provisions of section four of this
article to the contrary, an owner of land who either
directly or indirectly invites or permits, either with or
without charge, any person to use the property for
military training purposes does not thereby: (a) Extend
any assurance that the premises are safe for any
purpose; or (b) confer upon those persons the legal status
of an invitee or licensee to whom a duty of care is owed;
or (c) assume responsibility for or incur liability for any
injury to person or property caused by an act or
omission of those persons.


Any policy or contract of liability insurance providing
coverage for liability sold, issued or delivered in this
state to any owner of lands covered under the provisions
of this article shall be read so as to contain a provision
or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on
behalf of the policyholder or any beneficiary thereof, to
any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the use of such insured's land for recrea-
tional, wildlife propagation or military purposes, unless such provision or endorsement is rejected in writing by the named insured.

CHAPTER 118

(Com. Sub. for H. B. 2483—By Delegates Gallagher, Rowe and L. White)

[Passed March 25, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to factory-built home site rentals generally; defining terms; requiring written agreements; limiting liability of secured parties; prohibiting certain acts and conduct; providing procedures for terminating tenancy; limiting effect on taxation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. HOUSE TRAILERS, MOBILE HOMES, MANUFACTURED HOMES AND MODULAR HOMES.

§37-15-1. Purpose and applicability.
§37-15-3. Written agreement required.
§37-15-5. Demands and charges prohibited; access by tenant's invitee; purchases by factory-built home owner not restricted; exception; conditions of occupancy.

§37-15-1. Purpose and applicability.
The purpose of this article is to recognize the distinction between a house trailer, a mobile home, a manufactured home and a modular home. While it is the intent of this article to include the different classifications of factory-built homes into a single category for the purposes of this article, it is also the intent of this article to acknowledge the differences between the various types of factory-built homes for other purposes.

In addition, it is the purpose of this article to clarify the ambiguity and confusion related to the classification of factory-built homes as real or personal property, particularly relating to security interests. The provisions of this article apply to factory-built homes, as defined herein, which are held as personal property situated on real property owned by another in conjunction with a landlord/tenant relationship.


For the purposes of this article, unless expressly stated otherwise:

(a) "Abandoned factory-built home" means a factory-built home occupying a factory-built home site, pursuant to a written agreement under which the tenant has defaulted in rent or the landlord has exercised any right to terminate the rental agreement;

(b) "Factory-built home" includes modular homes, mobile homes, house trailers and manufactured homes;

(c) "Factory-built home rental community" means a parcel of land under single or common ownership upon which two or more factory-built homes are located on a continual, nonrecreational basis together with any structure, equipment, road or facility intended for use incidental to the occupancy of the factory-built homes, but does not include premises used solely for storage or display of uninhabited factory-built homes, or premises occupied solely by a landowner and members of his family;

(d) "Factory-built home site" means a parcel of land within the boundaries of a factory-built home rental community provided for the placement of a single
(e) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers, and shall include fold down camping and travel trailers as these terms are defined in section one, article six, chapter seventeen-a of this code, but only when such camping and travel trailers are located in a factory-built home rental community, as defined in this section, on a continual, nonrecreational basis;

(f) "Landlord" means the factory-built home rental community owner, lessor or sublessor of the factory-built home rental community, or an agent or representative authorized to act on his or her behalf in connection with matters relating to tenancy in the community;

(g) "Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development;

(h) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American National Standards Institute (ANSI)-A119.1 Standards for Mobile Homes;

(i) "Modular home" means any structure that is wholly, or in substantial part, made, fabricated, formed
or assembled in manufacturing facilities for installation
or assembly and installation on a building site and
designed for long-term residential use and is certified
as meeting the standards contained in the state fire code
encompassed in the legislative rules promulgated by the
state fire commission pursuant to section five-b, article
three, chapter twenty-nine of this code;

(j) "Owner" means one or more persons, jointly or
severally, in whom is vested (i) all or part of the legal
title to the factory-built home rental community, or (ii)
all or part of the beneficial ownership and right to
present use and enjoyment of the factory-built homesite
or other areas specified in the rental agreement, and the
term includes a mortgagee in possession;

(k) "Rent" means payments made by the tenant to the
landlord for use of a factory-built home site and as
payment for other facilities or services provided by the
landlord; and

(l) "Tenant" means a person entitled pursuant to a
rental agreement to occupy a factory-built home site to
the exclusion of others.

§37-15-3. Written agreement required.

(a) The rental and occupancy of a factory-built home
site shall be governed by a written agreement which
shall be dated and signed by all parties thereto prior to
commencement of tenancy. A copy of the signed and
dated written agreement and a copy of this article shall
be given by the landlord to the tenant within seven days
after the tenant signs the written agreement.

(b) The written agreement, in addition to the provi-
sions otherwise required by law to be included, shall
contain:

(1) The terms of the tenancy and the rent therefor;
(2) The rules and regulations of the factory-built home
rental community. A copy of the text of the rules and
regulations attached as an exhibit satisfies this
requirement;
(3) The language of the provisions of this article. A
copy of the text of this article attached as an exhibit satisfies this requirement;

(4) A description of the physical improvements and maintenance to be provided by the tenant and the landlord during the tenancy; and

(5) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services.

(c) The written agreement may not contain:

(1) Any provisions contrary to the provisions of this article and shall not contain a provision prohibiting the tenant who owns his or her factory-built home from selling his or her factory-built home;

(2) Any provision that requires the tenant to pay any recurring charges except fixed rent, utility charges or reasonable incidental charges for services or facilities supplied by the landlord; or

(3) Any provision by which the tenant waives his or her rights under the provisions of this article.

(d) When any person possesses a security interest in the factory-built home, the written agreement or rental application shall contain the name and address of any secured parties. The written agreement shall require the tenant to notify the landlord within ten days of any new security interest, change of existing security interest, or settlement or release of the security interest.

(e) When a factory-built home owner sells a factory-built home, the new owner shall enter into a written agreement if the factory-built home continues to occupy the site: Provided, That the new owner meets the standards and restrictions contained in the prior rental agreement.


(a) A secured party is not liable for rent to a landlord except as provided below:
(1) When a factory-built home subject to a security interest becomes an abandoned factory-built home, the landlord shall mail a notice of abandonment to the owner of the factory-built home and the secured party by certified mail, at the addresses shown in the rental agreement or rental application. The notice shall include any rental agreement previously signed by the tenant and the landlord, and shall also provide the landlord's current mailing address;

(2) A secured party who has a security interest in an abandoned factory-built home, and who has taken title to the factory-built home under court order or under the applicable security agreement, is liable to the landlord under the same rental agreement terms as agreed on by the tenant and the landlord prior to the accrual of a right of possession by the secured party;

(3) Subject to any defenses the tenant may have, when the tenant has failed to comply with the terms of the written rental agreement regarding rent and payment of fees, the tenant remains liable to the landlord for all rent and services provided during the period while the secured party is attempting to gain title or exercise a right of possession to the factory-built home: Provided, That when the landlord has terminated the rental agreement, the tenant shall not be liable for further rent or payment of fees to the landlord. The secured party is not liable to the landlord or tenant for rent or services until the secured party completes foreclosure proceedings under the terms of the security agreement or otherwise takes title or exercises a right of possession to the factory-built home; or

(4) Upon completion of foreclosure proceedings, acquiring title to or the exercise of a right of possession to the secured party, the secured party shall immediately notify the landlord of the completion of such proceedings by certified mail at the address provided in the landlord's notice of default. After the conveyance of title to or the exercise of a right of possession to the secured party, the secured party shall have ten business days to remove the factory-built home. If a secured party who has a security interest in an abandoned
factory-built home takes title to or possession of the factory-built home and the factory-built home remains in the factory-built home rental community for a period longer than ten business days, the relationship between the secured party and the landlord shall be governed by the rental agreement previously signed by the tenant and the landlord, except that the term of the rental agreement shall convert to a month-to-month tenancy. No waiver is required to convert the rental agreement to a month-to-month tenancy. Either the landlord or the secured party may terminate the month-to-month tenancy upon giving written notice of a desire to terminate to the other party thirty days or more in advance of the proposed date of termination. The secured party and the landlord may enter into a subsequent agreement but are not required to execute a new rental agreement.

(b) Nothing in this section may be construed to be a waiver of any rights by the tenant.

§37-15-5. Demands and charges prohibited; access by tenant’s invitee; purchases by factory-built home owner not restricted; exception; conditions of occupancy.

(a) A landlord may not demand or collect:

(1) Any fee which is not listed in the rental agreement;

(2) An entrance fee for the privilege of renting or occupying a factory-built home site;

(3) A commission on the sale of a factory-built home located in the factory-built home rental community unless the tenant expressly employs the landlord to perform a service in connection with the sale, but employment of the landlord by the tenant may not be a condition or term of the initial sale or rental; or

(4) A fee for improvements or installations on the interior of a factory-built home, unless the tenant expressly employs the landlord to perform a service in connection with such installation, improvement or sale.

(b) An invitee of the tenant has free access to the
(c) A factory-built home owner may not be restricted in his or her choice of vendors from whom he or she may purchase his or her (i) factory-built home, except in connection with the initial renting of a newly constructed factory-built home site not previously rented to any other person, or (ii) goods and services. However, nothing in this article prohibits a landlord from prescribing reasonable requirements governing, as a condition of occupancy, the style, size or quality of the factory-built home, or other structures placed on the factory-built home site.


(a) Either party may terminate a rental agreement which is for a term of thirty days or more by giving written notice to the other party at least thirty days prior to the termination date: Provided, That the rental agreement may specify a period of notice in excess of thirty days. A landlord may not cause the eviction of a tenant by willfully interrupting gas, electricity, water or any other essential service, or by removal of the factory-built home from the factory-built home site, or by any other willful self-help measure.

(b) A rental agreement may be terminated by the landlord for the following reasons:

(1) Failure to comply with the terms of the rental agreement;

(2) Condemnation of the community; or

(3) Change of use of the community: Provided, That all requirements imposed by this chapter are complied with.

(c) The landlord shall set forth in a notice of termination the reason relied upon for the termination with specific facts to permit determination of the date, place, witnesses and circumstances concerning that reason.

Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by selectively increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the landlord has knowledge that: (1) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (2) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this article; (3) the tenant has organized or become a member of a tenant's organization; or (4) the tenant has testified in a court proceeding against the landlord.

(b) Notwithstanding the provisions of subsection (a) of this section, a landlord may terminate the rental agreement pursuant to subsection (b), section six of this article unless the magistrate or circuit court finds that the reason for the termination was retaliation.


Nothing in this article shall be construed to affect the taxation of factory-built homes.

AN ACT to amend article fifteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to factory-built home site rentals; and requiring extended notice to tenants in cases of mass eviction.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section six-a, to read as follows:
ARTICLE 15. HOUSE TRAILERS, MOBILE HOMES, MANUFACTURED HOMES AND MODULAR HOMES.

§37-15-6a. Termination of tenancy of more than twenty-five tenants.

(a) A landlord of a factory-built home rental community may not terminate a rental agreement nor otherwise evict more than twenty-five tenants of any factory-built home rental community within a single eighteen-month period unless:

(1) The landlord obtains written agreement to voluntarily vacate the premises by every tenant prior to the expiration of the eighteen-month period;

(2) The landlord provides not less than six months' notice to terminate the rental agreement to each tenant; or

(3) The tenant has breached a provision of the rental agreement and the termination complies with the requirements of this article.

(b) If a landlord violates the provisions of this section, the tenant has a cause of action to recover actual damages, the costs required to relocate the aggrieved tenant and, in addition, a right to recover treble damages or the equivalent of the aggrieved tenant's rent for one year, whichever is greater, and reasonable attorney fees.

CHAPTER 120

(H. B. 2628—By Delegates Burk and Beane)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to the recordation of certified copies of instruments previously recorded or filed in an office of the clerk of the county commission of any other county within the state.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-2b. Recordation of certified copies of certain instruments.

1 Except as provided in this section, the clerk of the county commission of any county shall admit to record in the office of such clerk a copy of any contract, deed of trust, mortgage, lease, memorandum of lease, release, assignment, power of attorney or any other instrument or writing which has been certified by the clerk of the county commission of any other county of this state as being a true and correct copy and transcript from the records of said county. Any such recordations prior to the effective date of this section shall constitute notice with like effect as if such original instrument had been recorded therein. This section does not apply to deeds, wills or to any instrument filed in accordance with chapter forty-six of this code.

CHAPTER 121

(Com. Sub. for S. B. 108—By Senators Humphreys, Yoder, Grubb, Walker, Holliday, Wehrle, Chernenko, Blatnik and Macnaughtan)

(Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter forty-six-b; and to amend and reenact section thirty-two, article three, chapter sixty-one of said code, all relating to regulating the rental of consumer goods under rent-to-own agreements; creating the West Virginia consumer goods rental protection act; setting forth the short title of the act; stating the scope or application of the act; providing
for the applicability of the law of this state with respect to goods rented to a resident of this state; setting forth legislative purpose and intent; defining certain terms used throughout the act; establishing a statute of frauds applicable to rental agreements; limiting the enforcement of unconscionable agreements; providing for the creation of express warranties; establishing implied warranties of merchantability and fitness for particular purpose; prescribing the effect of any manufacturer's or supplier's warranties and requiring the transfer of such warranties under certain circumstances; prohibiting the disclaimer of warranties and remedies; extending warranties to third-party beneficiaries; allocating the risk of loss of consumer goods; describing the effect of default under a rental agreement and procedure to be followed upon default; providing for notice after default; providing for the termination of rent-to-own agreements; prescribing the terms for reinstatement of written rental agreement; providing for a consumer's right to ownership of the goods upon satisfying certain conditions; requiring maintenance of goods; setting forth disclosure requirements for rent-to-own transactions; prohibiting certain acts by rent-to-own dealers; establishing limitations on charges and fees; authorizing the attorney general to promulgate legislative rules governing rent-to-own transactions; prohibiting extortionate conduct in rent-to-own transactions; prohibiting rebates or discounts under certain conditions; prohibiting practice of law by debt collectors; prohibiting collections through threats or coercion; prohibiting oppression and abuse; prohibiting unreasonable publication; prohibiting fraudulent, deceptive or misleading representations; prohibiting the use of unfair or unconscionable means by debt collectors; prohibiting postal violations; requiring notice of assignment; requiring receipts for payments; providing for statements of account and evidence of payment in full; requiring filing of notification with state tax department; limiting the assignment of earnings; prohibiting confession of judgment; prohibiting garnishment before judgment; limiting garnishment; prohibiting discharge or reprisal because of garnishment; establishing personal property exemp-
tions; authorizing service of process on certain nonresidents; providing for enforcement of the act; providing for injunctions against unconscionable agreements and fraudulent or unconscionable conduct; authorizing civil actions by the attorney general; defining certain criminal offenses for the removal out of the county of property securing a claim, the fraudulent sale or disposition of personal property in possession by virtue of a lease or secreting or converting property subject to a lease; and making such proscribed conduct larceny of such property and thus subject to the applicable criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter

46B. Regulation of the Rental of Consumer Goods Under Rent-to-Own Agreements.

61. Crimes and Their Punishment.

CHAPTER 46B. REGULATION OF THE RENTAL OF CONSUMER GOODS UNDER RENT-TO-OWN AGREEMENTS.

Article

1. General Provisions; Purpose and Intent; Definitions.
3. Default.
4. Prohibited Conduct.
5. Assignment and Receipt of Payment.
7. Nonresident Defendants.
8. Enforcement and Remedies.

ARTICLE 1. GENERAL PROVISIONS; PURPOSE AND INTENT; DEFINITIONS.

§46B-1-1. Short title.
§46B-1-2. Scope.
§46B-1-3. Applicability of the law of this state.
§46B-1-4. Legislative purpose and intent.
§46B-1-5. General definitions.
§46B-1-1. Short title.

This chapter shall be known and may be cited as the "West Virginia Consumer Goods Rental Protection Act".

§46B-1-2. Scope.

This chapter applies to any transaction, regardless of form, which creates a rental agreement for the rental of consumer goods, unless such transaction is specifically exempted from the application of this chapter by an express provision contained herein.

§46B-1-3. Applicability of the law of this state.

With respect to consumer goods rented to a resident of this state under a rent-to-own agreement, compliance and the effect of compliance or noncompliance with the provisions of this chapter are governed by the law of this state.

§46B-1-4. Legislative purpose and intent.

The underlying purposes and intent of this chapter are as follows:

(1) To simplify and clarify the law governing contracts for the rental of consumer goods;

(2) To assure an adequate means for consumers to enter into contracts for the rental of consumer goods at an affordable price, so that consumers are financially able to comply with the terms of such contracts;

(3) To further consumer understanding of the terms of agreements which involve the purchase or rental of consumer goods;

(4) To foster competition among dealers or rent-to-own dealers who supply consumer goods under rental agreements, so that consumers may rent such consumer goods at a reasonable cost;

(5) To protect consumers against unfair practices by some dealers, while having due regard for the interests of legitimate and scrupulous dealers; and

(6) To permit and encourage the development and use of fair and economically sound business practices on the
part of dealers, as well as promoting the practice of
thrift and the exercise of good judgment by consumers
prior to their entering into agreements for the purchase
or rental of consumer goods.

§46B-1-5. General definitions.
The following words and phrases, when used in this
chapter, shall have the meanings respectively ascribed
to them in this section, unless the context in which such
words or phrases are used elsewhere in this chapter
clearly requires a different meaning:
(1) “Agricultural purpose” means a purpose related to
the production, harvest, exhibition, marketing, trans­
portation, processing or manufacture of agricultural
products by a natural person who cultivates, plants,
propagates or nurtures the agricultural products.
“Agricultural products” include agricultural, horticultu­
ral, viticultural and dairy products, livestock, wildlife,
poultry, bees, forest products, fish and shellfish and any
products thereof, including processed and manufactured
products, and any and all products raised or produced
on farms and any processed or manufactured products
thereof.
(2) “Consumer” means a natural person who acquires,
or seeks to acquire, the right to possession and use of
consumer goods by entering into a rent-to-own agree­
ment with a dealer.
(3) “Consumer goods” or “goods” means goods in­
tended to be used primarily for personal, family or
household purposes.
(4) “Damage waiver” means the voiding or disregard
by the dealer of any obligation on the part of the
consumer to pay the value of the consumer goods or to
make payments pursuant to a rent-to-own agreement in
the event of loss or damage to the consumer goods in
excess of normal wear and tear or the insurance of the
value of the consumer goods or of payments pursuant
to the rent-to-own agreement in the event of loss or
damage to the consumer goods in excess of normal wear
and tear.
(5) "Dealer" or "rent-to-own dealer" means a person who, in the ordinary course of business, transfers or offers to transfer the right to possession and use of consumer goods to a consumer or acts as an agent to transfer or offer to transfer the right to possession and use of consumer goods to a consumer, pursuant to a rental agreement.

(6) "Debt collection" means any action, conduct or practice of soliciting claims for collection or the collection of a claim or claims owed or due or alleged to be owed or due to a dealer by a consumer under a rent-to-own agreement.

(7) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme and are intended or calculated to be used to collect claims.

(8) "Financial organization" means a corporation, partnership, cooperative or association which:

(A) Is organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the organization to make consumer loans; and

(B) Is subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(9) "Ownership" means the right to enjoy, possess and use consumer goods to the exclusion of other persons, including the right to transfer legal title to such consumer goods or to otherwise control, handle or dispose of such consumer goods, whether or not indicia of such ownership is established by, or otherwise required to be evidenced by, a title-paper, letter, receipt or other document or instrument.

(10) "Period" or "rental period" means a week, a month or another specific length of time set forth in a rent-to-own agreement, during which such period the consumer has a right to continue possessing and using
consumer goods, after having made the periodic rental payment for such period.

(11) "Periodic payment" means a payment required to be made by a consumer to have the right to possession and use of consumer goods during a specified time period. The periodic payment does not include any applicable sales, use, privilege, excise or documentary stamp taxes otherwise payable upon a transfer of consumer goods from a dealer to a consumer, except as provided for by the disclosure requirements or other applicable requirements set forth in this chapter.

(12) "Person" or "party" includes a natural person or an individual, an organization, partnerships and corporations.

(13) "Person related to" with respect to an individual means: (A) The spouse of the individual; (B) a brother, brother-in-law, sister or sister-in-law of the individual; (C) an ancestor or lineal descendant of the individual or his spouse; and (D) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization, partnership or corporation means: (A) A person directly or indirectly controlling, controlled by or under common control with the organization, partnership or corporation; (B) an officer or director of the organization, partnership or corporation or a person performing similar functions with respect to the organization or to a person related to the organization, partnership or corporation; (C) the spouse of a person related to the organization, partnership or corporation; and (D) a relative by blood or marriage of a person related to the organization, partnership or corporation shares the same home with him or her.

(14) "Premises" means a particular physical place of business opened to the public by a dealer.

(15) "Rental agreement" means the bargain, with respect to the rental of consumer goods under a rent-to-own agreement, of the dealer and the consumer as found in their language or by implication from other circumstances including course of dealing or usage of
trade or course of performance as provided in this chapter.

(16) "Rental contract" means the total legal obligation that results from the rental agreement as affected by this chapter and any other applicable rules of law.

(17) (A) "Rent-to-own agreement" means a rental agreement which:

(i) Transfers the right to possession and use of the rental property from the dealer to the consumer;

(ii) Obligates the consumer to pay successive periodic rental payments as each shall become due, in order to continue his or her right to possession and use of the rented consumer goods;

(iii) Is subject to termination by the consumer as permitted by this chapter, whereupon the consumer is not obligated to make payments for any period of time other than a period during which he or she chose to maintain possession and use of the rented consumer goods;

(iv) Provides that upon compliance with the terms of the agreement the consumer shall become or has the option to become the owner of the property for no additional fee, except as permitted by this chapter.

(B) The term "rent-to-own agreement" does not include a rental agreement in which:

(i) A financial organization is a party, if the rental agreement is subject to the federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto;

(ii) Any of the consumer goods which are the subject matter of the rental agreement are vehicles as defined in section one, article one, chapter seventeen-a of this code;

(iii) All of the consumer goods which are the subject of the rental agreement are either two-way telecommunications equipment, medical equipment or musical instruments, and the rental agreement is subject to the
federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto; or

(iv) All of the goods which are the subject matter of the rental agreement are primarily intended to be used for agricultural purposes.

(18) "Retail value" or "fair market value" of particular consumer goods means the price at which goods of like type, quality and quantity would change hands between a willing seller and a willing buyer, at retail, for cash, in the particular market area at the time of the rent-to-own rental agreement, which price does not include any applicable sales, use, privilege, excise or documentary stamp taxes payable upon the transfer of such goods.

(19) "Rent-to-own charge", in connection with any rent-to-own agreement, means the sum of all charges in excess of the retail value which must be paid directly or indirectly by the consumer in order for the consumer to acquire ownership of the consumer goods without payment of further consideration.

(20) "Termination" means the cancellation of a rental agreement when the consumer determines that he or she no longer desires to pay periodic payments and retain the right to possession and use of the consumer goods or either party puts an end to the rental agreement for default by the other party in accordance with the provisions of this chapter.

(21) "Total of payments" means the total of all periodic payments specified in the written agreement which the consumer must pay in order to acquire ownership of the consumer goods without the payment of additional consideration to the dealer.

(22) "Willing buyer" means a person who:

(A) Buys consumer goods at retail for his or her personal use or for the use of his or her family or household;

(B) Has a reasonable knowledge of the relevant facts
to be considered in ascertaining the fair market price of consumer goods which are offered to be sold at retail; and

(C) Is under no compulsion to buy or to buy from a particular seller.

(23) "Willing seller" means a person other than a rent-to-own dealer who:

(A) In the ordinary course of business regularly sells or offers for sale consumer goods at retail;

(B) Has no direct or indirect ownership connection with any dealer;

(C) Has a reasonable knowledge of the relevant facts to be considered in fixing the fair market price of consumer goods which are offered to be sold at retail; and

(D) Is under no compulsion to sell or to sell to a particular buyer.

(24) "Written agreement" means a written document containing or evidencing the terms of a rent-to-own transaction, reduced to a tangible and legible form by printing, typewriting, computer print-out or any other intentional reduction.

ARTICLE 2. FORMATION AND CONSTRUCTION OF AGREEMENTS FOR THE RENTAL OF CONSUMER GOODS.

§46B-2-1. Statute of frauds.

§46B-2-2. Unconscionability.


§46B-2-4. Implied warranty of merchantability.

§46B-2-5. Implied warranty of fitness for particular purpose.

§46B-2-6. Manufacturers' warranties; transfer of warranties.

§46B-2-7. Disclaimer of warranties and remedies prohibited.

§46B-2-8. Third-party beneficiaries of express and implied warranties.


§46B-2-1. Statute of frauds.

(a) A rental agreement is not enforceable by a dealer by way of action or defense unless there is a writing, signed by both the dealer or his agent or employee and the consumer, sufficient to indicate that a rent-to-own
agreement has been made between the parties, reason-ably identifying and describing the consumer goods to be rented. Any purported rent-to-own agreement entered into without a written agreement may be voided by the consumer, who may return the consumer goods and be refunded all amounts previously paid to the dealer under the purported rental agreement.

(b) A rental agreement is not enforceable by a dealer against a consumer unless the written agreement contains all disclosures required by the provisions of this chapter, and unless a copy of the written agreement is delivered to the consumer contemporaneously with the execution of the written agreement. Any written agreement executed by a consumer which does not comply with the requirements of this subsection may be voided by the consumer.

(c) The fair market value for any single item which is the subject of a rent-to-own agreement may not be more than ten thousand dollars.

§46B-2-2. Unconscionability.

(a) If the court as a matter of law finds a rental agreement or any clause of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, or it may enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) With respect to a consumer rental agreement, if the court as a matter of law finds that a rental agreement or any clause of a rental agreement has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a rental agreement, the court may grant appropriate relief.

(c) Before making a finding of unconscionability under subsection (a) or (b) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the
setting, purpose and effect of the rental agreement or clause thereof, or of the conduct.

(d) In an action in which the consumer claims unconscionability with respect to a rental agreement:

(1) If the court finds unconscionability under subsection (a) or (b) of this section, the court shall award reasonable attorney's fees to the consumer.

(2) If the court does not find unconscionability and the consumer claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the dealer against whom the claim is made.

(3) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (a) and (b) of this section is not controlling.


(a) Express warranties by the dealer are created as follows:

(1) Any affirmation of fact or promise made by the dealer to the consumer which relates to the consumer goods is part of the basis of the bargain and creates an express warranty that the consumer goods will conform to the affirmation or promise;

(2) Any description of the consumer goods is part of the basis of the bargain and creates an express warranty that the consumer goods will conform to the description;

(3) Any sample or model exhibited to the consumer by the dealer is part of the basis of the bargain and creates an express warranty that the consumer goods actually delivered to the consumer will conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the dealer use formal words, such as "warrant" or "guarantee", or that the dealer have a specific intention to make a warranty, but an affirmation merely of the value of the consumer goods or a statement purporting to be merely the dealer's opinion
or commendation of the consumer goods does not create a warranty.

§46B-2-4. Implied warranty of merchantability.

(a) A warranty that the consumer goods will be merchantable is implied in every contract for the rental of consumer goods if the dealer is a merchant with respect to consumer goods of that kind.

(b) Consumer goods to be merchantable must be at least such as:

(1) Pass without objection in the trade under the description in the rental agreement;

(2) Are fit for the ordinary purposes for which consumer goods of that type are used; and

(3) Conform to any promises or affirmations of fact made on the container or label.

(c) Other implied warranties may arise from course of dealing or usage of trade.

§46B-2-5. Implied warranty of fitness for particular purpose.

If the dealer, at the time the rental contract is made, has reason to know of any particular purpose for which the consumer goods are required and that the consumer is relying on the dealer's skill or judgment to select or furnish suitable consumer goods, there is in the rental contract an implied warranty that the consumer goods will be fit for that purpose.

§46B-2-6. Manufacturers' warranties; transfer of warranties.

When consumer goods that are subjects of a rent-to-own transaction are warranted by a manufacturer's or supplier's warranty or other warranty that may either be retained by the dealer or transferred to the consumer, the warranty shall be retained by the dealer so long as the dealer is responsible for maintaining the consumer goods. At such time as maintenance of the goods becomes the responsibility of the consumer through a transfer of ownership or otherwise, such
§46B-2-7. Disclaimer of warranties and remedies prohibited.

(a) Notwithstanding any other provision of law to the contrary with respect to consumer goods which are the subject of or are intended to become the subject of a rental contract subject to the provisions of this chapter, all warranties available to the consumer, express or implied, are cumulative and not exclusive, and the consumer shall have the benefit of any or all such warranties. No dealer, manufacturer, supplier or other merchant shall:

(1) Exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

(b) Any exclusion, modification or attempted limitation of a warranty, express or implied, shall be void. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed as inconsistent with each other.

(c) It is unlawful in a rental contract subject to the provisions of this chapter to attempt to exclude, modify or otherwise attempt to limit any implied warranty of merchantability or any part of it, or to attempt to exclude, modify or otherwise attempt to limit any implied warranty of fitness.

§46B-2-8. Third-party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a consumer under
this chapter, whether express or implied, extends to any natural person who is in the family or household of the consumer or who is a guest in the consumer’s home if it is reasonable to expect that such person may use or be affected by the consumer goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a consumer to other persons. The operation of this section may not be excluded, modified or limited.


1 Risk of loss is retained by the dealer and does not pass to the consumer until such time as the consumer receives the goods.

ARTICLE 3. DEFAULT.

§46B-3-1. Default; procedure.

§46B-3-2. Notice after default.

§46B-3-3. Termination of rent-to-own agreements.

§46B-3-4. Reinstatement of written rental agreement.

§46B-3-5. Consumer’s right to ownership of the goods.

§46B-3-6. Maintenance of goods.

§46B-3-7. Disclosure requirements.

§46B-3-8. Prohibitions for rent-to-own transactions.

§46B-3-9. Limitations on charges and fees.

§46B-3-10. Attorney general; promulgation of rules.

§46B-3-1. Default; procedure.

1 (a) Whether the dealer or the consumer is in default under a rental contract is determined by the rental agreement and this chapter.

4 (b) If the dealer or the consumer is in default under the rental contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the rental agreement.

9 (c) If the dealer or the consumer is in default under the rental contract, the party seeking enforcement may reduce the party’s claim to judgment or otherwise enforce the rental contract by self-help or any available judicial procedure or nonjudicial procedure: Provided, That consumer goods may only be repossessed by a
§46B-3-2. Notice after default.

Except as otherwise provided in this chapter, the dealer or consumer in default under the rental contract is not entitled to notice of default or notice of enforcement from the other party to the rental agreement.

§46B-3-3. Termination of rent-to-own agreements.

(a) Upon the termination of a rent-to-own agreement by a consumer, all obligations that are still executory by both parties are discharged, but any right based on a failure of the dealer to maintain the consumer goods in accordance with the provisions of section six of this article, or any other right based on prior default or performance of the dealer survives, and the consumer retains any remedy or defense for such default. Rights and remedies available to the consumer for material misrepresentation or fraud by a dealer are not affected by a termination of the rental agreement by a consumer. Termination of the rental agreement by a consumer shall not bar or be deemed inconsistent with a claim for damages or other right or remedy.

(b) A consumer may terminate a rent-to-own agreement at any time.

(c) When a consumer terminates a rent-to-own transaction, the dealer may not require any further action or payment by the consumer except:

(1) Payment of any unpaid periodic payments and charges accrued before the consumer notified the dealer of the termination of the transaction and made the consumer goods available to be received by the dealer; and

(2) Payment of any pickup charge provided for in the rental agreement.
(d) A dealer may terminate a rent-to-own agreement when the consumer fails to make a periodic payment as it becomes due: Provided, That seven days prior to terminating the rent-to-own agreement, the dealer shall provide a written notice to the consumer informing him or her:

(1) Of the amount of any periodic payment or payments that the consumer has failed to make;

(2) That the consumer may voluntarily surrender possession of the goods to the dealer at the location where the goods are located;

(3) Of any late payment which has been or may be assessed;

(4) Of the right to reinstate which shall include:

(A) The consumer's right to reinstate the agreement by payment of amounts due when the goods are in the possession of the consumer;

(B) The amount of time when the consumer has to reinstate the agreement;

(C) That reinstatement will result in continuation of the original agreement, including the provisions relating to ownership of the goods; and

(D) The amount of fees to be paid for reinstatement.

(e) The dealer may request that the goods be surrendered at any time after a consumer has failed to timely make a periodic payment required under the agreement. When the consumer surrenders the goods, the transaction is terminated. The dealer shall provide the consumer the notice required by this section.

§46B-3-4. Reinstatement of written rental agreement.

(a) The consumer may reinstate the transaction at any time until the consumer is served, in a manner pursuant to rule four of the rules of civil procedure, with a civil complaint arising out of the transaction.

(b) When a consumer fails to timely make one or more periodic payments, he or she may reinstate the original
rent-to-own transaction, without losing any right or option of the consumer under the rental-purchase agreement, within sixty days after the expiration of the last period for which the consumer made a timely payment: Provided, That if a consumer has made more than forty percent of the regular payments required to obtain ownership of the goods, pursuant to the rent-to-own transaction, the consumer shall have ninety days to reinstate a rent-to-own transaction: Provided, however, That when a dealer seeks to repossess the goods and has lawfully repossessed the goods two previous times during the same transaction, the consumer may not reinstate the transaction.

(c) If reinstatement occurs pursuant to this section, the dealer shall provide the consumer with the same goods leased by the consumer prior to the reinstatement or if those goods are not available to the dealer, substitute property that is of no less quality and condition. When substitute property is provided, the dealer shall make all disclosures required by this chapter. When consumer goods have been repossessed or returned to the possession of the dealer prior to reinstatement, the dealer may charge a nominal reinstatement fee, not to exceed five dollars.

§46B-3-5. Consumer's right to ownership of the goods.

When the consumer has paid all periodic payments required by a rent-to-own transaction together with any other charges authorized by law which have been lawfully imposed in the transaction, he or she shall have exclusive ownership of the goods: Provided, That the consumer, after the initial payment, may obtain ownership before the scheduled end of the rent-to-own transaction by paying:

(1) A portion of the periodic payments, which have not yet become payable, subject to any limitation provided by this chapter;

(2) All periodic payments and other charges authorized by law which have already become due and which may be lawfully imposed in the transaction; and
The amount of any documentary or other fee charged by a governmental entity to transfer ownership or proof of ownership.

§46B-3-6. Maintenance of goods.

A dealer shall maintain the goods that are the subject of any rent-to-own transaction in working order and usable condition until such time as the consumer obtains ownership of the goods.

§46B-3-7. Disclosure requirements.

(a) The dealer shall make all disclosures required by this section.

(b) In all circumstances listed in subsection (c) of this section, the dealer shall disclose the following information with respect to the goods that are the subject of the rental agreement in a clear, conspicuous and easily understood manner:

(1) Retail value;
(2) Rent-to-own charge;
(3) Rental period;
(4) Number of periodic payments required for ownership;
(5) Amount of each periodic payment;
(6) Total of all payments; and
(7) Whether the goods are new or have been previously rented or are otherwise used.

(c) The dealer shall make the disclosures required in this section:

(1) On a label attached or posted on top of the goods displayed to any potential consumer;
(2) In any rent-to-own agreement as defined in section five, article one of this chapter;
(3) In any telephone communication with a potential consumer; and
(4) In any radio, television or printed advertisement
for the goods when the price for the item is included in the advertisement.

Any oral communications concerning the terms and conditions of the transaction shall be incorporated into a written agreement which shall govern the transaction.

(d) In any transaction involving more than one dealer, only one dealer may make the disclosures required by this article: Provided, That when the name of the dealer is required to be disclosed, all dealers shall be disclosed.

(e) A dealer may disclose information that is not required by this section only when the additional information is not stated, used or placed in a manner that may contradict, obscure or distract attention from the information required by this section.

§46B-3-8. Prohibitions for rent-to-own transactions.

1 No dealer may:

2 (1) Require any initial payment in any transaction except the payment for the first rental period, taxes, insurance or delivery fees and other disclosed fees or fees authorized by this chapter;

3 (2) Charge any fee at the time ownership of the consumer goods passes to the consumer, other than an applicable fee, if any, which actually is or will be paid to public officials for perfecting title or ownership in the consumer;

4 (3) Raise the amount of any payment or charge after the execution of the written agreement without both parties voluntarily entering into a second written agreement;

5 (4) Take any action to collect a payment which is prohibited by this chapter;

6 (5) Accept any cosigner other than a person who is in the household of the consumer and who is expected to use the consumer goods;

7 (6) Take any security interest in any property owned by the consumer;
(7) Require a damage waiver, insurance or form of insurance, insuring the consumer goods against loss or damage, unless the dealer requires such insurance for all goods of comparable type and value in every rent-to-own agreement;

(8) Require damage waiver from a particular insurer;

(9) Seek to collect any charge not authorized by this chapter and disclosed in a written agreement; or

(10) Have an initial period which is more than one rental period longer than any other rental period.

§46B-3-9. Limitations on charges and fees.

(a) Any consumer seeking to fulfill obligations pursuant to section five of this article may be charged a fee no greater than the retail value divided by the total of payments multiplied by the amount of the periodic payments which have not yet become due.

(b) A dealer may not charge a fee for delivery or pickup unless the charge is provided for in the written agreement, the parties agree that the dealer shall deliver or pick up the goods; and the charge is reasonably related to the costs of delivery: Provided, That no delivery or pick up charge may be assessed in any transaction when the transaction took place in any place other than the premises of the dealer.

(c) Any late fee imposed by a dealer may not exceed five percent of the periodic payment or fifteen dollars, whichever is less. Only one late charge may be imposed for any payment for which a late charge may be charged. Under a rental agreement in which periodic payments are due weekly, a late charge may not be imposed until the payment is three days late. Otherwise, a late charge may not be imposed until the payment is five days late.

(d) The total of payments in a rent-to-own transaction shall not be greater than two hundred forty percent of the retail value.

§46B-3-10. Attorney general; promulgation of rules.
The attorney general may adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof. In addition, the attorney general shall adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of said chapter, as are necessary and proper to determine formula or method of ascertaining retail value as defined in this article and as are necessary and proper to detail the requirements for disclosure set forth in this article.

ARTICLE 4. PROHIBITED CONDUCT.

§46B-4-1. Extortionate conduct in rent-to-own transaction.
§46B-4-2. Referral sales or leases.
§46B-4-3. Practice of law by debt collectors.
§46B-4-4. Threats or coercion.
§46B-4-5. Oppression and abuse.
§46B-4-6. Unreasonable publication.
§46B-4-7. Fraudulent, deceptive or misleading representations.
§46B-4-8. Unfair or unconscionable means.
§46B-4-9. Postal violations.

§46B-4-1. Extortionate conduct in rent-to-own transaction.

If the court finds as a matter of fact that it was the understanding of the dealer and the consumer at the time a rental agreement for a rent-to-own transaction was made that delay in making a payment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the agreement of the extension of credit is unenforceable through civil judicial process against the dealer, and the consumer, at his or her option, may rescind the agreement and retain the goods without any obligation to pay for them.

§46B-4-2. Referral sales or leases.

With respect to a rent-to-own transaction, the dealer may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the consumer as an inducement for a sale or lease in consideration of his giving to the dealer the names of prospective purchasers.
or consumers, or otherwise aiding the dealer in making
a lease to another person, if the earning of the rebate,
discount or other value is contingent upon the occur-
rence of an event subsequent to the time the consumer
agrees to lease. If a consumer is induced by a violation
of this section to enter into a rent-to-own transaction, the
agreement is unenforceable against the consumer, who
at his or her option, may rescind the agreement and
retain the goods without any obligation to pay for them.

§46B-4-3. Practice of law by debt collectors.

1 Unless a licensed attorney in this state, no debt
collector shall engage in conduct deemed the practice of
law. Without limiting the general application of the
foregoing, the following conduct is deemed the practice
of law:

6 (1) The performance of legal services, furnishing of
legal advice or false representation, direct or by
implication, that any person is an attorney;

9 (2) Any communication with consumers in the name
of an attorney or upon stationery or other written matter
bearing an attorney's name; and

12 (3) Any demand for or payment of money constituting
a share of compensation for services performed or to be
performed by an attorney in collecting a claim.

§46B-4-4. Threats or coercion.

1 No debt collector shall collect or attempt to collect any
money alleged to be due and owing by means of any
threat, coercion or attempt to coerce. Without limiting
the general application of the foregoing, the following
conduct is deemed to violate this section:

6 (1) The use, or express or implicit threat of use, of
violence or other criminal means to cause harm to the
person, reputation or property of any person;

9 (2) The accusation or threat to accuse any person of
fraud, any crime or any conduct which, if true, would
tend to disgrace such other person or in any way subject
him to ridicule or any conduct which, if true, would tend
to disgrace such other person or in any way subject him
to ridicule or contempt of society;

(3) False accusations made to another person, including any credit reporting agency, that a consumer is willfully refusing to pay a just debt or the threat to so make false accusations;

(4) The threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive or abusive collection attempts;

(5) The threat that nonpayment of an alleged claim will result in the:

(A) Arrest of any person; or

(B) Garnishment of any wages of any person or the taking of other action requiring judicial sanction, without informing the consumer that there must be in effect a judicial order permitting such garnishment or such other action before it can be taken; and

(6) The threat to take any action prohibited by this chapter or other law regulating the debt collector’s conduct.

§46B-4-5. Oppression and abuse.

No debt collector shall unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) The placement of telephone calls without disclosure of the caller’s identity and with the intent to annoy, harass or threaten any person at the called number;

(3) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges
incurred by a medium of communication, by conceal-
ment of the true purpose of the communication; and

(4) Causing a telephone to ring or engaging any
person in telephone conversation repeatedly or continu-
ously, or at unusual times or at times known to be
inconvenient, with intent to annoy, abuse, oppress or
threaten any person at the called number.

§46B-4-6. Unreasonable publication.

1 No debt collector shall unreasonably publicize infor-
2 mation relating to any alleged indebtedness of consu-
3 mer. Without limiting the general application of the
4 foregoing, the following conduct is deemed to violate this
5 section:

6 (1) The communication to any employer or his agent
7 before judgment has been rendered of any information
8 relating to an employee’s indebtedness other than
9 through proper legal action, process or proceeding;

10 (2) The disclosure, publication or communication of
11 information relating to a consumer’s indebtedness to any
12 relative or family member of the consumer if such
13 person is not residing with the consumer, except
14 through proper legal action or process or at the express
15 and unsolicited request of the relative or family
16 member;

17 (3) The disclosure, publication or communication of
18 any information relating to a consumer’s indebtedness
19 to any other person other than a credit reporting agency,
20 by publishing or posting any list of consumers, com-
21 monly known as “deadbeat lists”; and

22 (4) The use of any form of communication to the
23 consumer, which ordinarily may be seen by any other
24 persons, that displays or conveys any information about
25 the alleged claim other than the name, address and
26 phone number of the debt collector.

§46B-4-7. Fraudulent, deceptive or misleading
representations.

1 No debt collector shall use any fraudulent, deceptive
2 or misleading representation or means to collect or
attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector’s business, company or organization;

(2) The failure to clearly disclose in all communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;

(4) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) Any false representation or implication of the character, extent or amount of a claim against a consumer or of its status in any legal proceeding;

(6) Any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the federal, state or local government;

(7) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

(8) Any representation that an existing obligation of the consumer may be increased by the addition of attorney’s fees, investigation fees, service fees or any
other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

§46B-4-8. Unfair or unconscionable means.

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(2) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;

(4) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the written rental agreement and by statute; and

(5) Any communication with a consumer whenever it appears that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question or unless the attorney consents to direct communication.

§46B-4-9. Postal violations.
No debt collector shall use, distribute, sell or prepare for use any written communication which violates or fails to conform to United States postal laws and regulations.

ARTICLE 5. ASSIGNMENT AND RECEIPT OF PAYMENT.

§46B-5-1. Notice of assignment.
§46B-5-2. Receipts; statements of account; evidence of payment.
§46B-5-3. Notification.

§46B-5-1. Notice of assignment.

A consumer is authorized to pay the original dealer until he receives notification of assignment of rights to payment pursuant to a rent-to-own transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original dealer.

§46B-5-2. Receipts; statements of account; evidence of payment.

(a) The dealer shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a written rental agreement. A periodic statement showing a payment received complies with this subsection.

(b) Upon written request of a consumer, the dealer shall provide a written statement of the dates and amounts of payments made within the past twelve months and the total amount unpaid. The requested statement shall be provided without charge once during each year of the term of the agreement. If additional statements are requested, the creditor may charge not in excess of three dollars for each additional statement.

(c) After a consumer has fulfilled all obligations with respect to a rent-to-own transaction, the dealer shall, upon the request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.
§46B-5-3. Notification.

(a) Every person engaged in this state in making rent-to-own transactions and every person having an office or place of business in this state who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from such transactions shall file notification with the state tax department within thirty days after commencing business in this state, and, thereafter, on or before the thirty-first day of January of each year. A notification shall be deemed to be in compliance with this section if the information hereinafter required is given in an application for a business registration certificate provided for in section four, article twelve, chapter eleven of this code. The state tax commissioner shall make any information required by this section available to the attorney general or commissioner upon request.

The notification shall state:

(1) Name of the person;

(2) Name in which business is transacted if different from subdivision (1) of this subsection;

(3) Address of principal office, which may be outside this state;

(4) Address of all offices or retail stores, if any, in this state at which rent-to-own transactions are made or, in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted; and

(5) Address of designated agent upon whom service of process may be made in this state.

(b) If information in a notification becomes inaccurate after filing, accurate information must be filed within thirty days.

ARTICLE 6. LIMITATIONS ON COLLECTIONS AND RELATED PROVISIONS.

§46B-6-1. Assignment of earnings.
§46B-6-2. Authorization to confess judgment prohibited.
§46B-6-3. No garnishment before judgment.
§46B-6-4. Limitation on garnishment.
§46B-6-5. No discharge or reprisal because of garnishment.
§46B-6-6. Personal property exemptions.

§46B-6-1. Assignment of earnings.

(a) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more rent-to-own transactions may not exceed twenty-five percent of his disposable earnings for that week.

(b) As used in this section:

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(2) "Assignment of earnings" includes all forms of assignments, deductions, transfers or sales of earnings to another, either as payment or as security and whether stated to be revocable or nonrevocable and includes any deductions authorized under the provisions of section three, article five, chapter twenty-one of this code, except deductions for union or club dues, pension plans, payroll savings plans, charities, stock purchase plans and hospitalization and medical insurance.

(c) Any assignment of earnings and any deduction under section three, article five, chapter twenty-one of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

(d) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

§46B-6-2. Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a rent-to-own transaction. An authorization in violation of this section is void. The provisions of this section shall not be construed as in any way impliedly authorizing a confession of judgment in any other type of transaction.

§46B-6-3. No garnishment before judgment.
Prior to entry of judgment in an action against the consumer for debt arising from a rent-to-own transaction, the dealer may not attach unpaid earnings of the consumer by garnishment or like proceedings. The provisions of this section shall not be construed in any way impliedly authorizing garnishment before judgment in any other type of transaction.

§46B-6-4. Limitation on garnishment.

(a) For the purposes of the provisions in this chapter relating to garnishment:

(1) “Disposable earnings” means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(2) “Garnishment” means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(b) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a rent-to-own transaction may not exceed the lesser of:

(1) Twenty percent of his disposable earnings for that week;

(2) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by Section 6(a)(1) of the “Fair Labor Standards Act of 1938”, U.S.C. Title 19, Section 206(a)(1), in effect at the time the earnings are payable; or

(3) In the case of earnings for a pay period other than a week, the commissioner shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (2) of this subsection.

(c) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer’s earnings have been executed upon pursuant
(d) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment or notice of withholding in point of time or filing.

§46B-6-5. No discharge or reprisal because of garnishment.

No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a rent-to-own transaction.

§46B-6-6. Personal property exemptions.

Any consumer residing in this state may set apart and hold personal property to be exempt from execution or other judicial process resulting from rent-to-own transactions, except for the purchase money due on such property, in such amounts as follows: Clothing and other wearing apparel of the consumer, his spouse and any dependents of such consumer, not to exceed the fair market value of two hundred dollars; furniture, appliances, furnishings and fixtures regularly used for family purposes in the consumer's residence, to the extent of the fair market value of one thousand dollars; children's
books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his or her spouse and any dependent of such consumer; tools of trade, including any income-producing property used in the consumer's principal occupation, to the extent of the fair market value of one thousand dollars; and any policy of life or endowment insurance which is payable to the spouse or children of the insured consumer or to a trustee for their benefit, except the cash value of any accrued dividends thereon. When a consumer claims personal property as exempt under the provisions of this section, he shall deliver a list containing all the personal property owned or claimed by him and all items of such property he claims as exempt hereunder, with the value of each separate item listed according to his best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by affidavit. If the value of the property named in such list exceeds the amounts specified in this section, the consumer shall state at the foot thereof what part of such property he claims as exempt. If such value does not exceed the amounts specified in this section, the claim of exemption shall be held to extend to the whole thereof without stating more and, if no appraisement is demanded, the property so claimed shall be set aside as exempt. Where the consumer owning exempt property is absent or incapable of acting or neglects or declines to act hereunder, the claim of exemption may be made, the list delivered and the affidavit made by his spouse with the same effect as if the consumer had done so. Upon receipt of such a list, the officer to whom it is given shall immediately exhibit such list to the dealer or his agent or attorney. The rights granted and procedures provided for in article eight, chapter thirty-eight of this code shall apply to any proceeding under this section, except that the provisions of sections one and three of such article shall not apply.

ARTICLE 7. NONRESIDENT DEFENDANTS.

§46B-7-1. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corpo-
ration authorized to do business in this state pursuant
to the provisions of chapter thirty-one of this code, who
takes or holds any negotiable instrument, nonnegotiable
instrument, or contract or other writing, arising from
a rent-to-own lease which is subject to the provisions of
this chapter, shall be conclusively presumed to have
appointed the secretary of state as his attorney-in-fact
with authority to accept service of notice and process in
any action or proceeding brought against him arising
out of such rent-to-own transaction. A person shall be
considered a nonresident hereunder if he is a nonresi­
dent at the time such service of notice and process is
sought. No act of such person appointing the secretary
of state 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 two
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 person at his address, which address shall be
stated in such process or notice: Provided, That such
return receipt shall be signed by such person or an
agent or employee of such person if a corporation, or the
registered or certified mail so sent by said secretary of
state is refused by the addressee and the registered or
certified mail is returned to said secretary of state, or
to his office, showing thereon the stamp of the U.S.
postal service that delivery thereof has been refused,
and such return receipt or 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. But no process or
notice shall be served on the secretary of state or
accepted fewer 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 proceeding.

The provisions for service of process or notice herein
are cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process or notice in such action served in any other mode and manner provided by law.

ARTICLE 8. ENFORCEMENT AND REMEDIES.

§46B-8-1. Enforcement.
§46B-8-2. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.
§46B-8-3. Civil actions by attorney general.

§46B-8-1. Enforcement.

1 For a violation of or a failure to comply with the provisions of this article by a dealer, a consumer is entitled to recover from the dealer the consumer’s actual damages, reasonable attorney’s fees and court costs and a civil penalty in an amount not less than one hundred dollars nor more than one thousand dollars for each violation.

§46B-8-2. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

1 (a) The attorney general may bring a civil action to restrain a dealer or a person acting in his behalf from engaging in a course of:

4 (1) Making or enforcing unconscionable terms or provisions of rent-to-own transactions;

6 (2) Fraudulent or unconscionable conduct in inducing consumers to enter into rent-to-own transactions; or

8 (3) Fraudulent or unconscionable conduct in the collection of payments arising from rent-to-own transactions.

11 (b) In an action brought pursuant to this section the court may grant relief only if it finds:

13 (1) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

16 (2) That the agreements or conduct of the respondent have caused or are likely to cause injury to consumers;
and

(3) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are rent-to-own transactions.

(c) In applying this section, consideration shall be given to each of the following factors, among others:

(1) Belief by the dealer at the time rent-to-own transactions are made that there was no reasonable probability of payment in full of the obligation by the consumer;

(2) Knowledge by the dealer at the time of the sale of the inability of the consumer to receive substantial benefits from the transaction;

(3) Gross disparity between the price of the property or services sold that are the subject of the transaction and the value of the property measured by the price at which similar property are readily obtainable in rent-to-own transactions by like consumers;

(4) The fact that the dealer contracted for or received separate charges for insurance with respect to the goods with the effect of making the sales or loans, considered as a whole, unconscionable; and

(5) The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement or similar factors.

(d) In an action brought pursuant to this chapter, a charge or practice expressly permitted by this chapter is not unconscionable.

§46B-8-3. Civil actions by attorney general.

(a) After demand, the attorney general may bring a civil action against a dealer for making or collecting charges in excess of those permitted by this chapter. If the court finds that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge. If a dealer
has made an excess charge in a deliberate violation of or in reckless disregard for this chapter or if a dealer has refused to refund an excess charge within a reasonable time after demand by the consumer or the attorney general, the court may also order the respondent to pay to the consumer a civil penalty in an amount determined by the court not in excess of ten times the amount of the excess charge. Refunds and penalties to which the consumer is entitled pursuant to this subsection may be set off against the consumer's obligation. If a consumer brings an action against a dealer to recover an excess charge or civil penalty, an action by the attorney general to recover for the same excess charge shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. No action pursuant to this subsection may be brought more than one year after the time the excess charge was made. If the dealer establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(b) The attorney general may bring a civil action against a dealer to recover a civil penalty for willfully violating this chapter and if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter, it may assess a civil penalty of no more than five thousand dollars. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than four years before the action is brought.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.
(a) Any debtor under any security instrument conveying personal property, who retains possession of such personal property, and who, without the consent of the owner of the claim secured by such security instrument, and with intent to defraud, removes or causes to be removed any of the property securing such claim out of the county where it is situated at the time it became security for such claim or out of a county to which it was removed by virtue of a former consent of the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or converts the same to his own use, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than five hundred dollars, or imprisoned not more than six months, or both, in the discretion of the court.

(b) Any person in possession or control of any personal property by virtue of or subject to a written lease who, with intent to defraud and without written consent of the owner, disposes of such property by sale or transfer, or, after receiving a written notice to return the property or otherwise make the property available to the lessor, secretes or converts such property to his own use and in so doing places the property in a location other than the locations described in the written lease, or removes or causes to be removed such property from the state shall be deemed guilty of the larceny of such property.

In any prosecution under the provisions of this subsection, written notice may be mailed by certified mail, addressed to the consumer at the address of the consumer stated in the lease, and served on the consumer within ten days of the expiration of the lease, which notice shall state that the lease has expired and that consumer has ten days from receipt of such notice to return the leased property. Proof that the consumer failed to return the property within ten days of receiving such notice shall in any prosecution under this subsection constitute prima facie evidence that the consumer intended to defraud the owner.

Whenever the consumer is a resident of the county in which the lease was contracted, the dealer, after written
notice to the consumer within ten days after the
expiration of the lease, has the right to immediate
possession of the leased property, without formal process
to secure return and possession of the leased property,
if this can be done without breach of the peace. The
dealer is not liable to the consumer for any damages for
any action taken that is reasonable, necessary and
incidental to the reclaiming or taking possession of the
leased property.

CHAPTER 122
(Com. Sub. for H. B. 2513—By Delegates Browning, Gallagher,
Smith, Staton and Manuel)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-b, article
den, chapter seventeen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the relocation of public utility lines to accommodate
a federal-aid interstate or Appalachian highway project;
defining terms; and including public utility relocation
costs and relocation costs of any pipeline company
subject to the jurisdiction of the federal energy regula-
tory commission as a cost of construction or upgrading
of highways under the Federal Intermodal Surface

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines to accommo-
date federal-aid highway projects.

(a) Whenever the commissioner of highways deter-
mines that any public utility line or facility located
upon, across or under any portion of a state highway
needs to be relocated in order to accommodate a federal-
aid interstate or Appalachian highway project, he or she shall notify the public utility owning or operating the facility which shall relocate the same in accordance with the order of the commissioner. The cost of the relocation shall be paid out of the state road fund in all cases involving the interstate or the Appalachian system where proportionate reimbursement of the cost shall be obtained by the commissioner of highways from the United States pursuant to the “Federal Aid Highway Act of 1956” or the “Appalachian Regional Development Act of 1965,” as amended, and all acts amendatory or supplementary thereto: Provided, That the cost of any relocation of municipally owned utility facilities and water or sanitary districts or authorities shall be paid out of state road funds in any case involving any federal-aid system where proportionate reimbursement of such cost shall be obtained by the commissioner of highways from the United States.

(b) For the purposes of this section, the term, “cost of relocation,” includes the entire amount paid by the utility, exclusive of any right-of-way costs incurred by the utility, properly attributable to the relocation after deducting therefrom any increase in the value of the new facility and salvage value derived from the old facility.

The cost of relocating utility facilities, as defined in this section, in connection with any federal-aid interstate or Appalachian highway project is hereby declared to be a cost of highway construction.

(c) The commissioner of highways is hereby authorized to include within the cost of highway construction the cost of relocation necessarily incurred by any public utility, and any pipeline company subject to the jurisdiction of the federal energy regulatory commission, in relocating any public utility line, pipeline or facility as a result of the construction of any fully or partially controlled access highway as a part of the national highway system as authorized by the “Federal Intermodal Surface Transportation Efficiency Act of 1991”, and all acts amendatory and supplementary thereto as of the twentieth day of March, one thousand
nine hundred ninety-three. The provisions of article five-
A, chapter twenty-one of this code apply to all work
performed pursuant to the provisions of this subsection.

CHAPTER 123
(Com. Sub. for H. B. 2304—By Mr. Speaker, Mr. Chambers, and
Delegate Burk, By Request of the Executive)

[Passed April 10, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section two hundred two,
article two, chapter thirty-two of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; to amend and reenact section three hundred
five, article three of said chapter; and to amend and
reenact sections four hundred six and four hundred
thirteen, article four of said chapter, all relating to the
registration procedure for broker-dealers, agents and
investment advisers; increasing and adding fees,
registration of securities; setting up a special operating
fund to operate the securities division; specifying uses
of the fund; and requiring that the special fund be
appropriated by line item by the Legislature.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Registration of Broker-dealers, Agent; and Investment Advisers.
3. Registration of Securities.

ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS
AND INVESTMENT ADVISERS.

(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application together with a consent to service of process pursuant to subsection (g), section four hundred fourteen, article four of this chapter. The application shall contain whatever information the commissioner by rule requires concerning matters such as: (1) The applicant's firm and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of 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 or areas for the publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under section two hundred four of this article, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date, and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions, as designated by the broker-dealer in writing to the commissioner and approved in writing by the commissioner.
(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred fifty dollars in the case of a broker-dealer and the agent of an issuer, fifty-five dollars in the case of an agent, one hundred seventy dollars in the case of an investment adviser, and fifty dollars for each investment advisor representative. When an application is denied or withdrawn, the commissioner shall retain all of the fee.

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. A filing fee of twenty dollars shall be paid.

(d) The commissioner may by rule require a minimum capital for registered broker-dealers and investment advisers.

(e) The commissioner may by rule require registered broker-dealers, agents and investment advisers to post surety bonds in amounts up to ten thousand dollars, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond required. No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds twenty-five thousand dollars. Every bond shall provide for suit thereon by any person who has a cause of action under section four hundred ten, article four of this chapter and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

(f) Every applicant, whether registered under this chapter or not, shall pay a fifty dollar fee for each name or address change.

(g) Every broker-dealer and investment advisor registered under this chapter shall pay an annual fifty dollar fee for each branch office located in West Virginia.
1020 SECURITIES [Ch. 123

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-305. Provisions applicable to registration generally.

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. A registration statement filed under this chapter registering investment company shares shall cover only one class, series or portfolio of investment company shares.

(b) Every person filing a registration statement shall pay a filing fee of one twentieth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than fifty dollars or more than fifteen hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 306, the commissioner shall retain all of the fee.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

(d) Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under section 304 of this article or subsection (j) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can
be furnished by them without unreasonable effort or expense.

(g) The commissioner may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the conditions of any escrow or impounding required under this subsection, but he or she may not reject a depository solely because of location in another state.

(h) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

(i) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under section 306 of this article. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 306 of this article (if the registration statement did not
relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

(j) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(k) A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the investment company act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective when the commissioner so orders. Every person filing an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this section, with respect to the additional securities proposed to be offered.

(l) Every person changing the name or address of a securities registration shall pay a fifty dollar fee for change.

(m) Every person amending a registration statement or offering a document without increasing the dollar amount registered shall pay a twenty-five dollar fee for each amended statement or document.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-406. Administration of chapter; operating fund for securities department.

§32-4-413. Administrative files and opinions.

§32-4-406. Administration of chapter; operating fund for securities department.

(a) This chapter shall be administered by the auditor
of this state, and he or she is hereby designated, and
shall be, the commissioner of securities of this state. He
or she has the power and authority to appoint or employ
such assistants as are necessary for the administration
of this chapter.

(b) The auditor shall set up a special operating fund
for the securities division in his or her office. The
auditor shall pay into the fund twenty percent of all fees
collected as provided for in this chapter, not to exceed
four hundred thousand dollars. If, at the end of any
fiscal year, the balance in the operating fund exceeds
one hundred fifty thousand dollars, the excess shall be
withdrawn from the special fund and deposited in the
general revenue fund.

The special operating fund shall be used by the
auditor to fund the operation of the securities division
located in his or her office. The special operating fund
shall be appropriated by line item by the Legislature.

(c) It is unlawful for the commissioner or any of his
or her officers or employees to use for personal benefit
any information which is filed with or obtained by the
commissioner and which is not made public. No
provision of this chapter authorizes the commissioner or
any of his or her officers or employees to disclose any
information except among themselves or when neces-
sary or appropriate in a proceeding or investigation
under this chapter. No provision of the chapter either
creates or derogates from any privilege which exists at
common law or otherwise when documentary or other
evidence is sought under a subpoena directed to the
commissioner or any of his or her officers or employees.

§32-4-413. Administrative files and opinions.

(a) A document is filed when it is received by the
commissioner.

(b) The commissioner shall keep a register of all
applications for registration and registration statements
which are or have ever been effective under this chapter
and all denial, suspension or revocation orders which
have been entered under this chapter. The register shall
be open for public inspection.

(c) The information contained in or filed with any registration statement, application or report may be made available to the public under rules prescribed by the commissioner.

(d) Upon request and at such reasonable charges as he or she prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his or her seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions. Copies of the opinions shall be filed in a special file maintained for that purpose and shall be public records available for public inspection. The commissioner shall charge a one hundred dollar fee for each interpretative opinion.

CHAPTER 124

(Com. Sub. for S. B. 288—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-f, chapter twenty 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 two-b; to amend and reenact section twelve-b, article nine of said chapter; and to amend and reenact section twelve, article eleven of said chapter, all relating to definitions; sewage sludge management; siting approval for solid waste facilities; effect on facilities with prior approval; and recycling facilities exemption.
Be it enacted by the Legislature of West Virginia:

That section two, article five-f, chapter twenty 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 two-b; that section twelve-b, article nine of said chapter be amended and reenacted; and that section twelve, article eleven of said chapter be amended and reenacted, all to read as follows:

Article
  5F.  Solid Waste Management Act.
  9.  County and Regional Solid Waste Authorities.
  11.  West Virginia Recycling Program.

ARTICLE 5F.  SOLID WASTE MANAGEMENT ACT.

§20-5F-2.  Definitions.

§20-5F-2b.  Sewage sludge management.
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 land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(g) "Division" means the division of environmental protection.

(h) "Director" means the director of the division of environmental protection.

(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" or "persons" mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(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
(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, mixed waste processing facilities, sewage sludge processing facilities, composting facilities and
other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with subsection (b), section two-b of this article. 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: Provided, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility.

(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 environmental protection 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 source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

(v) "Source-separated materials" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

(w) "Mixed waste processing facility" means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling or composting.

(x) "Mixed solid waste" means solid waste from which materials sought to be reused or recycled have not been source-separated from general solid waste.

(y) "Composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

(z) "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article and articles nine and eleven of this chapter.

(aa) "Landfill" means any solid waste facility for the disposal of solid waste on land. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(bb) "Sewage sludge processing facility" is a solid
waste facility that processes sewage sludge for land
application, incineration or disposal at an approved
landfill. Such processes include, but are not limited to,
composting, lime stabilization, thermophilic digestion
and anaerobic digestion.

(cc) “Bulking agent” means any material mixed and
composted with sewage sludge.

(dd) “Sewage sludge” means solid, semisolid or liquid
residue generated during the treatment of domestic
sewage in a treatment works. Sewage sludge includes,
but is not limited to, domestic septage, scum or solids
removed in primary, secondary or advanced wastewater
treatment processes and a material derived from sewage
sludge. “Sewage sludge” does not include ash generated
during the firing of sewage sludge in a sewage sludge
incinerator.

(ee) “Composting” means the aerobic, thermophilic
decomposition of natural constituents of solid waste to
produce a stable, humus-like material.

(ff) “Agronomic rate” means the whole sewage sludge
application rate, by dry weight, designed:

(1) To provide the amount of nitrogen needed by the
food crop, feed crop, fiber crop, cover crop or vegetation
on the land; and

(2) To minimize the amount of nitrogen in the sewage
sludge that passes below the root zone of the crop or
vegetation grown on the land to the ground water.

§20-5F-2b. Sewage sludge management.

(a) The division shall develop and implement a
comprehensive program for the regulation and manage-
ment of sewage sludge. The division is authorized to
require permits for all facilities and activities which
generate, process or dispose of sewage sludge by
whatever means, including, but not limited to, land
application, composting, mixed waste composting,
incineration or any other method of handling sewage
sludge within the state.

(b) The director shall promulgate rules necessary for
the efficient and orderly regulation of sewage sludge no
later than ninety days after the effective date of this
article. The Legislature finds and declares that condi-
tions warranting a rule to be promulgated as an
emergency rule do exist and that the promulgation of
the initial rule required by this section should be
accorded emergency status. All rules, whether emer-
gency or not, promulgated pursuant to this section shall
assure, at a minimum, the following:

(1) That entities either producing sewage sludge
within the state or importing sewage sludge into the
state are required to report to the division the following:

   (i) The specific source of the sewage sludge;

   (ii) The amount of sewage sludge actually generated
       or imported;

   (iii) The content of heavy metals, pathogens, toxins or
       vectors present in the sewage sludge; and

   (iv) Each location that the sewage sludge is stored,
       land applied or otherwise disposed of; the amount so
       stored, land applied or otherwise disposed of; and the
       capacity of that location to accept sewage sludge;

(2) That the division engage in reasonable and
periodic monitoring of all sewage sludge related
activities and to monitor data supplied by sewage sludge
producers or importers to ensure compliance with state
and federal regulations;

(3) That representatives of the division have the
ability to enter onto any land application site for the
purposes of inspecting and analyzing the effects of
sewage sludge application on that site;

(4) That no permit for the processing or disposal of
sewage sludge will be issued until there is an accurate
finding that it has been adequately tested and shown not
to contain heavy metals, pathogens, toxins or vectors in
excess of regulatory standards;

(5) That the director may require a surety bond,
deposit or similar instrument in an amount sufficient to
cover the costs of future environmental remediation
from producers and importers of sewage sludge;

(6) That no person or entity be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc;

(7) That no land, except a solid waste facility, be allowed to accept or store so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land;

(8) That information relating to the disposal of sewage sludge is available to affected communities;

(9) That all sewage sludge processing facilities contain sufficient design specifications to protect ground and surface waters;

(10) That regulation of composting facilities varies according to types and quantities of materials handled;

(11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and

(12) That a fee, to be paid by the producer or importer, be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the “water quality management fund” established under the provisions of section six-a, article five-a of this chapter. The fee schedule shall vary according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.

(c) For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the
division pursuant to an NPDES permit required under article five-a of this chapter, a sewage sludge processing permit shall be a part of the existing water pollution control permit and shall include a sewage sludge management plan approved by the chief.

(d) On and after the effective date of this section, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the regulation provided for in subsection (b) of this section is effective.

(e) All sewage sludge placed in, or upon, or used by a solid waste facility or processed or handled, pursuant to a permit issued by the division of environmental protection, shall be subject to the same tipping and other fees levied by this chapter on the disposal of solid waste and shall be included in said facility's total tonnage, subject to the limitations established in this article and the provisions of article nine of this chapter: Provided, That no land within a solid waste facility, but outside a landfill disposal cell, be allowed to accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less: Provided, however, That no such fees, excepting assessment fees provided for in subdivision (12), subsection (b) of this section shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with this section.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-12b. Siting approval for solid waste facilities; effect on facilities with prior approval.

1 (a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section two, article five-f of this chapter, that are specifically exempted by section twelve, article eleven of this chapter. Notwithstanding said intent, facilities which obtained such
approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment in this code, and facilities which were otherwise exempted from local site approval under any prior enactment in this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twelve-c, twelve-d and twelve-e of this article.

(b) In considering whether to issue or deny the certificate of site approval as specified in sections twelve-c, twelve-d and twelve-e of this article, the county or regional solid waste authority or county commission shall base its determination upon the following criteria: The efficient disposal of solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority, or county commission, as appropriate, shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) hereof which support its decision to issue or deny a certificate of site approval.

(d) The siting approval requirements for composting facilities, materials recovery facilities and mixed waste processing facilities shall be the same as those for other solid waste facilities.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-12. Recycling facilities exemption.

Recycling facilities, as defined in section two, article five-f of this chapter, whose only function is to accept free of charge, buy or transfer source separated ma-
4 material or recycled material for resale or transfer for
5 further processing shall be exempt from the provisions
6 of said article and article nine of this chapter and
7 sections one-c and one-f, article two, chapter twenty-four
8 of this code.

CHAPTER 125

(Com. Sub. for S. B. 289—By Senators Brackenrich, Dalton, Chafin, Blatnik,
Humphreys, Walker, Craigo, Dittmar, Helmick, Plymale, Manchin, Jones, Ross,
Chernenko, Wiedebusch, Burdette, Mr. President, Bailey, Tomblin, Wagner,
Whitlow, Boley, Macnaughtan, Felton, Sharpe, Wehrle, Claypole and Yoder)

[Passed March 31, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and eight, article
five-f, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend article two, chapter twenty-four of said code by
adding thereto a new section, designated section one-i,
all relating to solid waste facilities generally; providing
for local solid waste to apply to director of the division
of environmental protection for modification of permits;
providing for extensions of the solid waste facility
closure deadline; providing that appeal from decision of
director of the division of environmental protection shall
be made to circuit court of the county in which the solid
waste facility is located; and providing for issuance of
emergency certificate of need by public service commis-
tion to increase maximum monthly solid waste disposal
 tonnage.

Be it enacted by the Legislature of West Virginia:

That sections five and eight, article five-f, chapter twenty
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted; and that
article two, chapter twenty-four of said code be amended by
adding thereto a new section, designated section one-i, all to
read as follows:
Chapter
20. Natural Resources.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-5. Prohibitions; permits required; priority of disposal.

§20-5F-8. Limited extension of solid waste facility closure deadline.

§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 may not be for more than one year. Upon expiration of a permit, renewal permits may be issued in compliance with rules and regulations promulgated by the director of the division of natural resources.

(d) All existing permits of the division of health for solid waste facilities under section nine, article one, chapter sixteen of this code shall continue in full force and effect until a permit is issued for that approved solid waste facility under this article: Provided, That all such existing permits of the division of health shall expire within five years of the tenth day of June, one thousand nine hundred eighty-three. Within four years of the tenth day of June, one thousand nine hundred eighty-three, all persons holding such division of health permits shall apply to the chief for a permit under this article: Provided, however, That the chief may require persons holding such existing health division permits to reapply under this section prior to four years from the tenth day of June, one thousand nine hundred eighty-three, if persistent violations of this article, any permit term or condition, orders or rules promulgated under this article, exist at that facility. Notwithstanding any other provision contained in this subsection, the division of natural resources may enter an extension order for a period of two years while an application for a permit pursuant to this article is pending.

(e) No person may dispose in the state of any solid
waste, whether such waste originates in state or out of state, in a manner which endangers the environment or the public health, safety or welfare as determined by the director of the division of natural resources: Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director of the division of natural resources, the director of the division of health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

(f) A commercial solid waste facility shall first ensure that the disposal needs of the wasteshed in which it is located are met. If one or more local solid waste authorities in the wasteshed in which the facility is located determine that the present or future disposal needs of the wasteshed are not being, or will not be, met by the commercial solid waste facility, such authorities may apply to the director of the division of environmental protection to modify the applicable permit. The director of the division of environmental protection, in consultation with the solid waste management board, may then modify the applicable permit in order to reduce the total monthly tonnage of out of wasteshed waste the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage necessary to ensure the disposal needs of the wasteshed 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.

§20-5F-8. Limited extension of solid waste facility closure deadline.

(a) The director of the division of environmental protection shall grant an extension of the closure deadline up to the thirtieth day of June, one thousand nine hundred ninety-three, to a solid waste facility, required by solid waste management regulations to close by the thirty-first day of March, one thousand nine hundred ninety-three, requesting such extension pursuant to the terms of subsection (b) of this section. The director may also grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to a solid waste facility required under the terms of an extension granted pursuant to this subsection to close by the thirtieth day of June, one thousand nine hundred ninety-three, or required by solid waste management regulations to close by the thirtieth day of September, one thousand nine hundred ninety-three, provided that the solid waste facility:

(1) Has a solid waste facility permit, or by the first day of March, one thousand nine hundred ninety-three, had an application to obtain a permit pending before the division of environmental protection for the construction of a landfill in accordance with title forty-seven, series thirty-eight, solid waste management regulations; and

(2) Has a certificate of need or had an application pending therefor, from the public service commission; and

(3) Has been determined by the director to pose no significant hazard to public health, safety or the environment; and

(4) Has entered into a compliance schedule with the
division of environmental protection to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with title forty-seven, series thirty-eight, solid waste management regulations or to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with preclosure provisions of title forty-seven, series thirty-eight, solid waste management regulations: Provided, That no such extension of closure deadline shall extend beyond the thirty-first day of March, one thousand nine hundred ninety-four, for any landfill in a county in which there is also located a commercial solid waste landfill which has installed a composite liner system in accordance with the requirements of the solid waste management regulations.

(b) Any commercial solid waste facility seeking to extend its closure deadline until the thirtieth day of June, one thousand nine hundred ninety-three, shall submit a request for an extension with the director, postmarked no later than the tenth day after this section becomes law. Any solid waste facility seeking to extend its closure deadline until the thirtieth day of September, one thousand nine hundred ninety-four, shall submit to the director, no later than the thirtieth day of April, one thousand nine hundred ninety-three, an application sufficient to demonstrate compliance with the requirements of subsection (a) of this section. The director shall grant or deny any application within thirty days of receipt thereof: Provided, That as a condition precedent for granting such closure extension, a solid waste facility must enter into an agreement with the director that the solid waste facility shall, no later than the thirtieth day of September, one thousand nine hundred ninety-three, complete and submit to the director an analysis of the facility’s specific requirements and cost to comply with the applicable design criteria, groundwater monitoring provisions of title forty-seven, series thirty-eight, solid waste management regulations and the corrective action, financial assurance and closure and post-closure care provisions of Subtitle (d) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6941-6949.
(c) Any party who is aggrieved by an order of the director regarding the grant or denial of an extension of the closure deadline for a solid waste facility pursuant to this section may obtain judicial review thereof in the same manner as provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in section four, article five, chapter twenty-nine-a of this code, in the circuit court of the county where such facility exists: Provided, That the court shall not in any manner permit the continued acceptance of solid waste at the facility pending review of the decision of the director of the division.

(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, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(e) The director of the division of natural resources shall grant an extension of the closure deadline not to exceed the thirtieth day of September, one thousand nine hundred ninety-three, to a solid waste facility required by solid waste management regulations to close by the thirtieth day of November, one thousand nine hundred ninety-two.

(f) Notwithstanding any other provision of this article, the director, upon receipt of a request for an extension, shall grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to any solid waste facility required to close on the thirty-first day of March, one thousand nine hundred ninety-three, or the thirtieth day of September, one thousand nine hundred ninety-three, which is owned by a solid waste authority or owned by a municipality and which accepts at least thirty percent
of its waste from within the county in which it is located and which has not been determined by the director to pose a significant risk to human health and safety or cause substantial harm to the environment and which could not be granted an extension up to the thirtieth day of September, one thousand nine hundred ninety-four, pursuant to the terms of subsections (a) and (b) of this section if:

(1) The cost of transporting the waste is prohibitive;

or

(2) The cost of disposing of waste in other solid waste facilities within the wasteshed would increase.

(g) Notwithstanding any other provision of this article, the director shall grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to any solid waste landfill which, on or before the first day of March, one thousand nine hundred ninety-three, has entered into a compliance schedule with the director for the construction of a transfer station or to any solid waste landfill which on the first day of March, one thousand nine hundred ninety-three, is already in the process of constructing a solid waste transfer station and applies by the first day of April, one thousand nine hundred ninety-three, to enter into with the director, a compliance schedule for the completion of the transfer station: Provided, That upon the completion of the transfer station and commencement of operations of the transfer station, such landfill shall cease accepting solid waste for disposal.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

(a) Notwithstanding any provision of this article, or
any provision of article five-f or article nine, chapter twenty, or any other provision of this code, upon the application of any commercial solid waste facility, the commission may grant to a commercial solid waste facility an emergency certificate of need to increase the maximum monthly solid waste disposal tonnage, for a period not to exceed one year, to the extent deemed necessary to prevent any disruption of solid waste disposal services in any county or wasteshed of the state resulting from the closure of an existing landfill in said county or wasteshed. The authority granted to the commission under this section shall expire after the thirtieth day of September, one thousand nine hundred ninety-three. No temporary certificate issued pursuant to this section shall extend beyond the thirtieth day of September, one thousand nine hundred ninety-four. The director of the division of environmental protection shall modify any commercial solid waste facility permit, issued under article five-f, chapter twenty of this code, to conform with the maximum monthly solid waste disposal tonnage and any other terms and conditions set forth in a temporary certificate issued under this section.

(b) If the net tonnage increase under a temporary certificate application made pursuant to subsection (a) of this section would cause the gross monthly solid waste disposal tonnage of such facility to exceed ten thousand tons, a temporary certificate shall be issued only if the solid waste facility has: (1) Obtained from the county or regional solid waste authority for the county or counties in which the facility is located a certificate of site approval or approval for conversion from a Class B facility to a Class A facility; and (2) obtained from the county or regional solid waste authority for the county or counties in which the facility is located approval to increase the maximum monthly tonnage disposed at the facility; and (3) obtained from the county commission for the county or counties in which the landfill is located approval to operate as a Class A facility; and (4) has a certificate of need application pending before the public service commission; and (5) has installed a composite liner system in compliance with the requirements set forth in the solid waste management regulations.
promulgated by the division of environmental protection or its predecessor. Such emergency certificate shall not authorize an increase in the maximum monthly solid waste disposal tonnage in an amount greater than that approved by the county or regional solid waste authority for the county or counties in which the landfill is located.

CHAPTER 126
(Com. Sub. for H. B. 2445—By Mr. Speaker, Mr. Chambers, and Delegates P. White, Douglas, Manuel, Huntwork and Compton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, five-a, five-b and ten of said article; and to amend and reenact section four, article five-n of said chapter, all relating to the management and disposal of solid waste; adding legislative findings which provide that solid waste incineration presents potentially significant health and environmental problems; that efforts should continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible; solid waste assessment fees; penalties; performance bonds; amount and method of bonding; bonding requirements; period of bonding liability; prohibiting new municipal and commercial solid waste facilities utilizing incineration technologies for the purpose of solid waste incineration; county assessment for Class A facilities; amount of county assessment fees and purposes for which they may be expended; solid waste disposal facility assessment fees; and penalties.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, five-a, five-b and ten of said article be amended and reenacted; and that section
four, article five-n of said chapter be amended and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

Article
5F. Solid Waste Management Act.
5N. Solid Waste Landfill Closure Assistance Program.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-1. Purpose and legislative findings.
§20-5F-5a. Solid waste assessment fee; penalties.
§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.
§20-5F-10. Municipal and commercial solid waste incineration and back-hauling prohibited; exceptions.

§20-5F-1. Purpose and legislative findings.

1 (a) The purpose of this article is to transfer jurisdiction over the management of solid waste under section nine, article one, chapter sixteen of the code from the division of health to the division of environmental protection and to establish a comprehensive program of controlling solid waste disposal.

7 (b) The Legislature finds that uncontrolled, inadequately controlled and improper collection, transportation, processing and disposal of solid waste (1) is a public nuisance and a clear and present danger to people; (2) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste; (6) that resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste is for the general welfare of the citizens of this state.
(c) The Legislature further finds that disposal in West Virginia of solid waste from unknown origins threatens the environment and the public health, safety and welfare, and therefore, it is in the interest of the public to identify the type, amount and origin of solid waste accepted for disposal at West Virginia solid waste facilities.

(d) The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal in the state of increasingly large amounts of infectious, dangerous and undesirable solid wastes and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

(e) The Legislature further finds that Class A landfills often have capacities far exceeding the needs of the state or the areas of the state which they serve and that such landfills create special environmental problems that require statewide coordination of the management of such landfills.

(f) The Legislature further finds that incineration technologies present potentially significant health and environmental problems.

(g) The Legislature further finds that there is a need for efforts to continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible.

§20-5F-5a. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of one dollar and seventy-five cents per ton or part thereof of solid waste. 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 is 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 is 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 remains 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 is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are 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 are 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 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 is 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 disposal facility within this state that collects the fee imposed by this section. Nothing herein 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 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 environmental protection, 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. 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 “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 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 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 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 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 three, chapter twenty-two-c of this code;

3. The “Solid Waste Reclamation and Environmental Response Fund” which may be expended by the director 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.

§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.

(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, rules promulgated hereunder and the permit: Provided, That the director has the discretion to waive the requirement of a bond from the operator of a commercial solid waste facility, other than a Class A facility, which is operating under a compliance order. The amount of the bond required is one thousand dollars per acre and may include an additional amount determined by the director based upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include, but are not limited to, satisfactory monitoring, post-closure care and remedial measures: Provided, however, That the amount of the bond shall not exceed eight thousand dollars per acre. All permits shall be bonded for at least ten thousand dollars. The bond shall cover either (1) the entire area to be used for the disposal of solid waste, or (2) that increment of land within the permit area upon which the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant
to chapter twenty-nine-a of this code. If the operator
chooses to use incremental bonding, as succeeding
increments of commercial solid waste facility operations
are to be initiated and conducted within the permit area,
the operator shall file with the director an additional
bond or bonds to cover such increments in accordance
with this section: Provided further, That once the
operator has chosen to proceed with bonding either the
entire area to be used for the disposal of solid waste or
with incremental bonding, the operator shall continue
bonding in that manner for the term of the permit.

(b) The period of liability for performance bond
coverage shall commence with issuance of a permit and
continue for the full term of the permit and for a period
of up to thirty full years after final closure of the permit
site: Provided, That any further time period necessary
to achieve compliance with the requirements in the
closure plan of the permit is considered an additional
liability period.

(c) The form of the performance bond shall be
approved by the director and may include, at the option
of the director, surety bonding, collateral bonding
(including cash and securities), establishment of an
escrow account, letters of credit, performance bonding
fund participation (as established by the director), self-
bonding or a combination of these methods.

If collateral bonding is used, the operator may elect
to deposit cash, or collateral securities or certificates as
follows: Bonds of the United States or its possessions, of
the federal land bank, or of the homeowners’ loan
corporation; full faith and credit general obligation
bonds of the state of West Virginia, or other states, and
of any county, district or municipality of the state of
West Virginia or other states; or certificates of deposit
in a bank in this state, which certificates shall be in
favor of the division. The cash deposit or market value
of such securities or certificates shall be equal to or
greater than the sum of the bond. The director shall,
upon receipt of any such deposit of cash, securities or
certificates, promptly place the same with the treasurer
of the state of West Virginia whose duty it is to receive
and hold the same in the name of the state in trust for
the purpose for which the deposit is made when the
permit is issued. The operator making the deposit is
entitled from time to time to receive from the state
treasurer, upon the written approval of the director, the
whole or any portion of any cash, securities or certifi-
cates so deposited, upon depositing with the treasurer
in lieu thereof, cash or other securities or certificates of
the classes herein specified having value equal to or
greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the
thirty-year period following final closure, the division
will conduct a final inspection of the facility. The
purpose of the inspection is to determine compliance
with this article, the division's rules, the terms and
conditions of the permit, orders of the division and the
terms and conditions of the bond. Based upon this
determination, the division will either forfeit the bond
prior to the expiration of the thirty-year period follow-
ing final closure, or release the bond at the expiration
of the thirty-year period following final closure. Bond
release requirements shall be provided in rules promul-
gated by the director.

(e) If the operator of a commercial solid waste facility
abandons the operation of a solid waste disposal facility
for which a permit is required by this article or if the
permittee fails or refuses to comply with the require-
ments of this article in any respect for which liability
has been charged on the bond, the director shall declare
the bond forfeited and shall certify the same to the
attorney general who shall proceed to enforce and collect
the amount of liability forfeited thereon, and where the
operation has deposited cash or securities as collateral
in lieu of corporate surety, the secretary shall declare
said collateral forfeited and shall direct the state
treasurer to pay said funds into a waste management
fund to be used by the director to effect proper closure
and to defray the cost of administering this article.
Should any corporate surety fail to promptly pay, in full,
forfeited bond, it is disqualified from writing any
further surety bonds under this article.
§20-5F-10. Municipal and commercial solid waste incineration and backhauling prohibited; exceptions.

(a) Notwithstanding any other provision of this code to the contrary, it shall be unlawful to install, establish or construct a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration: Provided, That such prohibition shall not include the development of pilot projects which may include tire or tire material incineration, designed to analyze the efficiency and environmental impacts of incineration technologies: Provided, however, That any pilot project proposing to incinerate solid waste must comply with regulatory requirements for solid waste facilities established in this chapter and shall demonstrate with particularity to the division that it has the financial and technical ability to comply with all regulations applicable to solid waste facilities utilizing incineration technologies. The division shall require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of potential future environmental harm at the site.

(b) It shall be unlawful to engage in the practice of backhauling as such term is defined in section two of this article.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§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 three dollars and fifty cents per ton or like ratio on any part thereof of solid waste, except as provided in subsection (e) 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 to close by article fifteen 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 is 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
(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are 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 are 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 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 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 environmental protection, 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 nine, article fifteen 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 twelve of this article.

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**CHAPTER 127**

(Com. Sub. for S. B. 400—By Senators Craig, Brackenrich and Boley)

[Passed April 9, 1983: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the deadline for prohibition on the disposal of yard waste, lead-acid batteries and tires in solid waste facilities.

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

That section eight, article eleven, 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 11. WEST VIRGINIA RECYCLING PLAN.**
§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) Effective the first day of June, one thousand nine hundred ninety-four, it shall be unlawful to deposit yard waste, including grass clippings and leaves, and lead-acid batteries in a solid waste facility in West Virginia; effective the first day of June, one thousand nine hundred ninety-five, it shall be unlawful to deposit tires in a solid waste facility in West Virginia: Provided, That such prohibitions do not apply to a facility designed specifically to compost such yard waste or otherwise recycle or reuse such items: Provided, however, That reasonable and necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection (c) of this section.

(b) No later than the first day of May, one thousand nine hundred ninety-three, the solid waste management board shall design a comprehensive program to provide for the proper handling of yard waste and lead-acid batteries. No later than the first day of May, one thousand nine hundred ninety-four, a comprehensive plan shall be designed in the same manner to provide for the proper handling of tires.

(c) No later than the first day of August, one thousand nine hundred ninety-three, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (b) of this section. No later than the first day of August, one thousand nine hundred ninety-four, the division of environmental protection shall promulgate rules, in accordance with said chapter, as amended, to implement and enforce the program for tires designed pursuant to subsection (b) of this section.